April 30, 2019

Hand-delivered and sent via e-mail
The Honorable Eliana Pintor Marin
Chair, Assembly Budget Committee
Attn: Frank Haines, Legislative Budget and Finance Officer
New Jersey State Legislature
P.O. Box 068
Trenton, New Jersey 08625-0068

Dear Madam Chair:

Pursuant to your letter regarding a written response to questions raised by Assemblywoman Carol Murphy dated April 18, 2019, please see attached the following requested documents:

- SDA’s nepotism policies, hiring practice policies, project management procedures, and procurement processes for project management and construction services.

Please do not hesitate to contact Roy Garcia, Chief of Staff, at (609) 858-5129 or at rgarcia@njsda.gov should you have any questions.

Sincerely,

[Signature]

Manuel M. Da Silva
Acting Chief Executive Officer
New Jersey Schools Development Authority

Attachments

cc: Frank Haines, Legislative Budget and Finance Office
David Ridolfino, Office of Management and Budget
Aaron Binder, Assembly Democratic Office
Deborah DePiano, Assembly Republican Office
William Owens, Office of Legislative Services
SDA HIRING PRACTICES
Human Resources Department

STANDARD OPERATING PROCEDURES

Recruitment Advertising

State of New Jersey
Schools Development Authority
Trenton, New Jersey
INTRODUCTION

The recruitment of candidates for an open position is viewed by the Human Resources Department as the initial stage for identifying qualified candidates for the New Jersey Schools Development Authority. The Human Resources Department will use various advertising wherever possible to provide an improved corporate profile through the use of color and larger ad presence (space), better value for dollar, align the recruitment advertising with other advertising, emphasize on building our brand in the labor market and aim to reduce overall ad copy.

The evaluation of the recruitment methods take into consideration, the potential risk and benefits to the Authority for utilizing recruitment advertising. One of the key methods utilized for attracting qualified applicants is through newspaper and internet advertising. The Human Resources Department place special attention on where third party vendors seek to advertise and enroll themselves for soliciting potential candidates for the Authority. Prior to filling an open position, both the recruitment methods and associated cost are evaluated and subjected to approval by the Human Resources Department and Chief Executive Office.

PURPOSE

The goal of the Human Resources Department is to use recruitment advertising to attract the attention of prospective candidates and cultivate their interest. In order to market the organization and the opportunities being offered at the New Jersey Schools Development Authority, it is important that we provide enough information to define the desired attributes of candidates; and secure a pool of suitable qualified candidates for vacant positions. The purpose of the SOP- Standard Operating Procedures is to provide guidelines for advertising vacant positions. It also provides information to hiring managers and Human Resources representatives about requirements for announcing vacant positions and established format used by Human Resources for approving recruitment advertising.

SCOPE

These procedures are now the standards for the New Jersey Schools Development Authority and the Human Resources Department recruitment advertising. This SOP applies to all eligible positions that are filled through the recruitment process and give the authority to the Human Resources Department to advertise key vacant positions.

DEFINITIONS

Advertising: This is defined as any "outreach effort intended to be seen and heard by potential applicants and designed to encourage them to contact the recruiter for further information about a specific position."
RESPONSIBLE UNITS/DIVISION

Human Resources: This group is responsible for initiating the recruitment advertising for vacant positions. Partners with hiring manager to provide sound technical advice on targeted newspaper, cost, ad content and timeline for advertising to ensure return on investment.

PROCEDURES

Job Posting Advertising

External advertising is sometimes necessary to enhance and diversify the applicant pool. This may involve advertising beyond the SDA internal and external Web site. Advertising options include print ads, Internet postings, professional journals, and non-profit organizations. All advertising costs are fully funded by the Human Resources Department.

SDA recognizes the value of a diverse workforce. The Authority encourages utilization of recruitment advertising in publications with a focus on diversity. Human Resources Department provides local organizations with the Authority’s job information and networks with various universities, professional organizations, community groups and civic organizations to promote employment at NJSDA.

Below are steps necessary prior to an ad placement:

Step 1. Meet with hiring manager to get approved requisition identifying open position for job posting. Ensure requisition has been signed by the Vice President or appropriate parties.

Step 2. Check signed requisition for accuracy and make sure correct job description is attached and ready for posting.

Step 3. Revise vacancy announcement for specialized experience candidates are required to possess in order to determined candidate qualifications.

Step 4. Post position within two business days internally and externally with advertising partners. Ensure positions are posted with job title, grade level, posting date, location and attached job description.

Step 5. Send announcement electronically to MIS for internal posting on the SDA intranet site and SDA external website with necessary information.

Step 6. Follow up with MIS to approve posted position and submit approval for final posting to ensure positions are posted within two business days. Once reviewed and approved by Human Resources, position is launched for public review.

Step 7. Advertise all open vacancies externally with advertising partners such as, Department of Labor, Universities, Professional Associations, depending on position, Monster.com, Yahoo hotjobs.com and outplacement firms.

Note: Depending on recruitment strategy, identify if positions should be posted at job fairs, newspapers targeted publications and with other internet advertising partners as appropriate.
Placing an External Ad:
Newspaper/Publication Advertising

Positions are usually advertised on the SDA website internally and externally prior to being submitted to a third party vendor for vacant announcement. Any vacant position not approved for newspaper or magazine advertising will be listed on monster.com, hotjobs.com, key universities, out placement services and the department of labor website. Information included in announcement is the job description. This includes job title, department, minimum qualification, knowledge, skills, and abilities, technical license if required and application information. Targeted newspapers for advertising are Star Ledger, Philadelphia Enquirer, The Times and NJ.com. It usually takes a minimum of five to seven days for an ad to be developed, approved, and placed. Consideration needs to be given to lead time for publication in journals and newspapers. This can be as long as two months for some publications.

**Step 1.** Coordinate all ads placements through our preferred third party vendor, MPA, Mary Pomerantz advertising for an additional state discount to reduce newspaper cost.

**Step 2.** Work with Mary Pomerantz advertising account representative to develop a draft ad, create the ad layout and graphics with specific ad content.

**Step 3.** Review the draft ad copy, recommend revisions if necessary and request rate quote form the media outlets. Ensure that advertisements do not include language that would compromise the recruitment process or put the Authority at risk.

**Step 4.** Send ad electronically to hiring manager with the rate quote for the ad type/media outlet, ad proof (if available), and publication date/deadline and preview of the ad for final approval.

**Step 5.** Contacts the advertising agency (MPA), once the hiring manager accepts or rejects the ad. Submits ad electronically or fax to 732-246-7405 for placement.

**Step 6.** Process payment for advertisement. Vendor will submit invoice to Human Resources Department. Upon receipt, fill out payment request form from intranet, get signature approval and submit to Accounting for payment. Make copy for Human Resources records.

**Notes:** It is important to ensure the advertisement may not overstate the potential of benefits of the Authority beyond what is submitted. Most newspaper advertising is now using the modular format, and depending on ad length, display ad may be recommended. Departments that wish to save costs on recruitment advertising are advised to keep descriptions at a minimum and preferred qualifications language as brief as possible. For example, a three row ad with wide columns costs $398.00 with the online. A seven row ad would cost $540.26 and a display ad, depending on size, could cost minimum $837.64. Currently, the Authority is a contract advertiser with Monster, Yahoo.hotjobs and the Mary Pomerantz Advertising group. As preferred vendors, these contracts are already negotiated with unmatched prices, which entitled the Authority deeply discounted recruitment advertisement rates. For direct placement without advertising agency, all ad type/media outlet contacts are located in the Newspaper Advertising log book.

Sample of previous ads placement are available for review as reference. Details of advertising contract rates are available in the Human Resources Department.
RECORDS

Advertising Log

✓ Copy of Advertising Request Form

✓ Copy of payment invoice, faxed document of advertising request and final draft of advertisement should be placed in Advertising log binder.

✓ Keep copy of advertisement from the newspaper clipping or target magazines for files.

FORMS ATTACHED
ADVERTISING REQUEST FORM

Human Resources Department
Phone: (609) 943-5955  Fax: (609) 777-1347

Please Type

Date: ________________________________

Requestor: ____________________________  Department: ____________________________

Phone: ____________________________  Fax: ____________________________  E-Mail: ____________________________

Check ONLY one:  □ Newspaper  □ Magazine  □ Radio  □ On Line

□ Other (Please Specify) ______________

* All Newspaper Advertising Request Forms, and the creative brief, must be submitted to agency at least two weeks prior to publication date.

Where would like to advertise? Check all that apply:

□ The Star Ledger  □ The Times  □ Philadelphia Enquirer  □ Asbury Park Press

□ Home News Tribune  □ Courier Post  □ Burlington County Times  □ Princeton Packet


□ NJ Herald  □ US 1 News Paper  □ Bucks County Courier Times

□ Other (Please Specify)

__________________________________________________________

Preferred Date(s) to run Ad(s):

__________________________________________________________

__________________________________________________________

Special Instruction:

__________________________________________________________

__________________________________________________________

PLEASE CALL (609) 943-4970 TO CONFIRM RECEIPT OF THIS FAX/CHARGES.
*PLEASE DO NOT CHARGE ANY EXTRA FEES (Except on-line charges) FOR THIS PLACEMENT *
Sample Ads

Below is a sample display ad for reference.
Review/Revision/Approval History

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<th>Author</th>
<th>Review Date</th>
<th>Approval/Release Date</th>
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<td>Sheron Johnson - Thomas</td>
<td>4/30/10</td>
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Human Resources Department

STANDARD OPERATING PROCEDURES

Recruitment

Advertising / Job Posting

Candidate Selection Process

State of New Jersey
SCHOOLS DEVELOPMENT AUTHORITY
TRENTON, NEW JERSEY

Last Revision Date: 4-15-2010
INTRODUCTION

The recruitment of highly qualified people is crucial to the success of the New Jersey Schools Development Authority. It is important that planning and development of recruitment strategies be maximized to ensure fair, successful and quality hires.

If not executed properly, a poor or non-existent recruitment strategy will result in poor quality hires or referral of applicants who are unlikely to meet the qualifications required to be successful throughout the recruitment process. Maximizing recruitment strategies or referrals is not a passive process but requires intensive proactive recruitment to overcome issues of unfair hiring practices, job shadowing and develop streamline recruitment efforts which if not implemented can be challenging.

PURPOSE

These operating procedures, which include forms, staffing processes and instructions, will assist hiring managers, supervisors and the Human Resources (HR) Specialist and (HR) Coordinators to carry out their duties eliminating unnecessary job loss and job shadowing resulting in expedited quality service to meet the HR customer needs. The goal is to develop a strategic staffing process, where the Recruitment Manager, Human Resource Specialist and / or (HR) Coordinators engages with the hiring managers to better understand customer expectations, hiring needs and priorities from the beginning to provide a full range of staffing and services as a strategic human resources business partner. Training is a key element to ensure this goal is achieve.

The aim is also to make available sources of recruiting information that may be of assistance to applicants who are interested in joining the New Jersey Schools Development Authority. Streamlined procedures are established and required to be followed in contacting, and administering applications from applicants who wish to joined the Authority. These procedures will enable the recruitment process of the Authority to be conducted in a transparent, objective and unbiased manner while ensuring the best applicant is chosen to meet the staffing needs for the New Jerseys Schools Development Authority. In addition, it ensures that the value is the over-riding criteria for selecting the best suitable applicant for available positions.

SCOPE

These procedures are now the standard for the New Jersey Schools Development Authority, and the Human Resources Department Recruitment and Selection Operating Procedures.

DEFINITIONS

Position Description Questionnaire (PDQ): A PDQ is completed when it contains sufficient information to determine the title, occupation series and grade level / pay grade of the position. Essential components are:

➢ The hiring manager / supervisor controls under which the position operates.
➢ Major duties that show the knowledge, skills and abilities (KSA) required to performed significant duties of the job.
➢ Percent of time spent on each major job responsibilities.
➢ A general statement at the end of major job duties: “Performs other duties as assigned” must always be included in the PDQ. This makes it clear that the assignment of duties to employees is not limited to by the content of the position description. However, supervisors should not assign employees additional duties that are inappropriate to their position and qualifications. PDQ format is found on the SDA intranet site.
**Recruitment:** It is the activity of hiring employees to fill vacancies. This is the process where people are identified, screened, contacted for the vacancy, or screened and determined not to be eligible. This involves candidates be selected by processes such as interviewing, technical skills test, and then proceed with job offer. Employees maybe recruited internally and externally.

**Prescreen:** The evaluation of generalized characteristics prior to phone screen to initially determine candidate eligibility. These characteristics enable an assessment to be made concerning contact and screening of the applicant for the position. These characteristics may be determined from job descriptions and staffing discussions with hiring manager to ensure eligibility.

**Screen:** This involves gathering of information that is in addition to resume pre-screen. Additional information is collected to further assess the eligibility of the candidate. These assessments may be evaluation of knowledge, skills and abilities, technical expertise, previous work experience and demonstrated leadership. In cases where an Administrative Assistant position is vacant, a skill test is administered to assess typing speed and computer skills for eligibility.

**Rejection:** This is where the person has provided consent after being fully informed of the job description, and has been found ineligible or either because the evaluation criteria have not been met.

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**RESPONSIBLE UNITS/DIVISION**

*Senior Human Resources Director* initiates organizational assessment and establish current state supply/demand for quarterly reviews and developmental moves. Partners with Vice Presidents of each Division and Recruitment Manager to develop staffing plan, priorities for critical positions, participate in ongoing staffing needs and approve salary offers outside guidelines.

*Recruitment Manager* is responsible for assessing the staffing needs and support strategic planning for hiring for each business unit or customer. Also provide technical sound advisory services while adhering to statutory classifications and staffing regulations to ensure compliance with legal requirements and proactive sourcing for vacant positions. Initiate and manage advertising, university partnerships and employment agency/search firm relationships. Manages interview team meetings to evaluate candidates and final decision making of selected candidates. Conduct internal salary analysis and prepare, recommend and negotiate offer packages for new hires and extend verbal offer to internal and external candidates in partnership with hiring managers.

*Hiring Manager / Supervisor* is responsible for initiating recruitment actions, discussing job descriptions changes and discusses recruitment strategies with Recruitment Manager and HR Specialist or HR Coordinator as soon as possible. Upon receipt of a referral list, they are responsible for candidate selection, interviewing and making hiring decision base on consensus agreement by interview panel members.

*The Human Resource Specialist* is responsible for assessing needs of the customers and provides technically sound advisory services to adhering statutory classifications and staffing regulations to ensure compliance with legal requirements and proactive sourcing for vacant positions. Proactive sourcing of candidates, maintain employment agency and university partnerships. Conducts reference check for external candidates and assist with extending verbal offers.
The Human Resource Coordinator is responsible for all job postings, coordinate interviews and itinerary of applicants, handle all aspects of candidate’s paperwork and ensure they are in compliance with regulatory guidelines. In addition, close out job folders, extend job offer for non-exempt hires, completes and mail all internal/external communication, including associated paperwork to new hires in a timely manner.

Executive / Administrative Assistants may assist hiring managers with processing a requisition or requesting a personnel action, coordinate interview schedule and ensures new employees are provided with ID badges, desk, phone, computer, e-mail, department orientation and other necessary local information.

**PROCEDURES**

For detailed, step-by-step procedure, hiring managers may access the flowchart entitled "NJSDA Staffing Process Flowchart" below.

**New Jersey Schools Development Authority Staffing Process**

1. Initiate Hiring Process
2. Source Candidates
3. Screen & Assess Candidates
4. Consensus Meeting
5. Offer & Secure Candidate
6. Onboard New Employee

A. HM/ RM identifies staffing need and reviews job description. For newly created positions a PDQ is completed for job evaluation and job description development.
B. HM completes Job Requisition
   - Allow time for approval
C. HM sends approved requisition to HR
D. SD/HR forwards copy to CEO for final approval
E. HR Coordinator posts job description
   - NUSD/ Job line and external sites
   - Creates job folder
F. MIS send email to HM/SD/HR to confirm posting
G. HM/SD/HR screens resumes and forwards resumes to HM
H. HM screens resumes and forwards resumes to HM
I. HM/SD/HR contacts candidates to be interviewed
J. HR Coordinator checks references & background check on selected candidates
K. HM completes applicant log and send interview notes to HR to close out job folders
L. HR/SD/HR determine offer terms
M. HM /HRC extends verbal offer to candidate
   - Candidate accept offer and establish start date
N. HM or HRC sends written offer letter and employment paper work
O. HM provide proper and timely feedback to unsuccessful internal candidates
P. HRC send rejection letter to unsuccessful external candidates, sign up new employee for orientation, secure other necessary documents
Q. RM/HRC confirms start date, informs HM/SD/HR and appropriate department to set up workspace, etc.

**KEY**

Senior Director HR = Red
Hiring Manager = Blue
HR Coordinator = Purple
Recruitment Manager = Green

1. In order to conduct a fair and transparent selection process, and in order to provide existing employees with an opportunity to advance their careers with the New Jersey Schools Development Authority, all vacancies arising with the Authority will be posted.

2. Exception to this policy will be made with the approval of the Senior Director of Human Resources or Vice Presidents from the various business units.
3. The recruitment of all open positions will be guided by the relevant NJSDA policies and government legislation.

**Staff Planning and Discussion Stage**

**Staff Planning:**
1. When a hiring manager / supervisor identifies a need to fill a position, the Senior HR Director or Recruitment Manager must be contacted in order to provide assistance and advise in the development of a staffing plan upon submission of the PDQ if not already created and a requisition. This plan is jointly developed between the hiring manager / supervisor and the Senior HR Director or Recruitment Manager during the planning discussion. The objective of this discussion is to identify the hiring manager / supervisor requirements so that PDQ, requisition and vacancy announcement if required can be developed and processed quickly.

**Discussion Stage:**
2. An action to fill a position begins any time after a hiring manager / supervisor expects that a position in his or her department will become vacant or when a new position is created. The hiring manager / supervisor immediately partners with key representatives in human resources to ensure PDQ if needed or requisitions are completed which will eliminate job shadowing and reduced time to fill vacant position or possible cancelation if requirements are not completed or position is not evaluated. Discussions are conducted regarding job descriptions, internal considerations, recruitment strategy, vacancy announcement options, position requirements, qualifications and skills assessment to determine best qualified candidate internally and externally.

**Initiating Staffing Action**
1. It is critical that the Recruitment Manager consult with the hiring manager / supervisor throughout the recruitment process beginning with a review of the job description and work requirements. The hiring manager review the PDQ and job description to make sure it is current and the job description is accurate. If it is, no revisions are required. This action and consulting advice ensure no unnecessary revisions to move the process along quickly.

2. If the job description is not accurate and minor changes are needed to ensure accuracy, the hiring manager should consult with the Senior Director of Human Resources or Recruitment Manager who will assist in determining if the changes would impact the grade level of the position. If no impact, the hiring manager should submit the job description changes to human resources.

3. If the position description is not accurate and more than minor revisions are needed that would impact the grade level, then a new job description needs to be established with a PDQ. The hiring manager should consult with the Senior Director of Human Resources or Recruitment Manager to ensure the guidelines on the PDQ are followed, job evaluation is conducted and a job description is develop accurately. Throughout the consultation period, a revision of the knowledge, skills, abilities (KSA) and key job responsibilities must be conducted for accurate job evaluation and job description.
Recruitment Process

Once the position is identified and approved, the position is entered into the “Master Staffing Report” with an assigned requisition number, position status and expected time line to track when the recruitment process begin and ends. This requisition number is only entered once. The first step is to determine priority placement status and other requirements. This is followed by a job posting announcement, applying the determining criteria to all candidates, referral of the best qualified candidates, rating candidates and providing assistance to the interview team in the candidate selection process. The steps are explained below individually. Since the planning discussion already took place, and a strategy is in place, the recruitment process will be expedited.

Advertising / Job Posting Process

1. Depending on the planning discussion where recruitment strategy is finalized, the next step in the process is to prepare the vacancy announcement. To initiate the job posting, the hiring manager must obtain approval from the appropriate Vice President. A complete requisition must be submitted to Human Resources for additional signature approval from the COO or CEO depending on position.

2. Once approved, position is forwarded to human resources to be posted within two business days internally and externally. Vacancy announcement must include outlined specialized experience candidates are required to possess in order to determined candidate qualifications. Announcement is sent to MIS for internal posting on the SDA intranet site and SDA external website with necessary information. Positions are posted with job title, grade level, posting date, location and attached job description. In some cases positions are advertised internally only depending on the planning discussion and finalized recruitment strategy.

3. MIS post position within two business days upon receipt from human resources and submit approval for final posting. Once reviewed and approved by human resources, position is launched for public review.

4. All open vacancies will be posted internally and externally with advertising partners such as, Department of Labor, Universities, Professional Associations, depending on position, Monster.com, Yahoo hotjobs.com and outplacement firms. Depending on recruitment strategy, some positions are posted at job fairs, newspapers targeted publications and other internet advertising partners as appropriate.

Candidate Evaluation Process

1. Candidates are instructed to apply online and submit resumes to resumes@njsda.gov. Each candidate will receive an acknowledgement letter to confirm resume receipt. If candidates possess the necessary qualification on the resume, they are contacted to participate in a phone screen for further evaluation. Referral resumes from internal employees are also required to apply on line for consideration. For administrative positions, a phone screen and skills test are administered.

2. All resumes submitted are stored in a resume database on the MIS database for evaluations. If candidate is not an appropriate match for available position, or resumes are submitted for position not declared available, resumes are stored in an electronic database for twelve months for possible matching against future vacancies.
3. Upon completion of all pre-screen and phone screen, candidates are submitted to hiring manager for further evaluation against education requirements and required licenses or certifications. Candidates will only be denied consideration when neither the resume or supplemental documents provides the necessary information to determine eligibility or when the resume or supplemental documents clearly indicates that the candidate does not meet required qualifications. Candidates maybe considered for multiple employment vacancies based on the information provided in their resume and supplemental documents.

4. The Recruitment Manager or Human Resources Specialist contact hiring manager to discuss recommended resumes. A follow up on referral list is usually conducted within five to seven business days if no feedback is provided to expedite the process. Hiring manager is responsible for communicating with HR who all the eligible candidates are that should be granted a site interview. HR contacts candidates and partners with Executive Assistant to coordinate site interview if appropriate. In most cases HR set up interview with all candidates selected for site interview.

Panel Interviews and Preparation

Panel interviews, if done with preparation, can be more efficient, and can provide reliable and valid results. Varied panel members provide different perspective that lessen evaluative biases and help discussions when comparing candidates. The objective is not to create stress for the candidates or place them in a position of being “out numbered”. The key is to convey our pleasure in their interest in the Authority, and select the most qualified candidate for the position while presenting the organization as an employer of choice. 

Steps Below:

1. Hiring manager partners with HR contact to identify panel members with varied expertise that can assist in an unbiased selection process.

2. All panel members are trained on interviewing techniques, legal requirements and data integration process prior to conducting interviews.

3. Recruitment Manager contacts the hiring manager to provide guidance on developing behavior based interview questions for open position. Questions are designed to determine eligibility to fulfill job requirements, assess strengths and weakness, determine job related skills, gain behavioral examples, seek contrary information and avoid what may be construed as discriminatory.

4. HR Coordinator follows up with hiring manager to revised finalized interview questions, set up interview schedule and send interview packets for review. Interview packets include finalized schedule, job description, candidate resumes and interview questions for interview preparation.

5. All candidates selected for interviews are sent an electronic copy of the interview schedule with instructions and directions to the SDA office where interviews are conducted. Candidates are also directed to the web site at [www.njsda.gov](http://www.njsda.gov) to learn more about the organization prior to interview.

6. Upon arrival, candidates complete the employment application and are escorted to the interview location where an introduction to panel members takes place. Interview is schedule for one hour.
Sample Behavior Based Interview Questions (STAR) and Core Competencies:

**Personal Effectiveness**
A. What unique skills or knowledge can you contribute to our company?
B. What would you say are your greatest career accomplishments? What are your goals?

**Organizational Leadership**
A. Describe your experience in managing a team?
B. What aspect of supervision do you find the most challenging?

**Teamwork**
A. Successful partnerships promote value for organizations. How would you promote partnerships with external constituents and other departments within the organization?
B. Give an example of a time when you led or contribute to an initiative that involved a team. What strategies did you use to ensure collaboration and achieve results?

**Candidate Selection Process**

When making a selection, the interview panel members can use a variety of processes to facilitate the selection process as long as all factors taken into consideration are unbiased and job related. The information obtained during the job evaluation portion of this process should serve as the primary factor for the selection and should also be use to shorten the list of potential candidates. *Steps below:*

1. All interview panel members are assigned a list of questions from the selected core competencies. They are instructed to use the rating scale from the data integration score sheet to rate candidates on each category from 1 to 5 based on how each candidate respond to questions.

2. Upon completion of all candidates interviewed a data integration meeting is scheduled for the panel members. The session is facilitated by the Sr. Director of Human Resources or Recruitment Manager. Discussion of the panel members are based on the consensus of the group. All panel members are advised to maintain confidentiality by not discussing candidate assessment or performance during the interview prior to data integration meeting.

3. In reaching consensus, only job related criteria are considered. The primary source is candidate resume and additional job related information can be taken into consideration through accurate first hand knowledge or supervisory reference checks.

4. Once candidate “A” and “B” are identified and a consensus is reached, the hiring manager may request a reference check be conducted to gather further information before making final hiring decision. The Human Resource Specialist will contact the three references provided and gather information for further consideration.

5. If results are favorable, the hiring manager will meet with Human Resources and make a hiring decision based on all factors being considered throughout the process.

**Job Offer Process and Condition of Employment**
1. During the discussion meeting with the hiring manager, the Sr. Director of Human Resources or Recruitment Manager discusses a recommended offer package taking into consideration a variety of compensation factors to determine the best offer for the candidate. Once an agreement is reached, the Recruitment Manager or HR Coordinator contact candidate to extend a verbal offer.

2. An offer of employment is made to the successful candidate. Upon acceptance, the Human Resources Department issues an offer letter. Verbal and written offers of employment must be consistent with the Authority salary guidelines.

3. All offer letters must be signed by Vice President of the division or by a designee from the management team in their absence prior to being sent to the candidate. Two copies are submitted to the candidate with offer package. Candidates are instructed to sign both copies and bring all paper work to orientation on the first day of employment.

4. All successful candidates are notified of condition of employment status. A background investigation is conducted by a preferred vendor “Lexis Nexis Service” for pre-employment screening. Employment is contingent upon the results of the pre-employment screening. For certain positions, a credit check may also be conducted depending on position.

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**RECORDS**

**HR Record Keeping**

It is required that resumes and documentation be retained for three years.

Job folders must be created to maintain any paper records that document the candidate application and selection process. This include but not limited to:

- Paper resumes, only if they are not included in an candidate’s Online recruiting profile
- All paper job interest profiles
- Evaluation forms
- Files or documents on other candidates considered if they aren’t included in the online recruiting
- Interview notes
- Test scores, if not maintained by a third party vendor or captured by an online recruiting
- Job description
- Copies of job advertisements posted outside of online recruiting (newspaper, third party, job boards other than Monster.com or Yahoo hot jobs. We capture Monster and Yahoo on online recruiting.)

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**Employment Policies**

- Employment Equity Policy
- Immigration Law Compliance
- Discrimination in workplace Policy
- Accommodation in Employment for Persons with Disabilities
- Affirmative Action Plan to achieve Employment Equity
- Diversity Policy
The Human Resources Coordinator maintains paper resumes or other written inquiries received from the job seeker in the job folders. All job folders should be clearly marked on the outside with:

- Requisition number
- Date the new hire or new hires began work in the position (or date position was cancelled, if no one was hired.)
- Hiring manager’s name and department.

Employment Applications are stored in human resources and filed in separate location.

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**FORMS**

Below are copies of standardized letters and forms used throughout the recruitment process

- Requisition Form
- Acknowledgement letters
- Applicant log
- Interview forms
- Data Integration Form
Employee Requisition Form
(Job Description Must Be Attached) *
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Division: ___________________________ Date: ___________________________

Supervisor: __________________________________________________________________________

Desired Seating Location: __________________________________________________________________________

Position Title: ___________________________ Date Needed: ___________________________

Reason: □ Replacement
□ Increase in Force
□ Other: __________________________________________________________________________

Post: □ Internally
□ Externally
□ Special Publication: __________________________________________________________________________

Full-Time* □ Part-Time* * Attach full written justification

□ Temporary Services
Term: __________________________________________________________________________

□ Professional Service Contract
Term: __________________________________________________________________________

BUSINESS JUSTIFICATION:

1. Explain the need for the position:
_________________________________________________________________________________________

2. Explain why the duties cannot be performed by another staff member:
_________________________________________________________________________________________

3. Is Job Description attached? Yes □ No □ If not, why? __________________________________________________________________________

Managing Director/Director Approval: __________________________________________________________________________ Date: __________

Chief Operating Officer Approval: __________________________________________________________________________ Date: __________

Chief Executive Officer Approval: __________________________________________________________________________ Date: __________

* NEED PRIOR TO SCHEDULING INTERVIEW

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NSDA HR Form 1204 Revised 1-1-2009
RESPONSE TO ADS IN NEWSPAPERS AND OTHER PUBLICATIONS
VIA LETTER ADDRESSED TO INDIVIDUAL RESPONDENT

NAME:
ADDRESS:

DEAR NAME,

Thank you for your response to our recent advertisement for employment with New Jersey Schools Development Authority.

Your resume is currently being reviewed. We will contact you for an interview if we determine that your qualifications are an appropriate match for the position we are filling. In addition, your resume will be maintained in an electronic database for twelve months for possible matching against future openings.

Again, thank you for considering us.

Human Resources Department

RESPONSE TO RESUMES RECEIVED FROM ON-SITE COLLEGE RECRUITING
VIA LETTER ADDRESSED TO INDIVIDUAL RESPONDENT

NAME:
ADDRESS:

DEAR NAME,

Thank you for expressing interest in New Jersey Schools Development Authority at our recent visit to your college.

Your resume is currently being reviewed. We will contact you for an interview if we determine that your qualifications are an appropriate match for the position we are filling. In addition, your resume will be maintained in an electronic database for twelve months for possible matching against future openings.

Again, thank you for considering us.

Human Resources Department
## PANEL INTERVIEW SCHEDULE

**OPEN POSITION:**

**DIVISION:**

**HIRING MANAGER:**

**DATE:**

<table>
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<th>INTERVIEW TIME</th>
<th>CANDIDATES NAME</th>
<th>INTERVIEWERS</th>
<th>LOCATION</th>
</tr>
</thead>
</table>

Please note candidates will be sent directions, and is instructed to arrive 15 minutes early to complete employment application. Upon completion of the application, your group will receive a copy of the employment application for the interview. The original copy will be submitted to Human Resources Department by Louise at the front desk for our records. In addition, please maintain documentation of all interview notes and applicant log of all candidates interviewed for the position. Please forward interview notes and applicant log of all candidates interviewed to human resources after the position is filled.

If you have any questions please don't hesitate to contact me immediately.

Thank You.

Human Resources Department
Sheron Johnson-Thomas
Recruitment Manager
Ext. 3-4970
Email: sthomas@njsea.gov
### PANEL INTERVIEW SCHEDULE

**OPEN POSITION:**  

**DIVISION:**  

**HIRING MANAGER:**  

**DATE:**

<table>
<thead>
<tr>
<th>INTERVIEW TIME</th>
<th>CANDIDATES NAME</th>
<th>INTERVIEWERS</th>
<th>LOCATION</th>
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</thead>
<tbody>
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</table>

Your interview will be held at One West State Street in Trenton which is located in the Wachovia Building. Parking is available at the Marriott on Warren Street or on East Front Street parking lot. Please arrive 15 minutes early to complete your employment application. The receptionist will notify the interviewer/s of your arrival and you will be escorted to the department upon completion of your application. Have a wonderful interview experience.

Please see the directions for NJSDA Corporate Headquarters below and visit our website at [www.njsda.gov](http://www.njsda.gov) to learn more about our organization.

Thank You.

Human Resources Department  
Sharon Johnson-Thomas  
Recruitment Manager  
Ext. 3-4970  
Email: sithomas@njsda.gov
# PANEL INTERVIEW SCHEDULE

**OPEN POSITION:**

**DIVISION:**

**HIRING MANAGER:**

**DATE:**

<table>
<thead>
<tr>
<th>INTERVIEW TIME</th>
<th>CANDIDATES NAME</th>
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Your interview will be held at 375 McCarter Highway in Newark. Parking is available on site. Please arrive 15 minutes early to complete your employment application. The receptionist will notify the interviewer(s) of your arrival and you will be escorted to the department upon completion of your application. Have a wonderful interview experience.

Please see the directions to the Northern Regional Office below and visit our website at [www.njsda.gov](http://www.njsda.gov) to learn more about our organization. If you have any questions contact HR Department.

Thank You.

Human Resources Department
Sharon Johnson-Thomas
Recruitment Manager
609-943-5955
Email: sthomas@njsda.gov
<table>
<thead>
<tr>
<th>JOB TITLE - LOCATION</th>
<th>DATA INTEGRATION SESSION - DATE</th>
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<tbody>
<tr>
<td>Candidate:</td>
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<td>Consensus</td>
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<td>Personal Effectiveness</td>
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<td>Achieving Results</td>
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<td>Total Rating</td>
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**OVERALL COMPETENCY RATINGS:**

<table>
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<tr>
<th>Clearly misses expectations</th>
<th>Less than expectations</th>
<th>Meets expectations</th>
<th>Exceeds expectations</th>
<th>Far exceeds expectations</th>
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<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
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</table>

*Where would you rate this person on this competency?*
<table>
<thead>
<tr>
<th>Candidate Name</th>
<th>Candidate Screened by HR Yes/No</th>
<th>Interview Date</th>
<th>Interviewer</th>
<th>Second Interview Yes/No</th>
<th>Offer Extended Yes / No</th>
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</table>

Please indicate either selected candidates or qualified candidates in this area
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<th>Author</th>
<th>Review Date</th>
<th>Approval/Release Date</th>
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Human Resources Department

Employment Screening

STANDARD OPERATING PROCEDURES

Pre-Employment Screening

State of New Jersey
Schools Development Authority
Trenton, New Jersey
INTRODUCTION

The New Jersey Schools Development Authority is committed to securing the right people to help achieve our mission. LexisNexis® Employment Screening technology solution is currently utilized to help provide the NJSDA with accurate pre-employment screening. This service gives us everything from in-depth criminal background checks to employment verification.

PURPOSE

This SOP is to provide documentation of standards used by the NJSDA in conducting pre-employment screening to verify the employment, educational and criminal background check for each new hire. The SOP also outlines additional information on procedures relating to the normal background check and credit checks for employees being hired for certain positions at NJSDA.

The SOP also outlines the process used to ensure the credibility and help eliminate any questions regarding the employee. It serves as a tool for Human Resources and the Hiring Manager to follow guidelines and processes to help reduce any misrepresentation of future hires.

SCOPE

These standard procedures are currently utilized by the New Jersey Schools Development Authority and the Human Resources Department in processing all pre-employment screening for new hires.

DEFINITIONS

Employment Screening is a process which helps to identify and prevent some of the risks associated with our hiring practices, this process allows us to:

- Run pre-employment background checks
- Run educational and employment verification
- Run drivers license report and motor vehicle records
- Check social security and identification verification
- Verify credit reports

RESPONSIBLE UNITS/DIVISION

The Human Resources Department is responsible for initiating the pre-employment screening for each new hire, this process helps to eliminate any potential risk to the Authority.

The Human Resources Coordinator is responsible for conducting the pre-employment screening. The information gained from the reports helps to determine the candidate’s eligibility.
PROCEDURES

The recruiting staff in the Human Resources Department conducts a background research after an offer is presented and accepted by the employee. Steps below:

1. Contact the employee to extend verbal offer and gather information (date of birth, driver license number and social security number for background check) prior to the employee's start date.
2. Complete application form from LexisNexis to ensure pre-approval access. Obtain password from LexisNexis and login information.
3. Process the background check using the LexisNexis® Employment Screening.
4. Log on to the LexisNexis account then click on Background Screens.
5. Next click on state where candidate resides to begin the search.
7. Complete all information highlighted in red then click on submit to obtain the background report.
8. Verify all information retrieved from LexisNexis is accurate and move forward with the hiring process.

Note: The criminal and background information can be retrieved in minutes, however, the Educational and Employment information may take a few days. If the criminal background report comes back negative, the information should be given to the Senior Director - Human Resources. Authorization from the employee must be obtained before any pre-employment screening is conducted. The pre-employment process is completed once the employee information is cleared.

Reference Check

On occasion hiring managers request additional information from references provided by candidates on employment application. Below are steps to verify information.

1. Get business reference information from employee's completed application form.
2. Use Human Resources Employee Reference Form to complete questions regarding the employee.
3. Contact hiring manager to discuss references obtained.
4. Complete hiring process when there is an agreement to move forward by hiring manager.

Note: Only business references are acceptable. All requests for employment reference information should be forwarded to the Human Resources Department. Verification of employment for current or former NJSDA employee is done by the Human Resources Department. A Human Resources representative is the only authorized personnel allowed to verify the information.
A Consumer Report request is recommended for certain position e.g. Senior Project Manager, or Project Manager positions. To obtain a Consumer Report:

1. Have employee complete a Disclosure Employment Application (See attachment).
2. Log into LexisNexis application and complete the necessary steps before chose Consumer Reports. (Follow the same steps highlighted above)
3. Give all Consumer Report information to the Senior Director - Human Resources after printing the information.

Driver License Log

✓ Records from the LexisNexis report are kept in the Human Resources miscellaneous files
✓ Records of the drivers license check are kept in the Human Resources file
✓ Records of the drivers license reports are kept in the Human Resources files
✓ Records of the Consumer Reports are kept in the Human Resources files
DISCLOSURE TO EMPLOYMENT APPLICANT
REGARDING PROCUREMENT OF
A CONSUMER REPORT

In connection with your application for employment, we may procure a consumer report on you from LexisNexis Screening Solutions as part of the process of considering your candidacy as an employee. In the event that information from the report is utilized in whole or in part in making an adverse decision, we will provide you with a copy of the consumer report and a description in writing of your rights under the federal Fair Credit Reporting Act.

The Fair Credit Reporting Act gives you specific rights in dealing with consumer reporting agencies. You will be given a summary of these rights together with this document.

By your signature below, you hereby authorize us to obtain a consumer report about you in order to consider you for employment.

Applicant’s Name: ______________________________________________________

Other Names Used: ______________________________________________________

Applicant’s Address: ____________________________________________________

City / State / Zip: _______________________________________________________

Telephone Number: _____________________________________________________

Social Security Number: ________________________________________________

Drivers License Number and State: _______________________________________

Name as appears on Drivers License: _____________________________________

Date of Birth: ___________________________________________________________

NOTE: Date of Birth information is used ONLY by LexisNexis Screening Solutions for verification of identity and is not used for any purpose by the Employer.

Applicant’s Signature: __________________________
## Review/Revision/Approval History

<table>
<thead>
<tr>
<th>Version</th>
<th>Author</th>
<th>Review Date</th>
<th>Approval/Release Date</th>
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</table>
New Jersey Schools Development Authority

Standard Operating Procedure (SOP) Inventory

Department

Division

Unit

<table>
<thead>
<tr>
<th>Job Function/Task</th>
<th>Is an SOP in place?</th>
<th>If Yes, is the SOP up-to-date?</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Yes (provide SOP date)</td>
<td>Yes (provide anticipated completion date)</td>
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## Standard Operating Procedure (SOP) Inventory

**Office:**

**Department:**

**Unit:**

<table>
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<tbody>
<tr>
<td></td>
<td>Yes (provide SOP date)</td>
<td>No (provide anticipated completion date)</td>
</tr>
<tr>
<td></td>
<td>Yes (provide last revision date)</td>
<td>No (provide anticipated date for revision)</td>
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</table>

**NOTE:** SOPs require review for accuracy annually per origination date.
# Standard Operating Procedure (SOP) Inventory

**Office**: Corporate Governance and Compliance  
**Department**: Human Resources  
**Unit**: Recruitment and Retention

<table>
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<tr>
<th>Job Function/Task</th>
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<th>If yes, is the SOP up-to-date? (please check one)</th>
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<tr>
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<td>Staffing</td>
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<td>Job Description</td>
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<td>Requisition Process</td>
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<tr>
<td>Job Posting</td>
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<td>Newspaper Advertisement</td>
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<td>Resume Review</td>
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<td>Employment Application</td>
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<td>Background Investigation</td>
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<td>Reference Check</td>
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<td>Orientation/On-Boarding Process</td>
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<tr>
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<tr>
<td>General Invoicing</td>
<td>In process</td>
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<tr>
<td>Parking Pass Assignment</td>
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<tr>
<td>Internship</td>
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</table>
### Standard Operating Procedures Inventory

**Department:** Human Resources  
**Division:** Corporate Governance and Operations  
**Unit:** Recruitment  
**Point Person Name/Phone #:** Sharon Johnson Thomas (608-943-4970)  
**Total Tasks/Deliverables:** 15  
**Total Completed SOPs:** 14

<table>
<thead>
<tr>
<th>Task/Deliverable</th>
<th>SOP Completed: Yes or No (If YES, Insert Date)</th>
<th>SOP Title</th>
<th>SOP Location/Path</th>
<th>Date to Conduct Annual Review</th>
<th>SOP Last Updated</th>
<th>If Revision Necessary, Insert Anticipated Completion Date</th>
<th>Date Revision Approved/Implemented</th>
<th>Notes</th>
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<tbody>
<tr>
<td>1. SOP - Recruitment and Selection</td>
<td>12-Nov-10</td>
<td>Recruitment and Selection</td>
<td>/Human Resources/SOP/RECRUITMENT SOP</td>
<td>12-Nov-10</td>
<td>12-Nov-10</td>
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<tr>
<td>2. SOP - Candidate Evaluation and Selection</td>
<td>16-Nov-10</td>
<td>Candidate Evaluation and Selection</td>
<td>/Human Resources/SOP/RECRUITMENT SOP</td>
<td>16-Nov-10</td>
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<td>5. SOP - Job Filler</td>
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<td>7. SOP - Staffing Initiative</td>
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**Mancie's SOPs**

<table>
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<th>Task/Deliverable</th>
<th>SOP Completed: Yes or No (If YES, Insert Date)</th>
<th>SOP Title</th>
<th>SOP Location/Path</th>
<th>Date to Conduct Annual Review</th>
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<th>If Revision Necessary, Insert Anticipated Completion Date</th>
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<tr>
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<td>5. SOP - Pre Employment Screening</td>
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**Human Resources**

- /Human Resources/SOP/RECRUITMENT SOP

**Corporate Governance and Operations**

- /Human Resources/SOP/RECRUITMENT SOP

**Recruitment**

- /Human Resources/SOP/RECRUITMENT SOP

**Sharon Johnson Thomas**

- Phone: 608-943-4970

**Total Tasks/Deliverables:** 15

**Total Completed SOPs:** 14
SDA NEPOTISM POLICIES
SDA Employee Handbook
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
POLICIES, PROGRAMS AND BENEFITS MANUAL

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605 FMLA-Military Family Leave Entitlements
610 New Jersey Family Leave
615 Paid Family Leave
620 Personal Leave
625 Military Leave
630 Donated Leave Program
EMPLOYMENT OF RELATIVES

1. Purpose

The New Jersey Schools Development Authority desires to hire the most qualified candidates to fill its open positions. As such, the following will apply to the employment of relatives:

a. The Authority shall not employ a relative of the Chief Executive Officer, Chief of Staff, Chief Financial Officer or a member of the Board of Directors of the Authority.

b. No employee shall directly or indirectly supervise or control the work of another employee who is his/her relative.

c. The existence of family relationships must be disclosed to the Chief Executive Officer and Ethics Liaison Officer as defined in the Code of Ethics. Hiring of relatives must have the written approval of the Chief Executive Officer or the Chief of Staff.

2. Definition of Relative

For the purposes of this section "relative" means the spouse, civil union partner, parent, child, brother, sister, aunt, uncle, cousin, niece, nephew, grandparent, grandchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related by blood, marriage or adoption.

If employees become immediate family members or establish a romantic relationship, the NJSDA will make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale. If accommodations of this nature are not feasible, the employees will be permitted to determine which of them will resign. If the employees cannot make a decision, the NJSDA will decide in its sole discretion who will remain employed by the Authority.
410 INTERNAL AND EXTERNAL HIRING

1. Purpose

Most positions will be posted for consideration of internal employees. Some of these positions may be posted internally and simultaneously recruited for external candidates. At times, however, external candidates are sought exclusively to incorporate new ideas to the NJSDA.

2. Coordinated through Human Resources

The Hiring Manager should notify Human Resources that a position needs to be filled through submission of an Employee Requisition Form that has been approved by the CEO.

All status changes such as: transfers, promotions, demotions and new hires will be coordinated through Human Resources. The NJSDA employees need to be in their current position for a year in order to be considered for another position. (NJSDA reserves the right to waive the requirement for business needs).

Although it is an employee’s option to discuss applying for another position with their manager, the employee is encouraged to consult their manager prior to submission of their resume for an open position.

3. Process

Employees should submit a resume to resumes@njsda.gov for a position if they meet the essential functions and are currently meeting performance and attendance expectations.

After an employee applies for a position, Human Resources will:
- Screen the resumes
- Forward the resumes of qualified candidates to the Hiring Manager

When it’s decided that there is a need to bring in someone externally, then the following process will take place under the direction of Human Resources:
- Employee referrals or networking contacts. Candidates must apply on-line and can forward their resume to resumes@njsda.gov
- University outreach efforts for key functional areas may be contacted
- College Recruiting, Career Fairs, or Job Fairs
- The Department of Labor (One Stop Career Services)
- Postings may occur on the Internet and the NJSDA website
- Magazine and/or newspaper advertisements may be solicited
  a) In the event a magazine or newspaper ad is requested, the Hiring Manager, with Executive approval, works with Human Resources and the approved advertising contacts to develop an ad. The items to discuss are:
    * The wording for the job advertisement
New Jersey Schools Development Authority

* The magazine/newspaper in which to place the ad
* The preferred run dates
b) Ads will indicate all resumes are to be directed to the attention of Human Resources
c) At times, virtual ads for openings will also be placed on www.nj.com to promote recognition for the NJSDA

- Professional Associations or Professional Contacts
- Unsolicited Resumes

4. Resume Screening

Upon receipt of resumes from internal/external sources, Human Resources will:
- Screen the resumes
- Distribute them to the appropriate hiring manager
- Coordinate scheduling of pre-screened interviewee for Hiring Manager. Once candidates have been identified, applicant packets are routed to the Hiring Manager for interview selection. Hiring Managers (or Human Resources) may schedule 2nd interviews with their division.
- The top candidates may be interviewed by Executive management.
- If there is no further interest in an applicant following an interview, a standard letter to that effect will be prepared by Human Resources and sent to the candidate

Resumes will generally be kept for a period of two years and then discarded. Unsolicited resumes should be forwarded to resumes@njsda.gov. Human Resources will distribute them to divisions as appropriate. If there is no interest, the resume should be returned to Human Resources.

5. Interviews

Panel interviews are generally utilized when filling open positions. Panels consist of three or four members including the respective Hiring Manager. Interviews are followed by a data integration session conducted by Human Resources with the panel members. During the data integration session, information gathered during the interviews on competencies important to the open position are reviewed and discussed.

6. Applicant Selection/Offers

When an applicant has been chosen for the position:
- Human Resources will discuss the appropriate salary offer with the Hiring Manager, obtain the appropriate approvals, extend the offer to the internal or external candidate, agree on a starting date, and obtain a verbal acceptance before an offer letter is sent.
- The applicant must sign and return the offer letter to Human Resources by the first day of employment.
7. First Day of Work

When the new employee reports to work, they will meet with a representative of Human Resources for the first stage of a New Hire Orientation that includes pertinent information regarding policy, procedures and benefits information. Human Resources will collect the signed offer letter, completed I-9 form and documentation that satisfies eligibility requirements, and required payroll documents. The employee will also attend an orientation session with Information Systems to receive pertinent information regarding SDA technology access, policies and requirements.

Employees will be scheduled for attendance at a formal orientation and/or mandatory SDA training as appropriate.
420 POSITIONS: TEMPORARY FULL-TIME AND PART-TIME

1. Purpose

The New Jersey Schools Development Authority may employ personnel on a temporary basis, as necessary, to provide when circumstances warrant additional/temporary assistance. Hiring Managers may obtain the services of temporary employees only after obtaining Executive management approval.

2. Process

Hiring Managers should proceed as follows to hire a temporary employee:

Complete an Employee Request form supporting the need to hire a temporary employee and obtain Executive approval prior to forwarding to Human Resources. The form should include:

- The reason for hiring
- The proposed work schedule (days and hours)
- The effective employment date
- The anticipated length of employment
- The rate of pay

If the individual to be hired will be paid directly by the NJSDA (i.e. no agency involved):

- Human Resources will extend the offer to the candidate, agree on a start date, and obtain a verbal acceptance before an offer letter is sent.
  An offer will be prepared by Human Resources for signature by the Chief of Staff, and mailed to the prospective employee.
- The letter must be signed by the temporary employee and returned to Human Resources by the first day of employment.

3. Types of Temporary Services

There are different types of temporary services that are beneficial to the NJSDA and Hiring Managers to use when filling a vacancy on a temporary basis. Some vendor contracts have been established for particular temporary assignments. For example, if there is a temporary need for an Engineer, the NJSDA has vendors who specialize in sourcing Engineers. Similarly, if the NJSDA has a vacancy for a clerical, technical or financial position, the NJSDA will generally utilize existing state contracts to fill the need. The Hiring Manager must submit a Requisition Form to Human Resources. Once the requisition is reviewed, Human Resources partners with the appropriate staffing agency or contracted vendor to fill the need.
4. Temporary Services Payment Process

If the hiring is through an agency (i.e. the NJSDA will pay the agency rather than the individual directly), no offer letter will be required.

When the temporary services employee reports to work:

- A representative from the individual's department will welcome the employee.
- The new employee must meet with a representative of the Human Resources Division for completion of employment forms and for review of information on NJSDA procedures on the first day that they report to work (Employees on SDA payroll only).
- A departmental representative should introduce the individual to the staff and show him/her the location of the various facilities.

During the course of an individual's temporary employment, whether hired directly or through an agency, the hiring Division must submit time sheets showing actual hours worked to Human Resources on a weekly basis.
425 POSITIONS: INTERN

1. Purpose

The New Jersey Schools Development Authority may employ personnel on a
temporary basis, such as for the summer, to provide additional and temporary assistance. Hiring Managers may obtain the services of Temporary Summer Employee only after completing an Employee Requisition form and obtaining Executive management approval.

An Temporary Summer Employee may be a high school or college student who is assisting the NJSDA on their school breaks or as their schedule permits.

2. Process

Human Resources Division will send a letter to the Hiring Managers requesting the need for Interns.

The NJSDA will coordinate a program where the Authority will partner with local universities and colleges to identify individuals who possess the key competencies that will be needed on a temporary basis.

This program will foster more awareness for the NJSDA and outreach to a diverse pool of candidates.

3. Filling A Vacancy

The Hiring Manager should proceed as follows to hire an Intern:

Documentation supporting the hire of a temporary employee must be prepared by the Hiring Manager with Executive's approval and submitted to Human Resources with:

- The reason for hiring
- The proposed work schedule (days and hours)
- The effective employment date
- The anticipated length of employment
- The rate of pay

If the individual to be hired will be paid directly by the NJSDA (i.e. no agency involved):
- Human Resources should extend the offer to the candidate, agree on a start date, and obtain a verbal acceptance before an offer letter is sent.
- An offer letter will be prepared by Human Resources and mailed to the prospective employee.
- The Temporary Summer Employee must sign and return the offer letter to Human Resources by the first day of employment.
When the new employee reports to work:

- A representative from the individual's department will welcome the employee.
- The new employee must meet with a representative of the Human Resources Division for completion of employment forms and for review of information on NJSDA procedures.
- A departmental representative should introduce the individual to the staff and show him/her the location of the various facilities.

During the course of the Temporary Summer Employee's employment, the Hiring Manager should submit time sheets showing actual hours worked. These time sheets must be submitted to Human Resources on a weekly basis.
NJ State Uniform Code of Ethics and Corresponding Plain Language Guide
UNIFORM ETHICS CODE

FOREWORD

Pursuant to N.J.S.A. 52:13D-23, the State Ethics Commission has adopted this Uniform Ethics Code to govern and guide the conduct of State officers and employees and special State officers and employees in State agencies in the Executive branch of State Government.

The Uniform Ethics Code shall be the primary code of ethics for State agencies. It shall be supplemented by an agency code of ethics formulated with respect to the particular needs and problems of the agency to which said code is to apply. Each agency, in consultation with the Attorney General’s Office, must review its enabling legislation to ensure that any agency-specific conflicts provisions are included in any supplemental agency code. An agency code must be approved by the Commission.
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or 4. Any organization a majority of whose members are as described in paragraphs 1 through 3 above.

“Person” means any natural person, association or corporation.

“Published work” means any tangible medium of expression, including, but not limited to, literary, pictorial, graphic and sculptural matter; sound recordings; and software. N.J.A.C. 19:61-6.2.

“Relative,” as used in section XIII, means an individual’s spouse, and the individual’s or his/her spouse’s parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother, or half-sister; whether the relative is related to the individual or the individual’s spouse by blood, marriage or adoption.

“Special State officer or employee” means (1) any person holding an office or employment in a State agency, excluding an interstate agency, for which office or employment no compensation is authorized or provided by law, or no compensation other than a sum in reimbursement of expenses, whether payable per diem or per annum, is authorized or provided by law; (2) any person, not a member of the Legislature, holding a part-time elective or appointive office or employment in a State agency, excluding an interstate agency, or (3) any person appointed as a New Jersey member to an interstate agency the duties of which membership are not full-time.

“State agency” means any of the principal departments in the Executive branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

“State officer or employee” means any person, other than a special State officer or employee (1) holding an office or employment in a State agency, excluding an interstate agency, other than a member of the Legislature or (2) appointed as a New Jersey member to an interstate agency.

“Supplier” means any person that is providing or is seeking to provide or may reasonably be expected to provide goods and/or services to the State officer or employee’s or special State officer or employee’s agency, including, but not limited to, consultants, vendors and lessors.

“Unclassified office or position” means any office or position in the unclassified service of the civil service of the Executive branch of State government.
XI. RETIREMENT GIFTS

A gift can be given to a State employee upon his/her retirement from State service. There are specific limits to the value of a permissible retirement gift. A State employee shall refer to Appendix K for the provisions governing retirement gifts.

XII. COMPENSATION FOR PUBLISHED WORKS

A State officer or employee or special State officer or employee may not solicit, receive, or agree to receive, compensation from sources other than the State for published work(s) created as part of his/her official duties on State time and/or using State resources.

However, a State officer or employee or special State officer or employee, other than a “designated State officer,” (the Governor, cabinet-level officers and other principal administrative officers of the State) may, in connection with any service, advice, assistance, appearance, speech or other matter related to his/her official duties, receive or agree to receive, whether directly or indirectly, from sources other than the State, reasonable fees for published works on matters within his/her official duties not created on State time and/or using State resources.

In addition, a State officer or employee or special State officer or employee may accept compensation from sources other than the State for published work(s) on matters unrelated to his/her official duties created on his/her own time and with non-State resources.

Before agreeing to accept or accepting any compensation from a source other than the State for any published work, a State officer or employee or special State officer or employee must secure his/her State agency’s approval to do so.

In determining whether to grant such approval, the State agency shall consider, among other things, whether the compensation is offered by an interested party, and whether the published work uses or discloses information not generally available to the public. The determination shall be consistent with applicable law and agency policy.

No State officer or employee or special State officer or employee may use his/her official title in soliciting compensation for a published work.

The Commission’s Guidelines with respect to Published Works are set forth in Appendix L.

XIII. FAMILY MEMBERS - CONFLICTS OF INTEREST

1. No relative of the Governor may be employed in any unclassified office or position within the State.
2. No relative of a commissioner or department head may be employed in any unclassified office or position within the department over which the department head exercises authority.

3. A relative of an assistant or deputy department head may be employed in an unclassified office or position within the department in which the assistant or deputy serves, provided that he/she is not assigned to a position over which the assistant or deputy department head exercises authority.

4. A relative of a head or assistant head of a division within a department may be employed in an unclassified office or position within the department in which the division head or assistant division head serves, provided that he/she is not assigned to a position over which the assistant or deputy department head exercises authority.

5. A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State may not be employed in any office or position in that entity.

6. A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency may not be employed in an office or position in that bi-state or multi-state agency, unless otherwise permitted by law.

7. No State officer or employee or special State officer or employee may supervise his/her relative, or exercise any authority with regard to personnel actions involving his/her relative.

8. Each State agency shall require State officers and employees and special State officers and employees to disclose information sufficient for the agency to determine whether the employment of any individual within the agency is prohibited.

Cohabitation

The Commission has determined that the prohibition regarding personnel actions and the supervision of family members, set forth in paragraph 7 above, is applicable to non-related individuals who share the same household with the same financial interdependence that the Commission views as creating a conflict in spousal situations.
Dating Relationship

In the case of individuals involved in dating relationships, the Commission has found violations of the Conflicts Law in situations where the State employee had official involvement in a matter affecting the individual with whom he/she had a dating relationship. Accordingly, a State officer or employee or special State officer or employee shall not have any involvement in his/her official capacity in any matter that pertains to or involves an individual with whom he/she has a dating relationship.

The Commission’s guidelines with respect to “Official Interactions with Family Members/Cohabitants and Dating Relationships” is attached hereto as Exhibit M.

XIV. CASINO-RELATED FAMILY MEMBER RESTRICTIONS

Concurrent Employment Restriction

An immediate family member of a State officer or employee, or of any “person,” as defined at N.J.S.A. 52:13D-17.2(a), may not hold directly or indirectly, an interest in, hold employment with, or represent, appear for, or negotiate on behalf of a holder of, or applicant for, a casino license, or any holding or intermediate company with respect thereto.

However, an immediate family member of a State officer or employee or “person” may be employed by a casino in circumstances where it is determined by the Commission that such employment will not interfere with the responsibilities of the State officer or employee or “person” and will not create a conflict of interest or the appearance of such conflict. N.J.S.A. 52:13D-17.2(b).

Post-Employment Restriction

An immediate family member of a “person,” as defined at N.J.S.A. 52:13D-17.2(a), may not hold, directly or indirectly, an interest in, hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any phase of casino development permitting, licensure, or any other matter related to casino activity, for a period of two years following the termination of the office or employment of such person.

However, an immediate family member of a “person” may be employed by a casino in circumstances where it is determined by the Commission that such employment will not interfere with the responsibilities of the “person” and will not create a conflict of interest or the appearance of such conflict. N.J.S.A. 52:13D-17.2(c)(1).

Casino post-employment restrictions that apply to State officials defined as “persons” are noted in section VIII.
APPENDIX M

OFFICIAL INTERACTIONS WITH FAMILY MEMBERS/COHABITANTS AND DATING RELATIONSHIPS

The State Ethics Commission staff frequently receives inquiries regarding the propriety of State officials interacting in the course of their duties with family members. The majority of the inquiries concern relatives employed by the same State agency or interactions with family members employed in the private sector. Prior to 2006, the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., did not contain an anti-nepotism provision. However, the statute was amended, effective March 15, 2006, to prohibit certain relatives of certain State officials from holding particular governmental positions and also to prohibit State officials from supervising, or exercising authority with regard to personnel actions over, a relative of the State official.

N.J.S.A. 52:13D-21.2 provides:

a. (1) A relative of the Governor shall not be employed in an office or position in the unclassified service of the civil service of the State in the Executive Branch of State Government.

(2) A relative of the commissioner or head of a principal department in the Executive Branch of State Government shall not be employed in an office or position in the unclassified service of the civil service of the State in the principal department over which the commissioner or head of the principal department exercises authority, supervision, or control.

(3) A relative of an assistant or deputy commissioner or head of a principal department in the Executive Branch of State Government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the assistant or deputy commissioner or head serves, but shall not be assigned to a position over which the assistant or deputy commissioner or head exercises authority, supervision, or control.

(4) A relative of a head or assistant head of a division of a principal department in the Executive Branch of State government who is employed in an office or position in the unclassified service of the civil service of the State may be employed in the principal department in which the head or assistant head of a division serves, but shall not be assigned to a position over which the head or assistant head exercises authority, supervision, or control.
b. (1) A relative of an appointed member of a governing or advisory body of an independent authority, board, commission, agency or instrumentality of the State shall not be employed in an office or position in that independent authority, board, commission, agency or instrumentality.

(2) A relative of an appointed New Jersey member of a governing body of a bi-state or multi-state agency shall not be employed in an office or position in that bi-state or multi-state agency, to the extent permitted by law.

c. A State officer or employee or a special State officer or employee of a State agency in the Executive Branch shall not supervise, or exercise authority with regard to personnel actions over, a relative of the officer or employee.

d. As used in this section, "relative" means an individual's spouse or the individual's or spouse's parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual's spouse by blood, marriage or adoption.

Attorney General Opinion 06-0006 addresses the issue of the application of the anti-nepotism provision, N.J.S.A. 52:13D-21.2, to previously hired employees and advises that a State employee is not required to be terminated when a relative is subsequently appointed to a high level position within the agency. However, arrangements must be made to prohibit the relative's involvement in the exercise of authority, supervision, or control with regard to the incumbent holder of the affected State office or position.

The casino-related provisions of the Conflicts Law also contain prohibitions that apply to a State official's immediate family members, defined in N.J.S.A. 52:13D-13(i) as the person's spouse, child, parent or sibling residing in the same household. N.J.S.A. 52:13D-17.2(b) deals with the concurrent casino-related employment of immediate family members while N.J.S.A. 52:13D-17.2(c) deals with post-employment situations of immediate family members. These two provisions are discussed below under "Casino-Related Prohibitions."

The Commission has addressed various family member issues over the years, primarily under the application of sections 23(e)(3), unwarranted privilege, 23(e)(4), direct or indirect personal financial interest that might reasonably be expected to impair objectivity and independence of judgment, and 23(e)(7), the appearance of impropriety. Summarized below are sample Commission cases that address a number of common family member scenarios. It should be noted that these cases were decided prior to the March 2006 Nepotism amendment.
STATE EMPLOYMENT

Family Members Employed by the Same Agency. In Case No. 27-91, the Commission considered whether the spousal relationship of the Chief of the Department of Labor Appeal Tribunal and her husband, a member of the Department of Labor Board of Review ("Board"), gave rise to a conflict of interest or appearance of a violation of the public trust. The Appeal Tribunal reviews determinations of the Division of Employment Security that are appealed by an aggrieved or dissatisfied claimant. The three-member Board of Review decides appeals of decisions issued by the Appeal Tribunal. The Chief did not decide cases; her job duties consisted of devising strategy and creating administrative policies for the Appeal Tribunal.

The Board adopted a policy precluding the Member from reviewing or having any connection with decisions issued by the Chief on those rare occasions when it was necessary for the Chief to conduct a hearing and function as an Appeals Examiner. The Commission concurred with the Deputy Attorney General who represented the Board that the recusa policy in place at the Board was a sufficient mechanism to avoid a conflict situation.

In Case No. 19-98, the Commission issued a complaint charging the Chairman of the Ocean County Soil Conservation District, Department of Agriculture, with violating sections 23(e)(4) and (7) of the Conflicts Law when he participated in a controversial matter pending before the District Board in which his brother, an employee of the District, had substantial involvement and for voting on matters that involved personnel and salary issues affecting his brother.

Supervisor/Subordinate Relationships. In Case No. 1161-83, the Commission considered whether a situation where spouses worked for the same agency and had a supervisor-subordinate relationship constituted a conflict of interest. This situation was reviewed under the application of section 23(e)(4) of the Conflicts Law which prohibits State employees from acting in their official capacity in a matter wherein they have a direct or indirect personal financial interest that might reasonably be expected to impair their objectivity or independence of judgment.

The Commission determined that one spouse has a direct personal financial interest in the salary and continued employment of the other spouse and thus should not be in a position to provide direct supervision or to take personnel actions such as performance evaluations and salary increases. The Commission advised the agency to take administrative action to resolve the conflict situation, and the agency transferred one of the spouses out of the work unit.

In Case No. 182-93, the Department of Community Affairs requested an opinion as to whether Commission precedent prohibiting family members from having supervisor/subordinate relationships should also apply to non-related individuals who share the same household with the same financial interdependence that the Commission viewed as creating a conflict in spousal situations. The Commission determined that where non-related supervisor/subordinate employees share the same household under circumstances where there is financial interdependence, there must be an intermediate supervisory level between the two and the higher
placed employee should have no supervisory or signing authority regarding personnel matters affecting the subordinate employee.

In Case No. 9-94, the Commission determined that the Conflicts Law was not violated by virtue of the fact that a Manager, Division of Motor Vehicles, Department of Law and Public Safety, worked in the same facility as his two cousins. Because the cousins were not members of the Manager's immediate family, as defined in section 13(i) of the Conflicts Law, the Commission determined that a supervisor/subordinate relationship was not per se prohibited under Commission precedent. The Commission reviewed the specifics of this particular situation and noted that the Manager did not directly supervise his cousins, complete their PARS or sign their time sheets. Thus, it was unlikely there could be an appearance of impropriety by virtue of his cousins working in the same facility.

**Hiring of Family Members.** In Case No. 23-88, the Commission was asked to approve the Department's removal of an employee from his position due to a number of violations of the Department's Code of Ethics. Among the violations was one that the employee secured employment for his daughter with a private organization that received funding from the Department. The employee directly monitored the organization's performance under the contract. After the employee's supervisor learned of his daughter's employment, the employee was relieved of all monitoring responsibilities. After reviewing the various violations, the Commission concurred with the Department's findings and approved the proposed sanction.

In Case No. 32-90, the Commission reviewed an allegation that the Warren County Conservation District ("District") had contracted with the District Manager's wife for financial and bookkeeping services without public announcement or advertisement of the availability of the contractual position. The Commission determined that the circumstances surrounding the contract were violative of section 23(c)(3), the unwarranted privilege section of the statute. The contract between the District and the District Manager's wife was terminated.

In Case No. 34-92, the Commission found indications of violations of sections 23(c)(3), unwarranted privilege, and 23(c)(7), appearance of impropriety, in connection with the Sussex County District ("District") Manager's hiring and supervising of her son. The manager and her son resided in the same household. The Commission ordered that her son's employment with the District be terminated and that a complaint against the District Manager be prepared. The Commission later approved a consent order in this matter.

In Case No. 2-93, the Commission found indications of violations of section 23(c)(3), unwarranted privilege, and 23(c)(7), appearance of impropriety, in connection with the Director of the Library of the Blind and Handicapped's hiring and supervision of her daughter for summer employment. The position was never advertised to the job-seeking public and the Director did not use any of the State contractors who normally performed the services in question. The Commission approved a consent order with the Director.
In Case No. 23-96, the Commission issued a complaint alleging that a Deputy Superintendent of Elections violated the Conflicts Law when, among other activities, she hired and supervised six family members. The Deputy Superintendent entered into a consent order with the Commission.

In Case No. 9-98(B), the Commission reviewed an allegation concerning the hiring of the son of the Director of Human Resources, Department of Corrections ("DOC"), for a position within the DOC. The Director had asked the Chief of the Bureau of Parole if he would be interested in hiring his son while a DOC employee was out on sick leave. The Bureau Chief then forwarded a personnel action request to the DOC Office of Human Resources seeking a freeze exemption to appoint a new employee. The form was signed by the Director. Other individuals were on the certified list who ranked higher than the Director's son and were not advised of the interim position. The Commission determined that there were indications that the State employee violated sections 23(e)(3) and (7) of the Conflicts Law. The Director entered into a consent order with the Commission.

STATE PROGRAMS

In Case No. 30-04, the Commission reviewed an allegation that an Assistant Commissioner, Department of Personnel ("DOP"), used her official position to attempt to place her nephew in the Pilot Program of a course developed by the DOP's Human Resource Development Institute ("HRDI") to prepare individuals to take the Law Enforcement Examination. The Assistant Commissioner's responsibilities included oversight of the HRDI.

The Commission determined that there were indications that the Assistant Commissioner violated sections 23(e)(3) and (7) of the Conflicts Law and authorized the drafting of a complaint. The Assistant Commissioner entered into a consent order with the Commission and agreed to a civil penalty of $750.

PRIVATE SECTOR SITUATIONS

In Advisory Opinion No. 33, issued September 17, 1975, the Commission determined that a Member of a County Board of Taxation must disqualify himself from hearing tax appeals when the assessor of the responding city is his second cousin or is more closely related to the Board Member. Because Members of the County Boards of Taxation act in a quasi-judicial capacity, the Commission was guided by cases interpreting the Canons of Judicial Ethics as applied to family member situations. It was noted that the need for unquestionable integrity, objectivity and impartiality is just as great for quasi-judicial personnel as for judges.

In Case No. 344-76, the Commission considered whether the Chief Engineer, Cable Television Section, Department of Public Utilities, was permitted to become involved in a challenge to the award of a franchise by the cable television company of which his son was President. If a company is denied a franchise in a municipality in favor of another company, it is the duty of the Chief Engineer to pass upon the engineering qualifications of the successful applicant. The Commission determined that it would be an appearance of a conflict if the
engineer were to become involved in any way in the challenge of the subject franchise or any future action with respect to the company that employed his son.

In Case No. 651-78, a Member of the New Jersey State Council on the Arts, Department of State, requested advice from the Commission regarding actions affecting a grant recipient. The Member's husband was president of an advertising agency which performed public relations work for the grant recipient. The Member asked if it was necessary for the advertising agency that employed her husband to resign from the account. The Commission determined that it did not have the authority to require the private public relations firm to relinquish the account and recommended that the Member refrain from participation in discussion and voting on any matters pertaining to the grant recipient.

In Case No. 35-79, the Division of Youth and Family Services ("DYFS"), Department of Human Services, requested an opinion from the Commission as to whether there was a violation of the Conflicts Law for a DYFS employee to serve as Administrator of Management Operations while his brother was employed as a salesman for a company that sold equipment to DYFS. The Commission determined that to avoid any potential conflict or appearance of a conflict, the Administrator should in no way be involved in contracts negotiated or executed by DYFS or DHS with the company that employed his brother. Further, in his State capacity, the Administrator should not solicit any State business for nor refer any State business to his brother's employer. Also, neither his brother nor any representatives of the company should call on the Administrator and the Administrator should have no involvement with matters pertaining to the company.

In Case No. 941-80, the Commission determined that it would not violate the Conflicts Law for the Director, Division of Hazard Management ("DHM"), Department of Environmental Protection, to review and approve contracts with an environmental company which was a subsidiary of the company that employed the Director's father-in-law. The parent organization had more than 30 subsidiary companies segmented into 9 control groups. The control group with which the Director's father-in-law was affiliated had no direct relationship with the environmental company that contracted with DHM. The Commission determined that the nexus was too remote to suggest that the Director was acting in his official capacity in a matter wherein he had a direct or indirect personal financial interest that might reasonably be expected to impair his objectivity or independence of judgment.

In Case No. 1176-83, the Commission determined that no conflict would result from the award of the Lottery Commission's advertising contract to the firm that employed the wife of the Deputy Chief of Staff, Office of the Governor, or by her assignment to perform work under that contract. The Commission noted the absence of any indication that the Deputy's spouse's position was offered to her for the purpose or with the intent of influencing him nor was there any evidence that the Deputy had used his position to obtain employment for his spouse with the bidder or to secure her assignment under the proposed contract. There was also no indication of any interest held by the Deputy in the bidder that would bar the contract under section 19, the contracting section of the statute.
As for the appearance of impropriety, the Commission noted that the Deputy’s spouse had obtained employment with the bidder prior to their marriage and long before his appointment as Deputy and that the lack of involvement by him in bidding process matters involving the Lottery Commission, on the part of the Governor’s Office, would substantially ameliorate any appearance problems. The Commission based its advice on the assumption that he would have no duties concerning this contract or the Lottery Commission in general, such as appointment of members, which might raise impairment of objectivity issues due to his personal financial interest in his spouse’s employment. The Commission also cautioned the Deputy that willful disclosure or use of information not generally available to the public received or acquired in the course of or by reason of official duties is prohibited.

In Case No. 25-84, the Commission considered whether it was a conflict of interest for the Ombudsman, Department of Corrections, to handle inmate complaints concerning Corrections Officers represented by the union of which her husband was State President. The Ombudsman was generally responsible for receiving, investigating and making recommendations concerning complaints received from persons incarcerated or on parole. The Commission determined that the Ombudsman and the Department should be advised that it is not consistent with the Conflicts Law for her to have involvement as Ombudsman in handling complaints concerning Correction Officers represented by the Union while her husband served as President. The advice was based on considerations of indirect interest, impairment of objectivity and appearance of impropriety.

In Case No. 14-85, the Commission approved the Department of Education’s handling of a matter wherein the Program Manager, Gifted Education Contracts, Division of General Academic Education, recommended that her husband be employed as a consultant to the Division. The employee also recommended her husband as a consultant to a school district which received funding from the Department for a project related to the education of gifted students. The Department determined that the manager’s recommendation of her husband as a Division consultant was violative of the Conflicts Law. She was also advised that she should not implicitly or explicitly make recommendations to local districts as to consultants or programs for gifted and talented education with which she has a direct or indirect relationship.

In Case No. 17-85, the Commission determined that the Medical Director, Division of Disability Determinations (“DDD”), did not use her official position to advance her husband’s private medical practice. As a private practitioner in the field of internal medicine, her husband worked in conjunction with the DDD as a Consultative Examining Physician (“CEP”). The Commission based its determination on the fact that while the Medical Director’s responsibilities placed her in direct contact with CEPs, she recused herself from all involvement regarding her husband and/or his specialty of internal medicine. The Medical Director had no direct control over the scheduling of examinations between DDD clients and CEPs. In addition, while it was the Director’s responsibility to review a physician’s qualifications prior to acceptance as a CEP, her husband became a CEP four years before she became Medical Director.

In Case No. 25-85, the Commission determined that the Chief, Bureau of Construction Code Enforcement (“BCCE”), Department of Community Affairs, violated the Conflicts Law by
soliciting and receiving, on behalf of his daughter, a scholarship award from an organization whose members were regulated by the BCCE. The Chief's daughter received the award for academic year 1983. In 1984, she applied personally for the scholarship. The organization's Board of Directors questioned the propriety of awarding the scholarship to the daughter of the Chief of the BCCE and advised the Chief that the award would not be granted until the conflicts issue was resolved. The Commission determined that the Conflicts Law was violated and ordered the Chief to reimburse the organization for the amount of scholarship monies awarded to his daughter.

In Case No. 9-86, the Commission considered a request for advice as to whether a nominee to the Racing Commission was in a conflict situation due to his son's business relationship, as an insurance broker, for an organization regulated by the Racing Commission. The Racing Commission does not regulate the selection of insurance brokers but does require that a surety bond be submitted by the track owner's insurance broker. The nominee's son provided this bond to the Racing Commission. The Commission determined that there was no conflict of interest per se; however, the nominee was cautioned to abstain from discussions and voting on any insurance matters that came before the Racing Commission.

In Case No. 27-89, the Commission considered whether a Casino Control Commission Member was required to recuse herself on matters where one of the parties was represented by a law firm for whom her father worked as an accountant. The Commissioner had been associated with the same law firm that employed her father prior to entering State service. The Commissioner had recused herself on eight previous occasions. The Commission determined that the Commissioner should continue to recuse herself from all matters related to the law firm in order to support her ability to render independent decisions and to be so perceived.

In Case No. 42-90, the Chairman of the Casino Control Commission ("CCC") requested an opinion as to whether he was required, under the operation of the Casino Control Act, the CCC Code of Ethics or the Conflicts of Interest Law, to recuse himself from matters involving his brother-in-law, a credit executive with a casino hotel, and/or his brother-in-law's employer. The Commission determined that the Chairman should recuse himself from participation in any matter involving his brother-in-law or the credit department of the casino hotel by which he was employed and advised him that his intention, in any matters involving his brother-in-law's employer, to advise the interested parties on the record of his relationship and to provide the opportunity for any interested party to seek his recusal was an adequate measure to protect the public interest.

In Case No. 245-93, the Commission reviewed an allegation that the Administrator, Office of Set-Aside and Certification, Department of Commerce, certified a business owned by his son for eligibility to participate in a program administered by his office. The Commission determined that the employee violated section 23(e)(3), the unwarranted privilege provision, section 23(e)(4), the prohibition against acting in one's official capacity if one has a direct or indirect personal financial interest in a matter, and section 23(e)(7), the appearance provision, in regard to certifying a business owned by his son. The Administrator should have delegated another employee in the office to handle his son's application.
M-9

In Case No. 1202-93, the Commission reviewed an allegation that the Director, Division of Administration, Department of Education, used his position to influence the award of grants and contracts to a school district employing his son. The Commission noted that most of the State funding to local school districts was awarded based on a statutorily mandated formula. Discretionary grants decisions are made by Program Division Heads with the Commissioner. The Division of Administration monitors and verifies the fiscal and statutory accuracy of grants and contracts after award decisions are made. The Commission voted to dismiss the complaint; however, the Director was advised to abstain from involvement in any matter which directly impacted his son's employment.

In Case No. 23-97, the Chief Planner, Hackensack Meadowlands Development Commission ("HMDC"), requested an opinion regarding her involvement on projects that directly or indirectly involve her husband's new employer. Her husband's employer was the environmental and engineering consultant on a project for which the Planner had been coordinator for ten years. Her husband had no involvement with the project. The Commission determined that the Planner could have no official involvement with projects that directly or indirectly involved her husband's employer regardless of whether her husband actually worked on the project.

In Case No. 23-98, the Senior Staff Engineer, HMDC, requested an opinion regarding her involvement on projects that directly or indirectly involve her husband. Her husband operated a consulting company and had been retained as a subcontractor to conduct an alternative site analysis required the Army Corp. of Engineers. The State employee had been asked to assist in the review of the hydrology and hydraulics for the project in question. Her involvement would include the writing of a scope of work document to hire a consultant to review the hydraulics and hydrology prepared by the consultant and to act as a liaison. The Commission noted that even though the two tasks, the State employee's involvement with the hydraulics and hydrology segment of the project and her husband's involvement in the alternate site analysis, are unrelated, due to the high profile nature of the project and the controversy surrounding it, it was conceivable that the participation of family members on the project could become an issue. The Commission determined that, because the HMDC could easily assign another engineer to perform the hydraulics and hydrology review, there appeared to be no reason, under these facts, to grant an exception to the existing HMDC policy, affirmed by the Commission in Case No. 23-97.

In Case No. 17-01, the Acting Chief Engineer, HMDC, requested that the Commission review its decision in Case No. 23-98 because her husband had not been involved with the project in question since July 1999. The Commission advised the Acting Chief Engineer that because her husband was no longer employed by the subcontractor and was not involved in the project, she was not precluded from having official involvement in the project.

In Case No. 14-01, the Acting Chief Engineer, HMDC, requested an opinion regarding her involvement in a project that was being performed by a firm that recently hired her brother-in-law. The Commission determined that the Acting Chief Engineer should recuse herself from
any involvement in matters involving the firm as long as her brother-in-law was employed by the firm.

**Dating Relationships.** In Case No. 16-99, the Ombudsman for the Institutionalized Elderly, Division of Senior Affairs, Department of Health and Senior Services, developed a dating relationship with a vendor to the Division. The vendor initially contracted with another State agency and later contracted with the State employee’s division to develop a software program. The development and implementation of the software program was a multi-phase project. During the period of the project, the Ombudsman began a social and personal relationship with the vendor and worked on and signed licensing and maintenance agreements on behalf of the Division with the vendor. Shortly thereafter, the Ombudsman sought additional funding for the vendor to supply additional services.

The Commission determined that there were indications that the Ombudsman violated sections 23(e)(3), (4) and (7) of the Conflicts Law. The Commission determined that under the applicable sections of the statute and the Commission’s precedent, the State employee should have recused herself from any official involvement with the vendor after her social and personal relationship began. The Commission entered into a consent order with the employee.

In Case No. 43-98, the Commission determined that the Assistant Executive Director of New Jersey Transit ("NJT") used his official position to secure an unwarranted advantage for his fiancé, an Account Executive at an insurance company. The insurance company was invited to provide additional insurance to NJT employees. NJT sent out letters to employees on NJT stationery, produced posters, and made insurance company sales representatives available on NJT premises. The Assistant Executive Director’s fiancé received commissions on sales to NJT employees. The Assistant Executive Director entered into a consent order with the Commission.

**Agency Contracts.** In Case No. 38-01, the Commission determined that the Director, Juvenile Sex Offender Treatment Services, Juvenile Justice Commission ("JJC"), was prohibited from acting as a co-trainer with his wife as long as he was employed in his current position at the JJC. The Director’s wife began contracting with the JJC in 1997, prior to his being hired by the agency. The Director had been assisting as a co-trainer since 1997. The Director’s wife was paid the same fee as all other trainers. The Director was not compensated for his participation. The Commission determined that the Director’s involvement as a co-trainer raised appearance concerns because of the financial interdependence of the parties.

In Case No. 25-00, the Commission determined that the Executive Director of the Communications Institute at Rowan University violated the Conflicts Law by awarding a subcontract to a firm in which he and his adult children had a financial interest. The Director entered into a consent order with the Commission.
PLAIN LANGUAGE GUIDE TO
NEW JERSEY'S EXECUTIVE BRANCH
ETHICS STANDARDS

Revised June 2014
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SEEKING FUTURE EMPLOYMENT/POST-EMPLOYMENT RESTRICTIONS

Seeking Future Employment. If you have direct and substantial contact with any interested parties, you must refrain from circulating resumes or in any manner seeking employment with those individuals or entities while you are still in State service. If you are solicited for potential employment by an entity with which you have direct and substantial contact, that solicitation must be disclosed immediately to your management and to your ELO to avoid a situation where you may appear to be using your official position to gain an unwarranted advantage. If you do not have direct and substantial contact with interested parties, you may circulate your resume and enter into discussions concerning potential employment with those individuals or entities, so long as you avoid any situation that may give rise to an unwarranted advantage. Your discussions, interviews, and negotiations should not take place on State time.

Dealing with the State after your Departure. As a former employee, you will be prohibited from representing or assisting a person concerning a particular matter if you were substantially and directly involved in that particular matter while in State employment. This prohibition does not extend to “determinations of general applicability or to the preparation or review of legislation that is no longer pending before the Legislature or the Governor.” The statute, rules, and precedent governing these prohibitions are complex. Questions about the nature of matters with which you had involvement during the course of your official duties should be directed to the Commission, for determination on a case-by-case basis.

Certain State Officials – One-Year Ban – Former Agency. A one-year post-employment ban applies to any head, deputy head or assistant head of any principal department, board, commission or authority, the Superintendent of State Police, the Governor’s Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel, Director of Communications, Policy Counselor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor. If you hold one of the enumerated positions, you are not permitted to represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of any person or party other than the State with or before any officer or employee of the State agency in which you served for a period of one year following your State service.

Special Rules for the Casino Industry and for Lawyers. Additional and more stringent rules will apply to your post-employment activities if you file a Financial Disclosure Statement pursuant to law or executive order, or have responsibility for matters affecting casino activity, or are engaged in the practice of law. Questions concerning post-employment casino-related activities should be directed to the Commission. Lawyers may request advice on the application of the Rules of Professional Conduct from the Supreme Court Advisory Committee on Professional Ethics.

Contracting with your Former Agency. Nothing in the Ethics Laws prevents an agency from contracting directly with a former employee.

Other Resources. For a more complete discussion of this subject, see Post-Employment Restrictions for State Employees, at www.nj.gov/ethics/statutes/guide/eunpl_restrictions.html.

NEPOTISM

The Commission staff frequently receives inquiries concerning the propriety of State officials interacting in the course of their official duties with family members. The majority of inquiries concern relatives employed by the same State agency, or interactions with family members employed in the private sector. Prior to 2006, the Conflicts Law did not contain a nepotism provision. However, the statute was amended, effective March 15, 2006, to prohibit certain relatives of certain State officials from
holding particular government positions and also to prohibit State official’s from supervising, or exercising authority with regard to personnel actions over, a relative of the State official.

If a relative (defined as an individual’s spouse or the individual’s or spouse’s parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother or half sister, whether the relative is related to the individual or the individual’s spouse by blood, marriage or adoption) is employed by or is an applicant for an unclassified position with the agency where you are employed, please contact your ELO to determine if you or your relative are affected by the statutory restrictions.

**Family Members Working for the Same Agency.** In the case of relatives who work for the same agency, direct supervisor/subordinate relationships are not permitted.

**Hiring Family Members.** With respect to the hiring of family members, the Commission looks at the totality of circumstances surrounding the hire to determine whether any unwarranted privilege has been afforded the family member. Note that the Conflicts Law prohibits hiring in some circumstances. See N.J.S.A. 52:13D-21.2.

**Interacting with Family Members in the Private Sector.** With respect to interactions with family members or their private sector employers, the Commission generally recommends recusal from matters involving the relative and/or the relative’s employer, in order to eliminate any appearance of impropriety.

**Dating and Other Relationships.** The Commission’s policy concerning spouses who work in the same agency is also applicable to non-related individuals who share the same household with the same financial interdependence that the Commission views as creating a conflict in spousal situations. In the case of individuals involved in a dating relationship, the Commission has found violations of the unwarranted privilege and appearance sections of the statute in situations where the State employee had official involvement in a matter affecting the individual with whom he/she had a dating relationship.

**Casino-Related Conflict Issues.** Only the casino-related provisions of the Conflicts Law contain prohibitions that specifically apply to a State official’s immediate family members (defined as the person’s spouse, child, parent, or sibling residing in the same household). Waivers of these prohibitions may be requested by contacting the Commission. A waiver of the casino employment restriction will be granted if, in the Commission’s judgment, the employment will not interfere with the responsibilities of the State officer or employee and will not create a conflict of interest or reasonable risk of the public perception of a conflict of interest.

**Other Resources.** For a more complete discussion of this subject, see Official Interactions with Family Members/Cohabitants and Dating Relationships, at [www.nj.gov/ethics/statutes/guide/famcode.html](http://www.nj.gov/ethics/statutes/guide/famcode.html).

**RECUSAL**

**Prior Business Relationships.** You are required to recuse yourself, for one year after commencing State service, on an official matter that involves any private sector individual, association, corporation or other entity that employed or did business with you during the year prior to your commencement of State service.

**Prior Involvement in Matter.** You are required to recuse yourself on an official matter if you had any involvement in that matter, other than on behalf of the State, prior to commencement of your State service.

**Personal or Financial Interest.** Sometimes, conflicts situations occur because of your personal relationships or financial circumstances. For example, you may be involved in reviewing vendor qualifications for a contract your agency is preparing to issue, and discover that your sibling's company
PROJECT MANAGEMENT
PROCEDURES
Program Operations

STANDARD OPERATING PROCEDURES

Open & Pending Payment Requisitions:

15-Day Deadline Report

STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY
TRENTON, NEW JERSEY

Last Revision Date: January 23, 2012
INTRODUCTION

New Jersey has a “prompt payment” law, which creates legal obligations governing the Authority’s payment of its prime contractors, consultants and suppliers. Under this law, the Authority can be assessed financial penalties, and firms have the right to suspend work, under certain conditions, if payments are untimely.

Some important features of this law include the following:

- The law applies to contracts for ‘improvements’ to real property executed by SDA on or after September 1, 2006. It sets strict time deadlines for SDA to pay approved invoices for construction or consulting services for architecture, engineering, land surveying and landscape architecture. The law also requires prompt payment to subcontractors, sub-subcontractors and suppliers of materials and equipment.

- Twenty (20) days after SDA or a Project Management Firm/Construction Manager (PMF/CM) receives an invoice, the billing is deemed automatically approved unless, prior to the expiration of the 20-day period, the SDA provides a written statement to the firm of the amount withheld and the reason(s) for withholding payment.

- The SDA must pay a firm within thirty (30) days of receiving its invoice, if the SDA has not given the firm a reason in writing for not paying.

- Where timely payment of an approved invoice is not made, after giving seven (7) calendar days’ written notice to the SDA, a firm may suspend work until the payment is made, provided the SDA (1) has not provided a written statement of the amount withheld and the reason for the withholding; and (2) the SDA is not engaged in a good faith effort to resolve the reason for the withholding.

It is the responsibility of the SDA’s Centralized Payment Unit (CPU) to initially receive, log-in, and transmit invoices for review and approval/rejection within 1 working day of receipt. In the event that an invoice requires Vice President (Level 5) approval, it is also the CPU’s responsibility to obtain this within the twenty day approval/rejection period.

Upon notification of receipt and transmittal of invoices by the CPU to each Program Operations Team, it shall be the responsibility of each particular project’s assigned Program Officer to review the invoice and input all data related to the review into the SDA Contract Manager program under the appropriate project/contract section for invoices. Subsequent review action taken by other signatory staff including the Deputy Director (DD) and Program Operations Director (POD) shall be similarly entered into the system by these reviewing/signing staff members. Data entry shall be made within 24 hours of any activity related to the review, sign-off or routing of an invoice. The 15-Day Report issued the following day shall contain the information necessary to track a particular invoice as detailed below.

As discussed below, it is the responsibility of each Program Operations Team’s assigned Program Officer for Controls (POC) to utilize the 15-Day Report to ensure that all required reviews and approvals (or rejections) are completed within 15 Days of the initial receipt of an invoice.

As discussed below, it is the responsibility of each Program Operation’s Team assigned Deputy Director to respond to any invoice processing issues identified by the POC and to ensure that any necessary actions are identified and implemented to ensure approval or rejection of all invoices within the prescribed time frames.
ACRONYMS

CM – Primavera’s Contract Manager
CMF – Construction Management (Firm)
CPU – Centralized Payment Unit
DD – Deputy Director
PA – Program Assistant
PO – Program Officer
POC – Program Officer for Controls
PMF – Project Management Firm
POD - Program Operations Director
SIMS – Schools Information Management System
SPM – Sr. Project Manager

PURPOSE

- The purpose of the Payment Requisitions Not Approved: 15-Day Deadline Report (15-Day Report) is to allow tracking and monitoring of all invoices to ensure that they are reviewed and approved or rejected within 15 days of receipt by NJSDA.

SCOPE

- The scope of this SOP is to monitor and track payment requisitions in accordance with the Prompt Payment Act.

RESPONSIBLE UNITS/ DIVISION

- It is the responsibility of the Program Operations Teams to review the “15-Day Report” and monitor the invoice process for consistency ensuring that Program Operations complies with the Prompt Payment Act.

PROCEDURES

REVIEW PROCESS OUTLINE

1. Report Generation and Distribution

   The 15-Day Report is automatically created and e-mailed daily from Primavera Contract Manager (CM) to an assigned list of recipients inclusive of the Team Program Operations Director (POD), Deputy Director (DD) and Program Officer for Controls (POC) as well as the Program Officer (PO) assigned to manage each project for which there is an associated project invoice. [Note to Program Ops Staff - In the interim that MIS is updating the systems and auto-generated email recipient list, those presently not included on that list, receive the 15-Day Pay Requisition Report from the Program Operations Coordinator.]

2. 15-Day Report Review

   By Noon of the day in which the 15-Day Report is generated, the POC will review all entries for projects assigned to their Program Operations Team as follows:

   a. New Entries – The POC will review any new Project Team entries on the report to ensure that all data,
including identification of the assigned PO, is accurate.

➢ In the event that any reported data is inaccurate, the POC will immediately contact the CPU via e-mail and request corrections.

➢ Whenever such corrections have been requested, the POC will review the next daily report to ensure that any necessary corrections have been made and, if not, will follow-up with the CPU as necessary until such corrections are made.

For any report received 5 days after the end of a monthly billing period, the POC will also review the report to determine whether all anticipated invoices have been received and entered. [Note – It is the responsibility of the POC to be aware of all active contracts so that they can anticipate which vendors will be submitting invoices in any monthly billing period.]

➢ In the event that an anticipated invoice has not been received and logged within 5 days of the end of the monthly billing period, the POC will contact the assigned DD and PO via e-mail.

➢ The assigned PO will contact the vendor to confirm whether an invoice has been submitted or identify the date on which it will be submitted. The PO will immediately document the vendor’s response including commitment dates (if a submittal is planned) via an e-mail to the vendor, copying the POC and DD.

➢ The POC will continue to track and follow-up with the PO as necessary until such time as the anticipated invoice is received or it is determined that the vendor will not be submitting an invoice for that monthly billing period.

b. All Entries – The POC will review all Project Team entries in the report as follows:

1) Identify all entries for which 4 days have elapsed and review and approval/rejection by the PMF/CMF or assigned PO (in the absence of a PMF/CMF) has not been completed and logged.

2) Identify all entries for which 8 days have elapsed and review and approval/rejection by the assigned PO and DD (and CMD for PMF invoices) have not been completed and logged.

3) Identify all entries for which 13 days have elapsed and review and approval/rejection by the POD have not been completed and logged.

➢ In the event that any of the above conditions are identified, the POC will contact the DD and the assigned PO via e-mail to alert them of the condition and to request confirmation that the required approval or rejection will be completed within the remaining time frame (“Invoice Alert e-mail”).

c. Approved Invoices – The POC will also review the Report for any invoices previously approved by the Program Operations Team and, if they have not been removed from the Report within 2 working days of approval, the POC will contact the CPU to confirm that the invoice will be removed or determine whether there is a reason why it has not been removed. The POC will follow-up with CPU until such time as the invoice is removed from the Report.

d. Rejected Invoices - The POC will also review the Report for any invoices previously rejected by the Program Operations Team and, if the rejection has not been reflected in the Report within 2 working days of rejection, the POC will contact the CPU to confirm that the invoice rejection will be noted or determine whether there is a reason why it has not been reported. The POC will follow-up with CPU until such time as the invoice rejection is reflected in the Report.

3. Follow-Up Activities

a. DD Response - Within the day that an Invoice Alert e-mail is issued by the POC, the DD will contact the assigned PO to determine what the status of invoice review and approval is and to determine whether any immediate follow-up is required, including the following:
Projects with PMF/CMF - In the event that 4 days have elapsed and review and approval/rejection by the PMF/CMF has not been completed and logged, the assigned PO will send an e-mail to the PMF/CMF to confirm that processing will either be completed within the prescribed time frame or to identify any impediments to approval/rejection.

Projects without PMF/CMF - In the event that 4 days have elapsed and review and approval/rejection by the assigned PO has not been completed and logged, the assigned DD will e-mail the PO to confirm that processing will either be completed within the prescribed time frame or to identify any impediments to approval/rejection.

In the event that 8 days have elapsed and review and approval/rejection by the assigned PO and DD (and CMD for PMF invoices) have not been completed and logged, the assigned DD and PO will confirm via e-mail to the POD that processing will either be completed within the prescribed time frame or identify any impediments to approval/rejection.

In the event that 13 days have elapsed and review and approval/rejection by the POD have not been completed and logged, the DD will contact the POD via e-mail and confirm that processing will either be completed within the prescribed time frame or identify any impediments to approval/rejection.

In the event that an impediment to approval or rejection of the invoice has been identified, the DD will so notify the POC, POD, will determine what action is necessary to resolve the issue, and will implement that action.

b. DD Reporting – By Noon of the working day following issuance of an Invoice Alert e-mail, the DD will advise the POC and POD via e-mail of the following for each entry included in the Invoice Alert e-mail:

1) The DD has determined that review and approval/rejection of the invoice will be completed within the prescribed time frame

or

2) In the event that an impediment to review and approval/rejection of an invoice has been identified, the DD shall report the following:
   • The nature of the impediment to processing the invoice
   • The actions which are being taken to correct the situation
   • The responsible parties
   • The time frames for completion of corrective actions

c. DD Follow-Up – Where impediments to processing an invoice have been identified, the DD shall provide daily updates of the status of corrective activities via e-mail to the POD and POC until such time as the issue is resolved.

In the event that such an impediment to processing has not been resolved within 13 days of receipt of an invoice, the DD shall meet with the POD, POC, assigned PO, and any other necessary parties to either resolve the issue or, if it is determined that the issue cannot be resolved within the remaining processing time, to take necessary action to reject the invoice.

4. Delegation/Designees – In the event that the POC or DD are absent, the POD shall assume responsibility for these activities or will identify staff that shall have such responsibilities.
PROMPT PAYMENT ACT PROCEDURES

- The Prompt Payment Act requires that contract invoices be paid within 30 calendar days from receipt by the SDA.
- SDA has 20 calendars days from the CPU receipt to reject the invoice, otherwise it must be paid in full—regardless of any errors in it.
- If the invoice is not paid within 30 calendar days, SDA is liable to pay interest.

THE CLOCK STARTS...

- When the CPU receives the payment application.

TIMELINE TO REVIEW INVOICES (CALENDAR DAYS)...

- CPU – 5 days
  (CPU must date stamp invoice)
- Program Operations, CMF/PMF – 15 days (Project Team and CMF/PMF are to go into the system at the same time CPU begins its review of the invoice once they receive the email notification from CPU that the invoice is in the appropriate system)
- Accts. Payable – 10 days

General Summary Provisions...

- If the invoice does not have a date stamp from the CPU, SDA will assume the invoice was in its possession from the date of contractor’s signature.
- If the invoice is found to be incorrect/incomplete (billing for non-executed change orders, forms or incorrect amounts), it must be immediately returned to the contractor.
- CPU cannot hold an invoice. Within the five (5) calendar days:
  - Send to PO, PA, CMF/PMF for review.
- If SDA determines the invoice is incorrect or incomplete, it must be rejected within 20 days of receipt with notification to the contractor (copy to CMF/PMF) for revision and re-submittal. The notification will be sent via email clock stops!

The clock resets with the contractor’s invoice re-submission to the CPU. The invoice must be re-stamped to start the clock over.
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<td>7/28/2010</td>
<td>Revised to the new Division of Program Operations</td>
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<td>Michael Anselmo, Corrado Minervini, Ritchard Sherman and Wanda Gibson</td>
<td>12/10/2011</td>
<td>Revised to the new structure in Program Operations and the new reviewers</td>
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Program Operations

STANDARD OPERATING PROCEDURES

Utilization

Of Construction Contract

Allowances

STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY
TRENTON, NEW JERSEY

Last Revision Date: January 29, 2013
ACRONYMS

CCD – Construction Change Directive
CMF – Construction Management Firm
CMD – Contract Management Department
DC – Design Consultant
DD – Deputy Director, Program Operations
GC – General Contractor
PD – Program Director, Program Operations
PMF – Project Management Firm
PO – Program Officer, Program Operations
POps – Program Operations Division
PT – Project Team
VP – Vice President

INTRODUCTION

Whether to establish an Allowance in a Construction Contract is at the discretion of the Authority.

If the Authority establishes an Allowance in a Construction Contract, the Authority does so during the solicitation process, and includes all relevant information within the solicitation documents, including:

• The Purpose of the Allowance;
• The Dollar Value of the Allowance; and
• The Method by which the Allowance will be utilized.

Upon execution, the Construction Contract includes an Allowance only for the Purpose and only at the Dollar Value established in the solicitation documents.

Utilization of an established Allowance requires appropriate review and written approval by the Authority.

PURPOSE

The purpose of this SOP is to ensure accuracy, thoroughness and consistency in the initiation of a request to utilize funds from within an established Allowance, and to ensure accuracy, thoroughness and consistency in the process for review and approval of such a request to utilize funds from within an established Allowance.

This SOP must be used in conjunction with:
• The relevant Construction Contract’s “Section 01020 – ALLOWANCES”
DEFINITIONS

An Allowance is a sum of money set aside within the Contract Price for 1) activities or portions of work that have been anticipated in the Contract but which have not been fully quantified or specified in the Contract; or 2) items that were anticipated for use or incorporation in the Project, but which have not been specified in the Contract. Work or services performed pursuant to an Allowance do not represent a Change in the Work. Allowance funds are to be utilized by the Contractor only as directed and approved by the Authority.

RESPONSIBLE UNITS/DIVISION

The Program Operations Division of the NJSDA is responsible for this process.

PROCEDURES

1. These procedures are applicable only to a project where one or more Allowance Categories with accompanying Allowance Amounts have been defined by, and included in, the construction contract.

2. A condition that may give rise to a request to utilize dedicated Allowance funds may result from either:
   - activities or portions of work that have been anticipated in the Contract but which have not been fully quantified or specified in the Contract; or
   - items that were anticipated for use or incorporation in the Project, but which have not been specified in the Contract.

3. For each request to utilize dedicated Allowance funds, the Contractor shall submit to the Authority an Allowance Authorization Form.

4. Included with the information provided on the submitted Allowance Authorization Form, the Contractor shall provide the Authority with a description of the proposed Allowance work, cost information for the proposed Allowance work, and detailed backup documentation regarding the description and the proposed costs to perform the Allowance work.

5. The Program Officer shall confer with the Program Director regarding:
   - Whether there is a need for review of the Contractor’s request by:
     - the Authority-engaged Environmental Consultant, and/or
     - the Authority-engaged Design Consultant, and/or
     - the Authority-engaged Construction Manager and/or
     - the Authority Environmental Advisory Group Leader, and/or
     - the Authority Design Studio/Architect Advisory Group Leader, and/or
     - the Contract Management Department (CMD);
   - Whether additional information is needed from the Contractor;
Whether there is a need for development of solution by the Environmental Consultant or Design Consultant prior to performance of the work by the Construction Contractor.

6. The review by the Program Officer and Program Director shall result in a preliminary assessment as to the validity of the Contractor's request in terms of whether the description of the work is within the purpose for which the Allowance was established, and/or whether additional information or review by others is needed to arrive at such preliminary assessment.

7. As a result of that review by the Program Officer and Program Director, the Program Officer shall facilitate the timely and complete performance of any additional review needed by others, the receipt of any additional information from the Contractor, and the development of any solution by the Environmental Consultant or Design Consultant, as determined appropriate by the review.

8. If the Program Officer and the Program Director determine that development of a solution by the Environmental Consultant or Design Consultant is necessary, the Program Director shall determine whether to direct that the Consultant/GC/PO shall collaborate on developing a solution to the cited condition, which may require the development of specifications, and/or clarification drawings if necessary.

9. After receipt of all required information and the review by all appropriate parties, if the Program Officer and Program Director preliminarily conclude that the Contractor's request to utilize dedicated Allowance funds is appropriate to the Purpose for which the Allowance was established, the Program Officer and Program Director shall decide whether:

- The work is appropriate for performance on a lump sum basis, unit price basis or Time & Materials basis
- Negotiation of the Contractor's proposed costs are needed
- CMD review and assistance is needed
- A revised Allowance Authorization submission is needed from the Contractor

10. After performance of the analysis, review and negotiation, as appropriate, as described above but prior to execution of the Allowance Authorization Form, the Program Officer shall draft a Justification Memo for review by the Program Director and for submission to the Vice President of Program Operations. The Justification memo shall memorialize the following:

- Confirmation that the original contract established an allowance.
- Description of the type of work or condition that the Allowance Category was established to address
- Verification that the proposed Allowance Work detailed within the backup to the Allowance Authorization Request is an appropriate utilization of funds in light of the scope and purpose of the Allowance Category as defined in the Contract Documents.
- Discussion of any other reviews performed of the Contractor's request, by whom, and the results of those reviews
- Identification of the original Allowance Amount and the current balance of the funds in the Allowance Amount.
- Identification of the dollar value of the Allowance Amount balance after deduction of the costs of the pending Allowance Authorization request.
o Identification of any competing or anticipated additional need that is intended to be covered by the remaining Allowance Amount funds.

o Discussion of any negotiation of cost or other element that was conducted

o Determination as to appropriateness of cost and method for invoicing and performance of the work, i.e., lump sum basis, unit price basis, Time & Materials basis

11. Upon approval from the Vice President of Program Operations of the Justification Memo, the Program Officer and Program Director shall execute the Allowance Authorization Form prior to VP execution and thereafter provide written direction to the Contractor to perform the work and invoice against dedicated Allowance funds.

12. The Program Officer shall appropriately update Contract Manager, and budget and schedule records and shall appropriately notify all relevant colleagues inclusive of the Project Team Member responsible for Project Controls functions

13. The GC’s billing shall be recorded on the SDA Form 810, included as a line item identified as Allowance Authorization # for the actual payment amount of the allowance line item(s). The approved Allowance Authorization form shall be attached to any SDA Form 810 that includes invoicing for that item.

NOTES:

o Contract Management Division (CMD) approval is not required because an allowance (with the exception of the de-obligation of unused allowances to the SDA in the amount of $100K) is not considered a change order or Construction Change Directive (CCD). However, staff is encouraged to consult with CMD on larger allowance authorization requests (Generally >$100K).

o The process for addressing unused allowances, at the completion of the project, will be in the form of a deduction of funds (deobligation of the funds or a deduct/credit change order per Section 01020, 1.4.6, and 1.5.8, below). The Program Manager shall confer with the Program Director and seek the approval of the Vice President of Program Operations as to which form of deduction to use. The unused allowances will be de-obligated from the project.
ALLOWANCE SECTION OF THE SPECIFICATIONS

SECTION 01020 - ALLOWANCES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

A. Section 01010 - Summary of Work (Listing Allowance Items and Amounts)

B. Designated delivery dates for products in Project Schedule.

1.2 DEFINITION

An Allowance is a sum of money set aside within the Contract Price for: 1) activities or portions of Work that have been anticipated in the Contract, but which have not been fully quantified or specified in the Contract; or 2) items that were anticipated for use or incorporation in the Project, but which have not been specified in the Contract. Work or services performed pursuant to an Allowance do not represent a Change in the Work. Allowance funds are to be utilized by the Contractor only as directed and approved by the Authority.

1.3 AUTHORITY'S WRITTEN APPROVAL REQUIRED

The Contractor shall obtain the NJSDA’s written approval on the appropriately executed Allowance Authorization form before providing any equipment or materials, or performing any work, to be funded by an Allowance (hereinafter, “Allowance Work”). Any work or services performed or undertaken by the Contractor to be compensated as an Allowance item shall be performed at the Contractor’s own financial risk, unless the Contractor has received specific written authorization from the Authority to perform the Allowance Work and be compensated with Allowance funds.

1.4 ALLOWANCE PROCEDURE FOR ANTICIPATED, UNQUANTIFIED WORK

1.4.1. Upon written direction by the Authority, the Contractor will be authorized to invoice against dedicated Allowance funds (the “Allowance Amount”) to perform specific Allowance Work that is anticipated but not fully quantified by the Contract. In its written authorization to perform the Allowance Work, the Authority may, in its sole discretion, elect to have the Allowance Work performed and invoiced on a lump sum, unit price and/or monitored Time & Materials basis.

1.4.2. For each request to utilize the allowance, the Contractor shall submit to the Authority detailed backup documentation describing the proposed costs to perform the Allowance Work. The Contractor shall provide the Authority with a description of the proposed Allowance Work and an itemization of the costs to perform the Allowance Work, calculated in the same manner as for Change Order Work as described in Section 01080.

1.4.3. Contractor shall provide the cost information for Allowance Work on Allowance Authorization forms supplied by the Authority. Any Allowance Work claimed by the Contractor that is not fully documented in an Allowance Authorization Form, or which is performed by the Contractor prior to receipt of an Allowance Authorization form approved

Utilization of Construction Contract Allowances SOP
and fully executed by the Authority, is performed at the Contractor's own risk.

1.4.4. Upon Contractor's receipt of an Allowance Authorization form approved and executed by the Authority, the Contractor shall proceed to perform the described Allowance Work. The Contractor shall be responsible for the oversight of Allowance Work in the same manner as specified by the Contract for the base Contract Work.

1.4.5. If the amount or cost of Allowance Work exceeds the Allowance Amount for such work specified in the Contract, then the Allowance Amount and/or the Contract Price may be adjusted by the SDA in accordance with the Operating Authority to increase the funds available to perform the Allowance Work.

1.4.6. If, upon completion of the Project, unused Allowance fund balances remain in Allowance categories, the Authority may, in its sole discretion, either unilaterally deobligate the funds, or may require the Contractor shall issue a credit change order to the Authority in the amount of any remaining balance of any unused allowance.

1.5 ALLOWANCE PROCEDURE FOR PRODUCTS/MATERIALS

1.5.1. Upon written direction by the Authority, the Contractor will be authorized to invoice against dedicated Allowance funds (the "Allowance Amount") to purchase specific products or materials that are anticipated but not specified by the Contract. In its written authorization to purchase the products or materials as an Allowance expense, the Authority may, in its sole discretion, elect to have the Contractor invoice for the Allowance products and materials on a lump sum, unit price and/or monitored Time & Materials basis.

1.5.2. The specific Allowance categories and relevant Allowance Amounts to be included in the Contract Price are listed in Section 01010.

1.5.3. When seeking authorization to invoice against Allowance Amounts for the purchase of materials and equipment, the Contractor's costs for the Allowance items shall include only the following components:

1.5.3.1. Net cost of product.
1.5.3.2. Delivery to the site.
1.5.3.3. Applicable taxes.

1.5.4. All other Costs relating to the Allowance Products and Materials shall be included in the base bid submitted by the Contractor including, but not limited to, the Contractor's costs for:

1.5.4.1. Handling of the Allowance Products and Materials at site including unloading, uncaring, and storage.
1.5.4.2. Protection of Allowance Products and Materials from elements and from damage.
1.5.4.3. Labor, installation, and finishing of the products or materials to be purchased through the Allowance.
1.5.4.4. Other expenses (e.g., testing, adjusting, and balancing) required to complete installation.
1.5.4.5. Overhead and profit.

1.5.5. Selection of Product/Material.
1.5.5.1. Design Consultant's Duties.

1.5.5.1.1. Consult with Contractor in consideration of product/material and suppliers.
1.5.5.1.2. Make selection, designate product/material to be used.
1.5.5.1.3. Notify Contractor in writing, designating:
   A. Product, size, color, and texture.
   B. Supplier.
   C. Cost, delivered at site.

1.5.5.2. Contractor's Duties

1.5.5.2.1. Assist Design Consultant in determining qualified suppliers.
1.5.5.2.2. Obtain 3 or more proposals from suppliers unless directed otherwise by the Authority.
1.5.5.2.3. Make appropriate recommendations for consideration by Design Consultant.
1.5.5.2.4. Notify the Authority, and, if applicable, it's PMF/CM in writing, of anticipated effect of selection of product or supplier on Project Schedule and Contract Price.
1.5.5.2.5. On approval of selection enter into purchase agreement with designated supplier.

1.5.6. Delivery.

1.5.6.1. Contractor Responsibilities:
   1.5.6.1.1. Arrange for delivery and unloading.
   1.5.6.1.2. Promptly inspect product for damage or defects.

1.5.7. Installation.

Comply with relevant General Conditions and Specification Section Requirements.

1.5.8. Adjustment of Product/Material Allowances.

1.5.8.1. Unused funds remaining in Allowance categories at completion of the Project shall be credited to the Authority through the deobligation of the funds or through a Deductive Change Order prior to approval of Final Application for Payment.

1.5.8.2. The Contractor shall issue a credit to the Authority in the Deductive Change Order for appropriate profit markup, consistent with Section 01080, for unused Allowance items under Product/Material Allowances.

END OF SECTION 01020

Utilization of Construction Contract Allowances SOP

Page 8 of 13
## ALLOWANCE AUTHORIZATION FOR CONSTRUCTION CONTRACT FORM

<table>
<thead>
<tr>
<th><strong>Date:</strong></th>
<th><strong>Allow. No.:</strong></th>
</tr>
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<tbody>
<tr>
<td><strong>Contract No.:</strong></td>
<td><strong>Project. No.:</strong></td>
</tr>
<tr>
<td><strong>Contractor:</strong></td>
<td><strong>School Name:</strong></td>
</tr>
<tr>
<td><strong>PMF/CM:</strong></td>
<td><strong>District:</strong></td>
</tr>
<tr>
<td><strong>A/E:</strong></td>
<td><strong>SDA PO:</strong></td>
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</table>

### The Purpose of this Allowance Authorization Request
(The purpose shall conform to the Allowance Category in the contract)

### The Contractor is authorized to perform the following Allowance Work
(The detailed description)

### Anticipated Additional Need of this Allowance Amount
(The brief description)

### Allowance Cost

<table>
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<tr>
<th>Original Allowance</th>
<th>Net of Prior Authorization to Allowance</th>
<th>This Authorization to Allowance</th>
<th>Current Balance of Allowance</th>
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</thead>
</table>

Page 1 of 2

Rev: 1/30/2013
# ALLOWANCE AUTHORIZATION FOR CONSTRUCTION CONTRACT

## Time

(This is notification only that TIME may be impacted. Any adjustment to the Contract time must be accomplished through a properly authorized change order.)

<table>
<thead>
<tr>
<th>(In calendar days where applicable)</th>
<th>ORIGINAL DATE</th>
<th>PRIOR TIME AUTHORIZATION</th>
<th>THIS TIME ADD / DEDUCT</th>
<th>CURRENT CONTRACT</th>
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<tr>
<td>Final Completion</td>
<td></td>
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This Allowance Authorization Request represents the total and entire adjustment to the Allowance Amount for the authorization described herein and is included in the contract sum.

### Accepted and Agreed to By:

**Contractor:**

- Signature
- Print Name
- Acceptance status
- Date

### Recommended for Acceptance By:

**PMF/CM:**

- Signature
- Acceptance status
- Date
- Print Name

### Approved and Agreed to By:

**SDA Program Director:**

- Signature
- Acceptance status
- Date
- Print Name

**SDA Vice President:**

- Signature
- Acceptance status
- Date
- Print Name

Contract No:

Page 2 of 2

Rev: 1/30/2013
ALLOWANCE AUTHORIZATION JUSTIFICATION MEMO CHECKLIST

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<th>School Name:</th>
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<tr>
<td>Allowance #:</td>
<td>Authorization #:</td>
<td>Contractor Name:</td>
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The Justification memo shall memorialize the following:

- Confirmation that the original contract established an allowance.
- Description of the type of work or condition that the Allowance Category was established to address.
- Verification that the proposed Allowance Work detailed within the backup to the Allowance Authorization Request is an appropriate utilization of funds in light of the scope and purpose of the Allowance Category as defined in the Contract Documents.
- Discussion of any other reviews performed of the Consultant/Contractor's request, by whom, and the results of those reviews.
- Identification of the original Allowance Amount and the current balance of the funds in the Allowance Amount.
- Identification of the dollar value of the Allowance Amount balance after deduction of the costs of the pending Allowance Authorization request.
- Identification of any competing or anticipated additional need that is intended to be covered by the remaining Allowance Amount funds.
- Discussion of any negotiation of cost or other element that was conducted.
- Discuss any consultation with CMD, Design Studio, Environmental Advisory Leader, and/or Legal.
- Determination as to appropriateness of cost and method for invoicing and performance of the work, i.e., lump sum basis, unit price basis, Time & Materials basis. Describe any negotiation(s) that occurred. If T&M, discuss hourly rate, how it was established, and state that only contract allowed overhead will be applied and that actual hours and calculations will be verified.

All of the above checked items are appropriate to and referenced in the memo.

Signature: ___________________________ Date: ________________

Print Name: __________________________ Program Officer

Signature: __________________________ Date: ________________

Print Name: __________________________ Deputy Director

Revised 3/25/2013
DE-OBLIGATION OF CONSTRUCTION ALLOWANCE FORM

State of New Jersey
SCHOOLS DEVELOPMENT AUTHORITY

DEOBLIGATION OF CONTRACT FUNDS

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<th>Change No.:</th>
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DEOBLIGATION OF CONSTRUCTION ALLOWANCES

This De-obligation of funds applies to the Contractor Agreement regarding:

<table>
<thead>
<tr>
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<th>Project No.</th>
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between New Jersey Schools Development Authority (NJSDA)

and Contractor:

Contractor Address:

City: ___________________ State: Alabama [ ] Zip Code: ___________________

This de-obligation form is used in lieu of a Credit Change Order. A credit change order is the accounting mechanism by which the NJSDA de-obligates a contract's unused allowance funds.

Amount of the Allowance

What was the Allowance Established for?

NJSDA Form 508_B
Page 1 of 2
STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

DEOBLIGATION OF CONTRACT FUNDS

Project: ____________________________ Project #: ____________________________

Amount of Deobligation: ____________________________

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<td>Net Prior Change</td>
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<td>Revised Sum</td>
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Justification for De-obligation

__________________________

__________________________

Approved:

NJSDA:
Deputy Director
Signature
Printed Name
Date

NJSDA:
Program Director
Signature
Printed Name
Date

NJSDA:
Vice President
Signature
Printed Name
Date

NJSDA Form 508_B
Page 2 of 2

Created: 1/30/2013

Utilization of Construction Contract Allowances SOP

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### Revision History

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Program Operations & Centralized Payment Unit

STANDARD OPERATING PROCEDURES

Invoice Processing With Matrix

State of New Jersey Schools Development Authority
Trenton, New Jersey

Last Revision Date: November 28, 2011
ACRONYMS

A/E – Architect or Engineer
A/P – Accounts Payable
CMD – Contract Management Division
CMF – Construction Management Firm
CM – Contract Manager (Primavera)
CPA – Capital Planning and Grants Administration
CPU – Centralized Payment Unit
DC – Design Consultant
DD – Deputy Director
GC – General Contractor
PA – Program Assistant
PT – Project Team
PD – Program Director
PMF – Project Management Firm
PO – Program Officer
POps – Program Operations
RES DB – Real Estate Services Database
SIMS – Schools Information Management System
SOV – Schedule of Values
TO – Task Order
VP – Vice President

INTRODUCTION

• Invoice processing is an essential part of NJSDA business. Our vendors (Professional Consultants and General Contractors) have to be paid for the work performed or services rendered in a timely manner as required in the Prompt Payment Act. (Act (P.L. 2006, c.96 of the Laws of 2006, codified as N.J.S.A. 2A:30A-1)

• This SOP recognizes that all vendor invoices shall be submitted to the SDA’s Centralized Payment Unit. This SOP also recognizes that two sequential reviews are performed upon each submitted invoice: first by CPU to determine whether there are any compliance deficiencies with the math and paperwork and thereafter by Program Operations for a substantive review and to determine whether the SOV is correct and that the submission is consistent with this SOP.

PURPOSE

• The purpose of this SOP is to ensure all invoices are processed timely in a standardized format and pursuant to a uniform and consistent procedure.
SCOPE

SDA has the responsibility of ensuring that our vendors, which are managed by the Program Operations Division, are paid in accordance with the Prompt Payment Act. This SOP outlines the process to ensure that all payment requisitions are processed accordingly. Payment types included in this process are: Construction Invoices, Design Invoices, Site Feasibility Invoices (A-Z), Environmental TO Invoices, Demolition Invoices, Appraisal TO Invoices, DEP MOU Invoices, DEP Fees, and those invoices entered directly into SIMS (such as reprographics).

RESPONSIBLE UNITS/DIVISION

- The Program Operations Division and the Centralized Payment Unit will monitor the process. Program Operations Project Analyst will create the project/package correlation, if required.

PROCEDURES – INVOICING PROCESS

The Invoicing Process is the same for all invoices entered through Primavera’s Contract Manager, Task Order Module of RESDB, and the “Adjustments” Module of RESDB.

1. Prior to an invoice being received for the purpose of Prompt Payment, Program Operations Program Officer will perform a “pencil copy” review of construction/design/task order invoice a vendor intends to present to SDA for payment. The invoice must accurately reflect the percentage of amount of work performed for a given billing period and that the dollar amount coincides with that percentage. The “pencil copy” of Environmental Task Order (805A TO) invoices are sent to the appropriate PO, who will complete their review for confirmation of amounts being invoiced and back up received to support those amounts. Once the “pencil copy” 805A TO has been reviewed and approved, it will be executed by the PO, DD and PD and returned via email in “.pdf” format to the consultant. The consultant will attach all approved 805A TO’s together with one original signed 805A invoice submission to CPU monthly.

2. One original copy of a request for payment is sent to CPU which shall contain the signatures of the Vendor. Program Operations staff is not to accept any invoices from the Vendors. Vendors have been instructed to send original invoices directly to CPU. This process must be followed so as to not create any issues with the Prompt Payment Act.

3. Original request for payment is “date” stamped by CPU and assigned to a CPU staff analyst. CPU staff analyst will scan and upload a copy of the invoice into the appropriate database. In instances where an invoice is received that are processed directly into SIMS, CPU staff analyst will scan the invoice into the “I:drive”. Once the invoice is logged into the database as necessary, an email notification will be generated from the system and sent to the Project Team (PT), comprising of Program Operations Program Officer (PO), Program Assistant (PA), Deputy Director (DD) and Program Director (PD), Program Officer-Project Controls (POC), and CMD (if their review and
approval is required) advising that the invoice has been received. DEP invoices and reprographic invoices are submitted to SDA in “batches” and can require approval of more than one Program Operations Team. CPU will review the invoices to determine which invoices are required to be processed by each respective team and will forward the appropriate invoices to each team for review and approval. Prompt Payment Act starts on the date CPU stamps the invoice received. CPU has five (5) days to complete its review of the invoice and advise PT of its findings. PO/PMF/CMF should also begin their review of the invoice upon notification that an invoice has been submitted for payment.

4. When CPU staff analyst forwards the reprographic and DEP invoices to the PT, a report enumerating the invoices being paid will be sent to the Project Analyst. PT will send all reviewed and approved invoices to the Project Analyst. Project Analyst prepares a check request for submission to CPU, which will have all invoices listed on the report received from the CPU staff analyst attached.

NOTE: There are two reviews of the invoice performed, each of which may result in a reason to reject, based on issues needing resolution

5. Request for payment is reviewed by CPU staff analyst for completeness and accuracy (math and paperwork). CPU staff analyst will check the invoice submittal package against the appropriate invoice checklist (in the event of a Site Investigation/Environmental Consultant, Construction, PMF/CMF or Design invoice) to ensure its completeness and will upload the checklist, if required, into the appropriate system.

6. If CPU staff analyst determines there is a minor issue with the invoice (i.e. wrong forms, updated insurance, missing signatures), the CPU staff analyst contacts the Vendor to correct the deficiency. Notation is made in the appropriate database. CPU continues to review the request for payment.

7. If CPU staff analyst review determines there are deficiencies with the math and paperwork. CPU staff analyst notifies the PT and CMF/PMF, if required, via e-mail of its findings through the appropriate database and that the “Schedule of Values” (SOV) review by Program Operations should begin. If CPU staff analyst review determines there are no deficiencies with the math and paperwork, they will notify the PT and CMF/PMF, if required to begin the “SOV” review.

8. If PO reviews and identifies any SOV deficiencies, PO sends email back to CPU staff and CMF/PMF (if any) detailing the deficiencies, or lack thereof. CPU staff analyst will generate Notice of Rejection, if applicable, to Vendor. Vendor will be instructed to return corrections to CPU. Notation is made in the appropriate database of the rejection and date of rejection. A copy of the Notice of Rejection (letter or email) is attached to the system file.

9. CPU staff analyst emails PT and CMF/PMF (if any), through the appropriate database that corrections (if required) have been received and attached to the appropriate database for review.

10. PO reviews corrections. CMF/PMF, if any, will print signature page, sign it and “.pdf” back to PO within two days of receipt of PO approval notification. PO will print signature page, sign it, and obtain other required signatures in accordance with the Operating Authority up to the Program Director level. In the event CMD review and approval is required the PO and DD will obtain CMD signature prior to forwarding the executed invoice to CPU.
11. PO/PA is to forward the fully signed approved original signature page to CPU staff analyst within 15 days of receipt of valid invoice.

12. In the event the payment requisition requires Level 5 or above signature, CPU staff analyst will forward signature page and hard copy of invoice to the Executive Division for review and signature. Executive Division will return the original invoice to the CPU staff analyst after execution.

13. Once fully approved, the signature page will be uploaded into the appropriate database by CPU staff analyst.

14. If CPU staff has not received the fully executed invoice from the appropriate PO/PA, CPU staff analyst will follow up with the appropriate PT for status. CPU staff analyst will review the invoice for the levels of signatory authority in accordance with the SDA Operating Authority. Invoices processed through CM, PO/CMF/PMF will enter the date received and the date they signed the invoice into the notes section. In the case of RESDB, PO will enter the date received and the date the invoice was approved in the system. CPU staff analyst will enter appropriate dates of receipt and full execution into the system (whether Contract Manager, RESDB or SIMS).

15. CPU will be responsible for "Certifying" or "Pushing to SIMS" in the appropriate database.

16. The database(s) will be checked to ensure the invoice has been "pushed over" or updated from the database into SIMS in order for CPU to process the payment and to ensure there are no reasons for the system to reject the invoice.

17. CPU processes approved and executed request for payment in appropriate database.

NOTE: Once a Contract/Task Order has been executed with a Vendor, PO is to provide CPU with the name and contact information of the PT, Vendor, and CMF/PMF, if applicable.

NOTE: The entire invoice process will occur within a 30 days period in order to comply with the Prompt Payment Act.

NOTE TO PROGRAM OPERATIONS: In the review of the SOV, be sure that the descriptions that the GC/Consultant has chosen to describe the work being billed against are not only accurate, but does not list a trade discipline that was not included on the Form 193 or the bid documents.
Initiation of Task Order Assignments

Program Operations Project Analyst will be responsible for creating the project/package correlation for any Task Order assignments.

Once it is determined that a Task Order needs to be assigned to a Task Order Consultant for any environmental or appraisal work and a task order has not been previously assigned to a specific consultant for that project, an initial set up of a contract needs to be completed. This initial set up of a contract (project/package correlation) is required prior to issuance of a Task Order/Work Order.

1. Program Operations sends a request to Project Analyst – Program Operations Management to create the project/package correlation so that an Environmental Services or Appraisal Task Order Consultant can be assigned to a Project.

2. Project/Package Correlation is created in SIMS. Project Analyst - Program Operations Management will make the project/package correlation by going to the “Package” set-up screen, click “Assign Projects to Package” and follow instructions to add a project to a package.

3. Project is linked to the Package/Contract in RESDB. Go to “Setup” module; expand the (+) next to Contract Management. Click on “Add to SIMS” button. Choose the Project and the Vendor which a contract is being assigned. Select the Use Code and click “Save”. Once “Save” is clicked, the SIMS interface screen will open. Follow the instructions to add the new contract. Once this is completed, the contract will be copied into RESDB.

4. Preliminary Task Order Request (PTOR) is generated by PO in RESDB with assigned preliminary task order number. Go to “Setup” module, expand the (+) next to Contract Management. Click on Task/Work Order button. To enter a new task order, click the “create new” button. Select a service and a project from the dropdown list. A list of projects that apply to the service will appear. Click the edit button in the first column of the table in the row of the desired contract. A details screen for the task/work order will open. The task order number will be automatically assigned. Click on the “Create PTOR” to be issued to Environmental Services Task Order Consultant requesting scope, schedule and budget and electronically saved in RESDB. If scope, schedule and budget are approved, Environmental Services Task Order Consultant will execute the PTOR and return to PO who will electronically save the document in RESDB. Upon receipt of the executed PTOR, PO will generate an ATP and forward to Consultant for review and signature.

5. In the event of an Appraisal Task Order/Work Order, click on the “Create Work Order”. A word document is created. PO to forward the document as an email attachment to the Appraisal Consultant. Appraisal Consultant to execute and return to PO for signature.

6. In the event that an additional task is required of a task order consultant, PO will only need to follow steps 4 or 5 above. The same task order contract will be used to generate any additional work required of the consultant for that project. An additional ATP/Work order will be generated.
7. Once ATP/Work Order is fully executed by the Consultant and SDA, PO will forward an original copy to CPU for processing.

8. CPU receives executed ATP/Work Order for processing into RESDB and SIMS.

9. ATP/Work Order is date stamped and assigned to a staff analyst.

10. CPU Staff analyst creates a 321 document in the RESDB from the ATP/Work Order.

11. CPU Staff analyst scans the ATP/Work Order and the unsigned 321 into the RESDB log.

12. CPU Staff analyst emails 321 from the database to the PO. Email instructs PO to have the Deputy Director and the Director sign the 321 and return the original to the staff analyst.

13. CPU Staff analyst receives the signed 321, scans the signed form into the RESDB log and approves and “Sends to SIMS” the transaction.

De-Obligation of Funds

In the event a task order consultant and SDA PO agreed that all work has been performed under the task order assignment and there are funds remaining allocated to such task, the amount remaining obligated for that specific task shall be de-obligated.

1. Program Operations PO sends a request to CPU advising that the remaining funds on a task order may be de-obligated. Notification must include the amount, contract number, project number, task order number and reason for de-obligation.

2. De-obligation request is assigned to a CPU staff analyst.

3. CPU staff analyst creates a 321 document in RESDB and emails to PO with the instructions that the PO is to have the Deputy Director and Director sign the 321 and return the original to the CPU staff analyst. As part of the back up to the 321, PO must attach the consultant confirmation email indicating that there will be no additional invoicing for that task order.

4. CPU staff analyst receives the fully executed 321 document with appropriate backup, scans into the log, and processes the transaction. The contract will be updated with the new obligation.

5. PO sends notification of de-obligation to vendor and copies CPU staff analyst, who will upload the notification into the system.

Quality Assurance on this process will be performed by the Centralized Payment Unit, Program Operations and MIS to ensure compliance.

Attachments:
A. Prompt Payment Procedures
B. The Invoice Matrices
C. Invoice Checklists (4)
A. PROMPT PAYMENT ACT PROCEDURES – Summary of Timeliness/Timeframe Standards

- The Prompt Payment Act requires that contract invoices be paid within 30 calendar days from receipt by the SDA.

- SDA has 20 calendars days from the CPU receipt to reject the invoice, otherwise it must be paid in full – regardless of any errors in it.

- If the invoice is not paid within 30 calendar days, SDA is liable to pay interest.

THE CLOCK STARTS...

- When the CPU receives the payment application.

TIMELINE TO REVIEW INVOICES (CALENDAR DAYS)...

- CPU – 5 days
  (CPU must date stamp invoice)

- Program Operations, CMF/PMF – 15 days (Project Team and CMF/PMF are to go into the system at the same time CPU begins its review of the invoice once they receive the email notification from CPU that the invoice is in the appropriate system)

- Accts. Payable – 10 days

General Summary Provisions...

- If the invoice does not have a date stamp from the CPU, SDA will assume the invoice was in its possession from the date of contractor’s signature.

- If the invoice is found to be incorrect/incomplete (billing for non-executed change orders, forms or incorrect amounts), it must be immediately returned to the contractor.

- CPU cannot hold an invoice. Within the five (5) calendar days:
  o Send to PO, PA, CMF/PMF for review.

- If SDA determines the invoice is incorrect or incomplete, it must be rejected within 20 days of receipt with notification to the contractor (copy to CMF/PMF) for revision and re-submittal. The notification will be sent via email clock stops!

The clock resets with the contractor’s invoice re-submission to the CPU. The invoice must be re-stamped to start the clock over.
<table>
<thead>
<tr>
<th>Checking for:</th>
<th>Construction Invoice</th>
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<tbody>
<tr>
<td>Enter date received in Contract Manager</td>
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</tr>
<tr>
<td>Check payment log (make sure last pymt was executed)</td>
<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
</tr>
<tr>
<td>Date Stamp(s)</td>
<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
</tr>
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<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
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<tr>
<td>Amount of Invoice/Total Due this period</td>
<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
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<tr>
<td>Check the numbers/math (with last invoice)</td>
<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
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<tr>
<td>Form 803 (Construction Contractor Invoice)</td>
<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
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<td>Form 803A (CC Invoice – Project Breakout) <strong>Multiple School Contracts ONLY</strong></td>
<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
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<tr>
<td>Form 803B (Sub-Contractor/Consultant Verification Form)</td>
<td>CPU: ● PO/CM: ● DD: ● PD: ● PA: ● VP: ● CPU: ●</td>
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<td>Form 810 (Schedule of Values/Amounts of Monthly Pymts to Contractor)</td>
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<td>Form 701 (Certificate of Substantial Completion)</td>
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<td>Form 702 (Confirmation of Contract Compliance)</td>
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<td>(Use <strong>ONLY</strong> w/ consent of VP)</td>
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<td>Form AIA G707 (Consent of Surety to Final Payment) - Notarized</td>
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**Color Legend**
- Due with Final Pymt
- Due with Retainage request
- Not a Proj. Mgmt. process

**Requirement Legend**
- Review
- Spot Check due to preference
- acknowledgement of existence
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<td>CD &amp;/or Progress Photos</td>
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<td>Enter date Rejected in Contract Manager (attach email/letter)</td>
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- **Due with Retainage request**
- **Not a Program Operations process**

**Requirement Legend**
- **- Review**
- **- Spot Check due to preference**
- **- acknowledgement of existence**
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<td>Scan Invoice and backup into Contract Manager for reviewers to see</td>
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<td>Send email to all reviewing parties: Team’s PO, PA and CM</td>
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<td>Has it been “pushed” from database into SIMS</td>
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<tr>
<td>Enter date Rejected in Contract Manager (attach email/letter)</td>
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</tbody>
</table>

Color Legend | Due with Final Pynt | Due with Retainage request | Not a Program Operations process
---|---------------------|---------------------------|-----------------------------
Requirement Legend | - Review | - Spot Check due to preference | - acknowledgement of existence

Page 11 of 26
<table>
<thead>
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<th>Checking for:</th>
<th>CPU</th>
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<th>CMD</th>
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Color Legend
- Due with Final Pynt
- Due with Retainage request
- Not a Program Operations process

Requirement Legend
- Review
- Spot Check due to preference
- acknowledgement of existence
### Checking for: Environmental Task Order Invoices

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**Color Legend**

- **Due with Final Pymt**
- **Due with Retainage**
- **Not a Program Operations process**

**Requirement Legend**

- **- Review**
- **○ – Spot Check due to preference**
- **□ – acknowledgement of existence**

Page 13 of 26
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<th>Central Processing Unit</th>
<th>Program Officer (if applicable)</th>
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<th>Program Asst. (Optional)</th>
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<td>Form 811 (Certification of Prime Contractor or Consultant)</td>
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**Color Legend**
- Due with Final Pymt
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**Requirement Legend**
- Review
- Spot Check due to preference
- Acknowledgement of existence

Page 14 of 26
Checking for:

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<thead>
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<th>Demolition Invoices</th>
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<td>Enter date received in RESDB/Contract Manager (Older Contracts in RESDB, Newer Contracts in Contract Manager)</td>
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<td>Check payment log (make sure last pymt was executed)</td>
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<td>Date Stamp(s)</td>
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<td>Amount of Invoice/Total Due this period</td>
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<td>Form 803A (CC Invoice – Project Breakout)</td>
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<td>Form 803B (Sub-Contractor/Consultant Verification Form)</td>
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<td>Form 816 (Request for Reduction of Retainage)</td>
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<td>Form 820 (Partial Waiver and Release)</td>
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<td>Form 821 (Final Waiver and Release)</td>
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<td>Form 701 (Certificate of Substantial Completion)</td>
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<td>Form 702 (Confirmation of Contract Compliance)</td>
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<tr>
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<td>Form AIA G707 (Consent of Surety to Final Payment) - Notarized</td>
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<td>CD &amp;/or Construction Schedule update (CD goes to SDA Scheduler)</td>
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<td></td>
</tr>
</tbody>
</table>

**Color Legend**
- Due with Final Pymt
- Due with Retainage request
- Not a Program Operations process

**Requirement Legend**
- □ - Review
- ○ - Spot Check due to preference
- □ -acknowledgement of existence
<table>
<thead>
<tr>
<th>Checking for:</th>
<th>DEP Invoices</th>
<th>Central Processing Unit</th>
<th>Program Officer of Contr. Mgr. (if Applicable)</th>
<th>Deputy Director</th>
<th>Program Director</th>
<th>Program Asst. (Optional)</th>
<th>Vice President</th>
<th>Central Processing Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enter date received, project number, name, invoice number in RESDB</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Check Request prepared through RESDB</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Signatures (as per the Operating Authority)</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Amount of Invoice/Total Due this period approved by PO</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Scan invoice and backup for reviewers to see</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Has it been entered into RESDB</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Enter date Rejected in RESDB</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
<tr>
<td>Check Recv'd and delivered to PO for delivery to DEP with required forms</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
<td>•</td>
</tr>
</tbody>
</table>

**Color Legend**
- Due with Final Pymt
- Due with Retainage request
- Not a Program Operations process

**Requirement Legend**
- Review
- Spot Check due to preference
- Acknowledgement of existence
### Checking for: MOU Invoices

<table>
<thead>
<tr>
<th>Checking for</th>
<th>CPU</th>
<th>PO/CM</th>
<th>DD</th>
<th>PD</th>
<th>PA</th>
<th>VP</th>
<th>Central Processing Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enter date received, project number, name, invoice number in SIMS</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Date Stamp</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Signatures (as per the Operating Authority)</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Scan invoice and backup for reviewers to see</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Send email to all reviewing parties with a copy of the Invoice and backup:</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Team's PO, PA and CM</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Amount of Invoice/Total Due this period approved by Project Manager</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Form Check Request</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Has it been entered into SIMS</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Enter date Rejected in SIMS</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

(MOU has expired and will not be renewed. There will be lingering invoices received on remaining projects that are being closed-out.)

### Color Legend
- Due with Final Pymt
- Due with Retainage request
- Not a Program Operations process

### Requirement Legend
- Review
- Spot Check due to preference
- acknowledgement of existence

Page 18 of 26
<table>
<thead>
<tr>
<th>Checking for:</th>
<th>CPU</th>
<th>PO/CM</th>
<th>DD</th>
<th>PD</th>
<th>PA</th>
<th>VP</th>
<th>CPU</th>
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</thead>
<tbody>
<tr>
<td>Permit Fees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Request from PO for Check for Permit Fees</td>
<td>○</td>
<td>○</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>○</td>
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<tr>
<td>Check Request prepared through RESDB</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Signatures (as per the Operating Authority)</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>○</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Amount of Invoice and Backup Documentation approved by PO</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>○</td>
<td>●</td>
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<tr>
<td>Permit Application (Completed)</td>
<td>●</td>
<td>○</td>
<td>○</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td></td>
</tr>
<tr>
<td>Scan Executed Check Request, Permit and backup into RESDB</td>
<td>●</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Has it been entered into RESDB</td>
<td>●</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Check Received and delivered to PO for submission to DEP with application</td>
<td>●</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

**Color Legend**
- Due with Final Pymt
- Due with Retainage request
- Not a Program Operations process

**Requirement Legend**
- Review
- Spot Check due to preference
- acknowledgement of existence
<table>
<thead>
<tr>
<th>Checking for:</th>
<th>Checked by:</th>
<th>CPU</th>
<th>PO</th>
<th>DD</th>
<th>PD</th>
<th>PA</th>
<th>VP</th>
<th>CPU</th>
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<tbody>
<tr>
<td>Reprographics Invoices</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enter date received, project number, name, invoice number in SIMS</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td></td>
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<td>Date Stamp</td>
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</tr>
<tr>
<td>Compare Vendor Invoicing Forms to PO request form</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scan invoice and backup for reviewers to see</td>
<td></td>
<td>●</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Send email to all reviewing parties with a copy of the Invoice to Team’s PO, PA</td>
<td></td>
<td>●</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total amount of Invoice adds up to the charges on the invoice</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Signatures/Approval obtained from each PO (as per the Operating Authority)</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td></td>
<td></td>
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<tr>
<td>Signatures of the Team PD and MD of Capital Planning and Grants (as per the Operating Authority)</td>
<td></td>
<td>●</td>
<td>●</td>
<td>●</td>
<td></td>
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<td></td>
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<tr>
<td>Has it been entered into SIMS</td>
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<td>●</td>
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</table>

**Color Legend**
- **Due with Final Pymt**
- **Due with Retainage request**
- **Not a Program Operations process**

**Requirement Legend**
- ● - Review
- ○ - Spot Check due to preference
- □ - acknowledgement of existence
CONSTRUCTION CONTRACTOR INVOICE CHECKLIST

<table>
<thead>
<tr>
<th>District Name</th>
<th>Contract #</th>
<th>School Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period Ending</td>
<td>Invoice #</td>
<td>Contractor Name</td>
</tr>
</tbody>
</table>

Prompt Payment 20th Day Date:

CPU REVIEW: Please check first box for "YES", second for "NO" and third for "NA"

- 803 - "CONSTRUCTION CONTRACTOR INVOICE".
- 803A - "CONSTRUCTION CONTRACTOR INVOICE - PROJECT BREAKOUT" This form is needed ONLY IF the Contract covers more than one School.
- 810 - "SCHEDULE OF AMOUNTS OF MONTHLY PAYMENTS TO CONTRACTOR"
- 803B - "SUB-CONTRACTOR/SUB-CONSULTANT VERIFICATION FORM" This form must be signed by the CM/PMF (if applicable), NJSDA STAFF AND THE GENERAL CONTRACTOR.
- 811 - "CERTIFICATION OF PRIME CONTRACTOR OR CONSULTANT". This form needs to be completed, signed and dated by the Contractor. Box A, B or C must be checked.
- 812 - "AGREEMENT & BILL OF SALE CERTIFICATION FOR STORED MATERIALS". This form is needed ONLY IF the Invoice is billing for stored materials that are on site. Bill of Sale is required.
- 813 - "CONTRACTORS SUMMARY OF STORED MATERIALS". This form is needed ONLY IF the Invoice is billing for stored materials that are off site.
- 820 - "PARTIAL WAIVER AND RELEASE". This form is required with all Invoices, except the first one and the final invoice.
- INSURANCE CERTIFICATE - A valid certificate must accompany the invoice if the previous certificate has expired.
- CD, PROGRESS PHOTOS AND PROJECT SCHEDULE OR UPDATE ARE REQUIRED WITH EACH INVOICE.
- 701 - "CERTIFICATE OF SUBSTANTIAL COMPLETION" - Required for both a reduction in retainage at substantial completion as well as for final payment.
- 702 - "CONFIRMATION OF CONTRACT COMPLIANCE" - Issued in Lieu of a 701 when a certificate of occupancy has not been issued yet to allow a reduction in retainage at substantial completion.
- 814 - "CONSENT OF SURETY TO REDUCTION IN OR PARTIAL RELEASE OF RETAINAGE". Required at substantial completion if retainage is being reduced to a % other than listed on the contract and each subsequent time thereafter.
- 816 - "REQUEST FOR REDUCTION OF RETAINAGE" - Form signed by PMF/CM and SDA approving the retainage reduction.
- 710 - "CONSTRUCTION CONTRACT FINAL COMPLETION CHECKLIST"
- 821 - "FINAL WAIVER AND RELEASE". At Final Invoice. (To be provided in lieu of the 820)
- AIA G707 - "CONSENT OF SURETY TO FINAL PAYMENT"
### DESIGN CONSULTANT INVOICE CHECKLIST

<table>
<thead>
<tr>
<th>District Name</th>
<th>Contract #:</th>
<th>School Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period Ending</td>
<td>Invoice #:</td>
<td>Consultant Name</td>
</tr>
</tbody>
</table>

**Prompt Payment 20th Day Date:**

**CPU REVIEW:** Please check first box for “YES”, second for “NO” and third for “NA”

- □ □ □ 804 “DESIGN CONSULTANT INVOICE”
  - □ □ □ Allowances - please check for backup documentation - including a copy of the 3rd party invoice for services provided, or a description of the services rendered and the amount being billed for services performed in-house.
  - □ □ □ Validate Allowances are paid in full or
  - □ □ □ Validate Credit Amendment is issued for unused Allowances

- □ □ □ 804A “DESIGN CONSULTANT INVOICE – PROJECT BREAKOUT” – This form is needed ONLY IF the Contract covers more than one School.

- □ □ □ 804B – “SUB-CONTRACTOR/SUB CONSULTANT VERIFICATION FORM” This form must be signed by the CM/PMF (if applicable), NJSDA STAFF and the Design Consultant.

- □ □ □ 811 – “CERTIFICATE OF PRIME CONTRACTOR OR CONSULTANT” This form must be completed, signed and dated by the Design Consultant. Box A, B or C must be checked.

- □ □ □ INSURANCE CERTIFICATE – A valid certificate must accompany the invoice if the previous certificate has expired.

- □ □ □ 711 – “DESIGN CONTRACT FINAL COMPLETION CHECKLIST” – This form needs to be signed by the CM/PMF (if applicable).

**COMMENT SECTION:**

________________________________________________________________________________________

________________________________________________________________________________________

□ RETURN TO: ____________________________
CMF/PMF CONSULTANT INVOICE CHECKLIST

<table>
<thead>
<tr>
<th>District Name:</th>
<th>Contract #:</th>
<th>School Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Period Ending:</th>
<th>Invoice #:</th>
<th>Consultant Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Prompt Payment 20th Day Date:

CPU REVIEW – Please check first box for "YES", second for "NO" and third for "NA"

Y N NA 805 "CONSULTANT INVOICE"

- □ □ □ Allowances - please check for backup documentation - including a copy of the 3rd party invoice for services provided, or a description of the services rendered and the amount being billed for services performed in-house.
- □ □ □ Validate Allowances are paid in full or
- □ □ □ Validate Credit Amendment is issued for unused Allowances

□ □ □ 805A "CONSULTANT INVOICE – PROJECT BREAKOUT" – This form is needed ONLY IF the Contract covers more than one School.

□ □ □ 803B/804B – "SUB-CONTRACTOR/SUB CONSULTANT VERIFICATION FORM" This form must be signed by the CM/PMF (if applicable), NJSDA STAFF and the Consultant.

□ □ □ 811 – "CERTIFICATE OF PRIME CONTRACTOR OR CONSULTANT" This form must be completed, signed and dated by the Consultant. Box A, B or C must be checked.

□ □ □ INSURANCE CERTIFICATE – A valid certificate must accompany the invoice if the previous certificate has expired.

□ □ □ 712 – "CONSULTANT FINAL COMPLETION CHECKLIST" – form needs to be signed by CM/PMF

□ □ □ 713 – "CLOSE-OUT FOLDER CHECKLIST" - form needs to be signed by the CM/PMF

COMMENT SECTION:

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

□ RETURN TO: _________________________________
SITE FEASIBILITY & ENVIRONMENTAL SERVICES
TASK ORDER INVOICE CHECKLIST

Consultant Name:  Contract #:  School Name:

Period Ending:  Invoice #:  Project #:

Prompt Payment 20th Day Date:

CPU REVIEW:

THE CHECKED OFF REQUIRED FORMS ARE EITHER MISSING OR
CONTAIN INFORMATION THAT IS INCORRECT. INCORRECT
INFORMATION IS DETAILED IN COMMENT SECTION AT THE END.

☐ 805 (TO) "TASK ORDER INVOICE"

☐ 805A (TO) "TASK ORDER INVOICE – PROJECT BREAKOUT" – This form is required when the Contract covers more
than one School.

☐ PROJECT SUMMARY COVER LETTER – Back up documentation for activities performed during the billing period must be
attached.

☐ PROJECT COST SUMMARY REPORT

☐ 811 – "CERTIFICATE OF PRIME CONTRACTOR OR CONSULTANT" This form must be completed, signed and dated by
the Consultant. Box A, B or C must be checked.

☐ 803B/804B – "SUBCONTRACTOR/SUBCONSULTANT VERIFICATION FORM"

☐ INSURANCE CERTIFICATE – A valid certificate must accompany the invoice if the previous certificate has expired

COMMENT SECTION:

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

☐ RETURN TO: ___________________________________________
## Revision History

<table>
<thead>
<tr>
<th>Version</th>
<th>Author</th>
<th>Release Date</th>
<th>Change Description</th>
</tr>
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<tbody>
<tr>
<td>2</td>
<td>W. Gibson</td>
<td>12/13/2010</td>
<td>To identify with the reorganization</td>
</tr>
<tr>
<td>3</td>
<td>W. Gibson/Bonny Serratelli</td>
<td>9/20/2011</td>
<td>To include the entire processing of all invoices through the Central Processing Unit.</td>
</tr>
<tr>
<td>4</td>
<td>B. Serratelli</td>
<td>10/20/2011</td>
<td>To include changes based on 10/19/11 meeting</td>
</tr>
<tr>
<td>5</td>
<td>B. Serratelli</td>
<td>11/23/11</td>
<td>Based on VP review and Comments/clarifications from Training Sessions</td>
</tr>
</tbody>
</table>
CONSTRUCTION CONTRACTOR CHANGE ORDER CHECKLIST

<table>
<thead>
<tr>
<th>District Name:</th>
<th>Contract #:</th>
<th>School Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period Ending:</td>
<td>Change order #:</td>
<td>Contractor Name:</td>
</tr>
</tbody>
</table>

- **FORM “500 (CCR/A)” “CONTRACT CHANGE REQUEST/AUTHORITY (CCR/A)”** This form needs to be completed, signed and dated by the requestor (whether that is the Contractor, PMF/CM or SDA).
- **FORM “501 (AAR)” “AUTHORITY AGENT RECOMMENDATION (AAR)”** This form is needs to be completed, signed and dated by the Design Consultant, Project Controls Program Officer and the Program Officer.
- **FORM “503” “CHANGE ORDER (CO) FOR CONSTRUCTION CONTRACT”** This form must be completed, signed and dated by the Contractor, Project Controls Program Officer, Program Officer, Deputy Director and Program Director. Vice President of Program Operations and/or CEO’s signature may be required as per (Operating Authority), depending on the amount of the change order.
- **FORM “505” “NOTICE OF CLAIM”.** - This form needs to be completed, signed and dated by the Firm filing the claim.
- **FORM 505A” “CHECKLIST ATTACHMENT”.**
- **FORM 665 “REQUEST FOR INFORMATION (RFI)”**. - This form needs to be completed, signed and dated by the Firm requesting the information.
- **CONTRACT MANAGEMENT RELEASE FORM/ANALYSIS.** - This form needs to be completed, signed and dated by the Contract Management Division.
- **COA FORM “CHANGE ORDER ANALYSIS”.** This form must accompany every Change Order.
- **CEO Memo.** As Needed.
- **BOARD MEMO.** As Needed.
- **BOARD MINUTES.** As Needed.
- **SETTLEMENT RESOLUTION.** As Needed.
- **PROJECT CHARTER.** As Needed.
- **PMF/CM/SDA PROGRAM OFFICER RECOMMENDATION FORM –** This form needs to be completed, signed and dated by the Program Officer.
- **RECORD OF NEGOTIATIONS:** Should accompany any successful negotiation and can be found in: I: \ Everyone \ CMD Forms \ NJSDA Form CMDP-2 Record of Negotiations 12-16-08. This form needs to be completed, signed and dated by the Attendees of the negotiations meetings (usually, CMD, Program Officer, Contractor’s representative).

"LIST ALL ITEMS THAT ARE MISSING FROM THE CHANGE ORDER AND/OR OTHER REASONS FOR REJECTION/HOLDING"

Details regarding deficiencies noted above:

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________
To expedite the review of these Change orders, please arrange the above Forms in the order that they are listed on this Checklist.

Signature: ___________________________ Date: ________________
Print Name: __________________________ Program Assistant

NOTE: "REVIEWER TO SIGN AND DATE INTERNALLY" Facsimile copies are acceptable. Signature stamps are NOT acceptable.

Signature: ___________________________ Date: ________________
Print Name: __________________________ Program Officer

NOTE: "REVIEWER TO SIGN AND DATE INTERNALLY" Facsimile copies are acceptable. Signature stamps are NOT acceptable.

DOCUMENT PREPARED BY: Wanda Edghill, PM Coordinator
CONSULTANT AMENDMENT CHECKLIST

<table>
<thead>
<tr>
<th>District Name:</th>
<th>Contract #:</th>
<th>School Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period Ending:</td>
<td>Amendment #:</td>
<td>Contractor Name:</td>
</tr>
</tbody>
</table>

☐ FORM “301” "WRITTEN AMENDMENT TO AGREEMENT BETWEEN SDA & DESIGN CONSULTANT” - This form needs to be completed, signed and dated by the Design Consultant, PMF/CM, Project Controls Program Officer, Program Officer, Deputy Director and Program Director. Vice President of Program Operations and/ or CEO’s signature may be required as per (Operating Authority), depending on the amount of the change order.

☐ FORM “302)” “DESIGN PHASE SCOPE MODIFICATION REQUEST” - This form needs to be completed, signed and dated by the Design Consultant, PMF/CM and the Program Officer.

☐ FORM “311” “WRITTEN AMENDMENT TO AGREEMENT BETWEEN SDA & PMF/CM” - This form needs to be completed, signed and dated by the PMF/CM, Project Controls Program Officer, Program Officer, Deputy Director and Program Director. Vice President of Program Operations and/ or CEO’s signature may be required as per (Operating Authority), depending on the amount of the amendment.

☐ FORM “505” “NOTICE OF CLAIM”. - This form needs to be completed, signed and dated by the Firm filing the claim

☐ FORM 505A “CHECKLIST ATTACHMENT”

☐ FORM 655 "REQUEST FOR INFORMATION (RFI)". - This form needs to be completed, signed and dated by the Firm requesting the information.

☐ CONTRACT MANAGEMENT RELEASE FORM/ANALYSIS. - This form needs to be completed, signed and dated by the Contract Management Division.

☐ COA FORM “CHANGE ORDER ANALYSIS”. This form must accompany every Amendment.

☐ CEO MEMO. As Needed.

☐ BOARD MEMO. As Needed.

☐ BOARD MINUTES As Needed.

☐ SETTLEMENT RESOLUTION. As Needed.

☐ PROJECT CHARTER. As Needed.

☐ PMF/CM/SDA PROGRAM OFFICER RECOMMENDATION FORM – This form needs to be completed, signed and dated by the Project Manager.

☐ RECORD OF NEGOTIATIONS: Should accompany any successful negotiation and can be found in: I: \ Everyone \ CMD Forms \ NJSDA Form CMDP-2 Record of Negotiations 12-16-08. This form needs to be completed, signed and dated by the Attendees of the negotiations meetings (usually, CMD, Program Officer, Consultant’s representative)

"LIST ALL ITEMS THAT ARE MISSING FROM THE AMENDMENT AND/OR OTHER REASONS FOR REJECTION/HOLD"

Details regarding deficiencies noted above: ____________________________________________

________________________________________________________________________________

________________________________________________________________________________
STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

Signature: __________________________  Date: __________________________
Print Name: ________________________

Program Assistant

NOTE: "REVIEWER TO SIGN AND DATE INTERNALLY" Facsimile copies are acceptable. Signature stamps are NOT acceptable.

Signature: __________________________  Date: __________________________
Print Name: ________________________

Program Officer

NOTE: "REVIEWER TO SIGN AND DATE INTERNALLY" Facsimile copies are acceptable. Signature stamps are NOT acceptable.
**CONSTRUCTION CHANGE DIRECTIVE CHECKLIST**

<table>
<thead>
<tr>
<th>District Name:</th>
<th>Contract #:</th>
<th>School Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period Ending:</td>
<td>CCD #:</td>
<td>Contractor Name:</td>
</tr>
</tbody>
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- **FORM 506** "CONSTRUCTION CHANGE DIRECTIVE (CCD) FOR CONSTRUCTION CONTRACT" – This form needs to be completed, signed and dated by the Design Consultant, PMF/CM, Project Controls Program Officer, Program Officer and Program Director.

- **FORM 506A** "CONSTRUCTION CHANGE DIRECTIVE (CCD) FOR CONSTRUCTION CONTRACT" (Internal Document) – This form needs to be completed, signed and dated by the Design Consultant, PMF/CM, Project Controls Program Officer, Program Officer, Deputy Director and Program Director Vice President of Program Operations and/ or CEO's signature may be required as per (Operating Authority), depending on the amount of the change order.

- **COA FORM** "CHANGE ORDER ANALYSIS". This form must accompany every CCD.

- **CEO MEMO**. As Needed.

- **PROJECT CHARTER**. As Needed.

- **PMF/CM/SDA PROGRAM OFFICER RECOMMENDATION FORM** – This form needs to be completed, signed and dated by the Program Officer.

**LIST ALL ITEMS THAT ARE MISSING FROM THE CCD AND/OR OTHER REASONS FOR REJECTION/HOLD**

Details regarding deficiencies noted above: ____________________________

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Signature: ___________________________ Date: ___________________________

Print Name: ___________________________ Program Assistant

**NOTE:** "REVIEWER TO SIGN AND DATE INTERNALLY" Facsimile copies are acceptable. Signature stamps are **NOT** acceptable.

Signature: ___________________________ Date: ___________________________

Print Name: ___________________________ Program Officer

**DOCUMENT PREPARED BY:** Wanda Gibson, PO Coordinator
PROCUREMENT PROCESSES FOR
PROJECT MANAGEMENT AND
CONSTRUCTION SERVICES
Title 19, Chapter 36 -- Chapter Notes

CHAPTER AUTHORITY:


CHAPTER SOURCE AND EFFECTIVE DATE:


See: 44 N.J.R. 1318(a), 45 N.J.R. 752(a).

CHAPTER EXPIRATION DATE:


CHAPTER HISTORICAL NOTE:


Chapter 36, Procedures for Procurement of Design Build Contracts for School Facilities Projects for the Schools Construction Program, was adopted as special new rules by R.2009 d.102, effective February 27, 2009. See: 41 N.J.R. 1513(a).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from February 27, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 44 N.J.R. 1318(a).

Chapter 36, Procedures for Procurement of Design Build Contracts for School Facilities Projects for the Schools Construction Program, was readopted as R.2013 d.053, effective March 4, 2013. As a part of R.2013 d.053, Chapter 36 was renamed Procurement of Design Build Contracts; and Subchapter 9, Performance Evaluations, was adopted as new rules, effective April 1, 2013. See: Source and Effective Date. See, also, section annotations.
§ 19:36-1.1 Purpose and applicability of rules

(a) These rules are adopted by the New Jersey Schools Development Authority (the "Development Authority," "Authority" or "SDA") to establish requirements and procedures for the procurement of design-build contracts. Section 4 of P.L. 2007, c. 137 confers broad powers on the Development Authority to enter into contracts for the "planning, design, construction, reconstruction, improvement, equipping, furnishing, operation, and maintenance" of a school facilities project. This statutory authority includes the procurement of design, construction, and other project-related services in one contract when the Authority determines that a single point of responsibility for a combination of these services is in the best interests of a school facilities project.

(b) These rules allow for the Authority to engage a design professional pursuant to N.J.A.C. 19:38C, as a "bridging architect," for the duration of the school facilities project, to prepare a design-build information package, which outlines the conceptual program, schematic design, and performance specifications to be followed by the design-builder, and review the work of the design-builder to ensure that the design meets the requirements of the Authority and the SDA school district. The rules further allow for the engagement of a construction manager (CM) by the Authority to serve as the Authority's representative during the school facilities project and provide such services as project oversight and reporting, value engineering services, and cost estimating.

(c) These rules provide for the Authority to select design-builders according to the proposals that are the most advantageous to the SDA, based upon a "best value selection" process premised on a combination of cost and qualitative factors, with consideration given to price at least equal to the consideration given to all other factors combined. The rules provide for the following two-phase selection process:

1. The public advertisement of a request for qualifications (RFQ) that describes the school facilities project, outlines the scope of work for the project and solicits responses outlining the qualifications of bidders; and

2. The issuance of a request for proposals (RFP) to a "short list" of bidders, selected on the basis of their responses to the RFQ, which outlines the criteria to be used for selection and the weight that will be given to each of these criteria in the evaluation process, and which solicits technical and price proposals.

(d) These rules further provide for a technical evaluation committee, comprised of representatives of the Authority and the SDA school district, to provide technical review and evaluation services, including evaluating and ranking the qualifications of bidders during the RFQ process and evaluating and scoring technical proposals submitted to the Authority in response to an RFP.

(e) Design-build project delivery offers the potential for such benefits as a shorter overall design and construction process, greater cost reliability and reduced risk through enhanced project coordination. In order to achieve such results, these rules provide the Authority with the flexibility to adjust the design-build process, for example, to vary the level of design in the initial design-build information package and/or select and weight the qualitative factors to be addressed in a technical proposal according to the specific needs and complexities of the school facilities project.

§ 19:36-1.2 Definitions

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


"Best value selection" means a selection process in which consideration is given to both a price proposal and a technical proposal, and the award of the design-build contract is based upon a combination of price and qualitative considerations.

"Bidder" means any legal entity classified by the Department of the Treasury, Division of Property Management and Construction, and prequalified by the Authority, that may submit an offer in response to a request for qualifications or request for proposals for an award of a design-build contract.

"Board" means the governing body of the Authority, consisting of the members of the Authority, as outlined in N.J.S.A. 52:18A-237.
"Bridging architect" means the firm employing persons duly licensed and registered in the State of New Jersey to practice architecture or engineering, which firm may be engaged by the Authority to develop preliminary design work and performance criteria, as well as provide other services, such as construction administration services, in connection with the design and construction of the school facilities project.

"Commissioner" means the Commissioner of the Department of Education.

"Compensation" means payment(s) due to the design-builder for services rendered or work performed or pursuant to the design-build contract.

"Construction documents" means the plans, specifications and other documents prepared by the design-builder that set forth in detail the design for, and other necessary requirements relating to, the construction of the school facilities project, based on the requirements set forth in the design-build information package.

"Construction manager" or "CM" means the firm that may be engaged by the Authority to act as the Authority's representative for the school facilities project and to provide construction management services, in connection with construction of the project.

"Contract milestones" means the dates identified in the school facilities project schedule by which the design-builder must complete certain critical activities to advance the project.

"DCA" means the New Jersey Department of Community Affairs.

"Deliverables" means any documents required to be produced by, or work product generated by the design-builder, pursuant to the design-build contract.

"Department" means the New Jersey Department of Education.

"Design-build contract" means the written, integrated agreement between the Authority and the design-builder setting forth the obligations of the parties, including, but not limited to, the performance of work and services and the basis for payment.

"Design-build information package" means the package of information that is included in the RFP, which sets forth the minimum design requirements, performance specifications, and other project requirements, for the purpose of furnishing sufficient information so that bidders may prepare technical and price proposals.

"Design-build project delivery" means a project delivery method that combines all or some portions of the design and construction phases of a school facilities project into a single contract, including, without limitation, design, regulatory permit approvals, and utility relocation and construction.

"Design-builder" means the entity contractually responsible for delivering the design and construction and, if applicable, other services for the school facilities project in accordance with the design-build contract.

"Development Authority," "Authority" or "SDA" means the New Jersey Schools Development Authority, an entity which is statutorily charged with undertaking and funding school facilities projects under the Act and which is the entity formed pursuant to P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation.

"Guaranteed maximum price" or "GMP" means a method of compensation for the design-builder, including, but not limited to, the design-builder's fee, the costs of all work, and any other prices, as set forth in accordance with the design-build contract, which is the maximum price the Authority shall pay the design-builder.

"Key team member" means an individual identified as having a responsible role in the successful completion of the design-build contract, in the bidder's response to the Authority's RFQ or RFP, which response is made part of the contract.

"Legal requirements" means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the design-builder's performance of services or work under the agreement, including, but not limited to, the current versions of the Building Design Services Act, the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools under Construction or Being Planned for Construction, the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of local or national authorities having jurisdiction over the project, as applicable.
"Notice of award" or "NOA" means a written notice from the Authority to the bidder prior to award, setting forth the Authority's intention to enter into a design-build contract with the bidder.

"Notice to proceed" means a written notice from the Authority setting the commencement date on which the design-builder is authorized to commence performing services and work pursuant to the design-build contract.

"Performance specifications" means a document provided in the design-build information package, setting forth a description of an end result, objective or standard of performance that the design-builder is expected to achieve in designing and constructing the project.

"Prequalification" means the approval of a bidder by the Authority, pursuant to N.J.A.C. 19:38A, for the submission of a statement of qualifications and proposals for a design-build contract. The prequalification process is separate from short listing as elsewhere provided in this chapter.

"Prescriptive specifications" means a document provided in the design-build information package that contains a description of the materials to be employed and/or the manner in which the work is to be performed that the design-builder is required to follow.

"Price proposal" means the price submitted by the bidder to provide the required design and construction and other services described in the RFP, which may be submitted in the form of a GMP, if so required by the RFP.

"Professional services consultants" or "consultants" means the architect, engineer, land surveyor, or other individual or professional firm providing services related to its respective occupation, which require unique professional or technical skills, licenses, or other credentials, which services are associated with research, development, design, construction, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These professional services consultants may provide services including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, appraisals, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal reviews, testing, commissioning, provision of insurance, preparation of operating and maintenance manuals, and other related services, and shall include those consultants who provide "professional architectural, engineering, or land surveying services" within the meaning of N.J.S.A. 52:34-9.2.

"Protest" means a challenge to a decision, statement, action, or alleged inaction of the Authority.

"Punchlist" means the list of incomplete or defective work, including work that does not comply with applicable code or legal requirements, to be performed or remedied by the design-builder. Punchlist(s) shall be prepared by the bridging architect in conjunction with the Authority and CM prior to the issuance of the certificate of substantial completion.

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

"Request for proposals" or "RFP" means the document issued by the Authority in the second phase of a two-phase selection process that describes the procurement process and forms the basis for the design-build proposals.

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

"Schedule" means the schedule prepared and submitted by the bidder in its technical proposal to the Authority, wherein the bidder identifies all critical, and certain non-critical, activities, contract milestones and the projected and actual time periods for completing such activities and contract milestones.

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

"SDA school district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39 (N.J.S.A. 18A:7G-3).

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

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

"Specification" means a written description included as part of the construction documents, which sets forth the detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment, or work to be incorporated into the school facilities project, or a requirement of the work to be performed. A specification may include a statement of any of the Authority's requirements and may provide for inspection, testing, or the preparation of a construction item before procurement. Specifications shall augment and complement the drawings and plans prepared by the design-builder.

"Statement of qualifications" or "SOQ" means the document(s) submitted by bidders in response to an RFQ that describes the qualifications and capabilities of the bidder and its key team members to perform the scope of services to be included in a design-build contract.

"Stipend" means a monetary amount which may be paid to unsuccessful bidders.

"Substantial completion" means that point in time in the progress of the school facilities project when certain conditions specified by the design-build contract have occurred, including, but not limited to, the issuance of a temporary certificate of occupancy, the creation of a punchlist, and the determination that the school facilities project is ready for occupancy in accordance with its intended use.

"Technical evaluation committee" means a selection committee comprised of a majority of Authority representatives and an SDA school district representative(s) who are responsible for reviewing and evaluating responses by bidders to an RFQ and RFP.

"Technical proposal" means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to an RFP.

"Two-phase selection process" means a procurement process in which the first phase consists of short listing, based on qualifications submitted in response to an RFQ, and the second phase consists of the submission of price and technical proposals in response to an RFP.

"Uniform Construction Code" means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23, and all applicable subcodes, as such codes are amended from time to time.

"Weighted criteria process" means a form of best value selection in which a percentage of evaluation weight is pre-established for qualitative factors and for price, and the award of a design-build contract is based upon the highest total points awarded to a bidder.

"Work" means all design and construction services performed by the design-builder and its team, including providing all material, equipment, tools and labor, necessary to complete the construction, as described in and reasonably inferable from the construction documents and the design-build contract.

§ 19:36-1.3 Disclosure and publicity

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

§ 19:36-1.4 Access and record retention

(a) The design-builder shall make available records and accounts pertaining to school facilities projects to the State Comptroller and the State Auditor in their investigations, examinations and inspections of the activities related to the financing and undertaking of school facilities projects. The design-builder shall also cooperate, upon request, in sharing information with other State or Federal entities.

(b) The design-builder, shall be responsible to keep and maintain all of those records and accounts, including records and accounts of subcontractors and subconsultants, for school facilities project activities as necessary in order to evidence compliance with the Act and all applicable regulations and contractual requirements. Such records shall be retained by the design-builder for 10 years following substantial completion of a school facilities project, and any additional period required for the resolution of litigation, claims, or audit findings. Thereafter, those records shall be transferred to the Authority, unless the Authority, in its sole discretion, requests an earlier transfer of such records from the design-builder to the Authority or another designated entity. At any time, upon request of the Authority, the design-builder shall make records relating to the design-build project available to the Authority, within four business days of the request for documents, at no cost to the Authority.

(c) In the event that any litigation, claim, audit, or request pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., relating to the procurement or the performance of work under the design-build contract is commenced prior to expiration or termination of the design-build contract, all records relating to the procurement and the contract shall be retained until all litigation, claims, audit findings, document requests, and related appeals, if any, have been resolved with finality.

§ 19:36-1.5 Fraudulent statements

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

§ 19:36-2.1 Applicability

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

§ 19:36-2.2 Composition and responsibilities of technical evaluation committee

(a) When the design and construction of a school facilities project will be undertaken pursuant to this chapter, the Authority will designate a technical evaluation committee to review and evaluate responses by bidders to an RFQ and RFP, and will designate a selection coordinator to administer the selection process. The members of the technical evaluation committee shall consist of a majority of Authority representatives and a representative of the SDA school district in which the school facilities project is located, if such district elects to participate. Each member of the technical evaluation committee shall have the relevant experience as set forth in N.J.S.A. 52:34-10.3(c), necessary to evaluate the submissions.

(b) Each member of the technical evaluation committee shall be responsible for:

1. Independently evaluating and scoring the statements of qualifications submitted by bidders in response to an RFQ; and
2. Evaluating and scoring, in consultation with the other members of the technical evaluation committee, the technical proposals submitted by bidders in accordance with the weighted criteria process set forth in an RFP.

(c) Once the responses are received and the identity of the bidders is ascertained, the members of the technical evaluation committee will be given a list of all firms that submitted a bid. Each member of the technical evaluation committee, prior to the evaluation of any submission, shall execute a certification that he or she has no personal interest, financial or familial, in any of the bidders to be evaluated, any of the named subcontractors or subconsultants to the bidders, or any of the principals, subsidiaries, or parent companies of such bidders. Furthermore, should any of the technical evaluation committee members indicate that a conflict or personal interest exists once the identity of the bidders is revealed, that member shall not serve on the technical evaluation committee. In the event that an evaluation committee member is discovered to have a conflict, such evaluation committee member will be removed from the selection committee by the Authority. At the discretion of the Authority, the conflicted committee member may be replaced, if replacement with a new member is feasible at the time of removal of the conflicted committee member, and such replacement will not have an adverse impact on either the evaluation process or the procurement schedule or process generally.

(d) The names of the members of the technical evaluation committee shall be made public once the contract is awarded, pursuant to N.J.S.A. 52:34-10.3(c).

§ 19:36-3.1 Applicability

This subchapter provides for the retention by the Authority of professional consultants to act in the SDA’s interests during the school facilities project; namely, a bridging architect to develop minimum design requirements, performance specifications and other project requirements and a construction manager to provide management and technical support during the school facilities project.

§ 19:36-3.2 Engagement of bridging architect

The Authority may retain a bridging architect, pursuant to the provisions of N.J.A.C. 19:38C, for the duration of the school facilities project, to prepare a design-build information package, review the documents prepared by design-builders and provide other professional services on behalf of the Authority.

§ 19:36-3.3 Design-build information package

(a) A design-build information package shall be prepared by the Authority, using a design professional either on staff of the Authority and/or the bridging architect.

(b) As a prerequisite to the completion of the design-build information package, the schematic design for the school facilities project must have been approved by the SDA school district, the Authority and the Department, in accordance with the requirements of N.J.A.C. 6A:26, and the Department shall have issued the preliminary project report approving the school facilities project, pursuant to N.J.S.A. 18A:7G-5(h)(2).

(c) The design-build information package may include, but need not be limited to, the following:

1. A description of the school facilities project, including:
   i. Building type and size;
   ii. Site development requirements, such as, parking and site requirements and playground equipment;
   iii. Description of physical relationships between building spaces and between buildings and other site elements; and
   iv. Specific architectural style or concept;

2. Educational specifications and schematic design documents for the school facilities project;
3. Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs and environmental issues;

4. Assignment of responsibility for obtaining required approvals and permits;

5. Engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment); and

6. The terms and conditions for the payment of a stipend, if a stipend is offered.

§ 19:36-3.4 Engagement of construction manager

(a) The Authority may retain a construction manager, pursuant to the provisions of N.J.A.C. 19:38C, for the duration of the school facilities project.

(b) The services of the construction manager may include, but need not be limited to, technical support in the area of scheduling, cost estimating, document control and inspection of construction during all phases of the school facilities project.

§ 19:36-3.5 Conflicts of interest

Professional consultants who assist the Authority in the preparation of an RFQ or an RFP will not be permitted to participate as a bidder or subconsultant to a bidder submitting a statement of qualifications in response to the RFQ or a proposal in response to the RFP.

§ 19:36-4.1 Applicability

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

§ 19:36-4.2 Necessity for prequalification

(a) Only those bidders holding a valid notice of prequalification, issued by the Authority, in accordance with the procedures in N.J.A.C. 19:38A, in such trade(s) or discipline(s) as specified by the RFQ, shall be eligible to submit a statement of qualifications in response to an RFQ or proposals in response to an RFP. The prequalification of a bidder must be valid on the due date for the submission of a statement of qualifications and on the due date for the submission of technical and price proposals.

(b) The Authority may establish appropriate and special prequalification requirements as may be necessary in order to ensure competitive technical and price proposals, or as may be dictated by the unique or specialized nature of the work to be performed under the design-build contract.

§ 19:36-4.3 Request for qualifications

(a) The Authority shall publicly advertise an RFQ. The RFQ shall contain the following information:

1. A general description of the school facilities project;

2. The scope of work;
3. The minimum qualification requirements for bidders, including, but not limited to, the appropriate classifications and aggregate rating limits assigned by the New Jersey Department of Treasury, Division of Property Management and Construction;

4. A request for the submission of a statement of qualifications which will describe the qualifications of prospective bidders;

5. The phase one evaluation factors to be used in the determination of a short list of bidders;

6. The technical evaluation factors to be utilized in the second phase of the selection process;

7. A statement of the number of bidders to be selected for the short list; and

8. Any other requirements, as determined in the sole discretion of the Authority.

(b) Bidders desiring to submit technical and price proposals shall submit a statement of qualifications and an organizational chart of the bidder and its key team members and the other information required by the RFQ.

§ 19:36-4.4 Short listing of bidders

(a) The technical evaluation committee shall review and evaluate the responsive submissions of bidders and determine the relative ability of each such bidder to perform the work under the design-build contract. The evaluation of the qualifications of each bidder may include, but need not be limited to, consideration of the following factors:

1. Experience of the prospective bidder and proposed design-build team on projects of similar size, scope, and complexity;

2. Experience of key team members on projects of similar size, scope and complexity;

3. Experience of the prospective bidder and proposed design-build team on design-build projects of similar size, scope, and complexity;

4. Experience of the key team members on design-build projects of similar size, scope and complexity;

5. Experience of the prospective bidder or its key team members on projects for the Authority, as evidenced by performance evaluations as specified in the RFP;

6. The prior affirmative action experience of the prospective bidder and the design-build team;

7. Consideration of the bidder's aggregate rating from the Department of Treasury, Division of Property Management and Contracts, which is affected by prior affirmative action experience; and

8. Any other pertinent information necessary to establish the qualifications of the prospective bidder and proposed design-build team to undertake the design-build contract.

(b) At the conclusion of the first phase of the selection process, the technical evaluation committee shall develop a short list of the bidders whose qualifications are deemed most advantageous to the Authority in terms of qualification factors other than price, as indicated in the RFQ. The bidders selected for the short list shall be invited to participate in the second phase of the process. The short list will be published on the Authority's website at www.njsda.gov and all bidders that supplied submissions will be notified in writing of the bidders selected for the short list.

§ 19:36-4.5 Request for proposals

(a) Only bidders that have been short listed during the RFQ process will be permitted to submit a proposal in response to an RFP.

(b) The RFP shall include, without limitation:

1. The design-build information package;

2. Technical and price proposal forms;
3. The design-build contract;
4. Instructions to bidders;
5. The criteria for evaluation of proposals and their relative weight;
6. A description of the drawings, specifications, or other submittals to be submitted with the technical proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;
7. Budget limits for the work;
8. Requirements for bid bonds, performance bonds, payment bonds, and insurance;
9. Schedule requirements, as set forth in the RFQ;
10. Amount of the stipend, if any; and
11. The documents required to be submitted upon the notice of award, pursuant to N.J.A.C. 19:36-6.1(c).

§ 19:36-4.6 Selection process

(a) The Authority shall issue an RFP for the school facilities project to the bidders who were short listed in the phase one RFQ process.

(b) The Authority may provide for a pre-proposal conference at a designated date, time, and location at which bidders that have been short listed may ask questions and seek clarification concerning any of the information, data, or documents contained within the RFP. Pre-proposal conferences may be mandatory or optional, as stated in the RFP.

(c) The RFP shall require the submission of a proposal in two separate parts: a technical proposal and a price proposal. The technical and price proposals shall be evaluated separately, in accordance with the evaluation factors and process set forth in the RFP. The evaluation factors may include, but need not be limited to, design concepts, management approach, proposed technical solutions, and the other factors listed at N.J.S.A. 52:18A-243(d), as applicable.

(d) The technical proposal shall include preliminary design drawings, outline specifications, technical reports, calculations, permit requirements, a management plan, schedule and other information and/or data requested in the RFP.

(e) The price proposal shall be submitted in a separate sealed envelope and shall provide a price for all design services and construction work required to complete construction of the school facilities project. If required by the RFP, the price shall be submitted in the form of a guaranteed maximum price for all design and construction of the school facilities project. The envelope containing the price proposal shall indicate clearly that it is the price proposal and shall identify the bidder's name, project number, and any other information required by the RFP. The price proposals shall remain sealed until such time as provided in (g) below.

1. Each price proposal shall be accompanied by a bid bond as specified in the RFP.

2. The Authority shall examine all documents required to be submitted with the technical proposal for completeness and conformity with the requirements of the RFP. If the Authority determines that a technical proposal received must be rejected as non-responsive, it shall notify the bidder in writing of the rejection of its proposal and the reason for the rejection within 10 business days of its receipt, unless there are circumstances that require additional time.

3. The submission of technical and price proposals is conclusive evidence that the bidder has completely reviewed the RFP and the design-build contract and fully understands and agrees to all of the requirements, terms, and conditions set forth therein.

(f) The technical evaluation committee may conduct interviews with each bidder prior to ranking the bidders. The technical evaluation committee shall evaluate each technical proposal in accordance with the evaluation criteria and the weight assigned to each, as set forth in the RFP. The technical review committee shall then total and submit the scores for each technical proposal to the selection coordinator.
(g) After the technical proposals have been reviewed and scores are submitted, Authority staff shall open the price proposals and assign the maximum price points to the lowest total dollar proposal. All other responsive proposals shall be scored based upon the percentage that each proposal exceeds the lowest proposal.

1. The Authority shall examine all documents required to be submitted with the price proposal for completeness and conformity with the requirements of the RFP.

2. The bidder shall show all amounts in words and figures. In the event of a discrepancy between the words and figures, the amount shown in words shall govern.

3. If the Authority determines that a price proposal received must be rejected as being non-responsive, it shall notify the bidder in writing of the rejection of its proposal as being non-responsive and the reason for the rejection within five business days of the opening of price proposals, unless there are circumstances that require additional time.

(h) The selection coordinator shall determine the combined scores for each bidder based on their technical and price proposals, with consideration of price at least equal to the consideration given to all other factors. The bidder with the highest overall score shall be recommended to the Board of the Authority for an award of the design-build contract. If the recommendation is approved, the Authority will notify the successful design-builder.

§ 19:36-4.7 Rejection of proposals

(a) Proposals received after the submission date and time prescribed in the advertisement and RFP shall be rejected.

(b) The Authority may reject any proposal for any reason, in accordance with law, when it is otherwise deemed to be in the interest of the State or the public interest to do so. The Authority may reject all proposals for excessive cost, insufficient competition, or any other reason, in accordance with law, that it determines to be in the interest of the State or the public interest.

(c) The Authority may cancel a notice of award at any time before the execution of the design-build contract by the Authority, if the Authority deems it advisable to do so in the interest of the State or the public interest.

§ 19:36-5.1 Criteria for payment of stipend

(a) At the discretion of the Authority, a stipend may be paid to eligible bidders who submit responsive but unsuccessful proposals in response to the RFP. The decision to do so shall be based on the Authority's analysis of the estimated proposal development costs, the complexity of the school facilities project, and the anticipated degree of competition during the procurement process. The purpose of the stipend is to encourage competition by offering to compensate responsive, but unsuccessful bidders, for a portion of the estimated proposal development costs.

(b) The terms and conditions for the payment of a stipend shall be included in the RFP.

(c) Whether or not a stipend is provided to an unsuccessful bidder, submission of a technical proposal by a bidder shall indicate the bidder's agreement and consent that the work produced within that bidder's technical proposal shall be provided to the Authority for its use in connection with the design-build contract awarded, or in connection with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful bidder.

(d) Bidders submitting a response to the RFP which is determined by the Authority in its sole discretion to be non-responsive or irregular, pursuant to N.J.A.C. 19:36-4.7, will not be entitled to a stipend.

§ 19:36-6.1 Contract approval and execution

(a) Except as may otherwise be specifically provided in this chapter, the engagement of a design-builder shall be subject to approval by the Board of the Authority and may only be executed in accordance with Authority procedures.

(b) Prior to the execution of a design-build contract, the bidder that was provided a notice of award shall exist in the legal status in which it will perform its responsibilities pursuant to the design-build contract.
(c) The Authority will send the successful design-builder a notice of award letter. The notice of award letter shall contain a list of the additional documents required to be submitted by the design-builder with the executed contract. The notice of award will specify the time within which the executed contract and required documents must be returned.

(d) Each payment and each performance bond must be in an amount at least equal to the total contract price.

1. All bonds shall comply with the requirements of this chapter and relevant State statutes. All bonds submitted by the design-builder shall be issued only in accordance with N.J.S.A. 2A:44-143 through 147 to the design-builder and shall indicate aggregate bonding limits.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

(e) If the design-builder fails to return the executed contract and performance and payment bonds and other required documents within the time specified by the Authority, the Authority may take whatever action is appropriate and authorized by law including, but not limited to, withdrawing or canceling the notice of award to the delinquent bidder and awarding the contract to the next-highest ranked bidder; cancelling the procurement; or proceeding to recover under the bid bond submitted with the price proposal in accordance with N.J.A.C. 19:36-4.6(e).

(f) All contracts executed pursuant to this chapter shall provide for, among other things, termination for the convenience of the Authority and for cause.

(g) No agreement is valid or binding on the Authority unless and until it is executed by an appropriately authorized representative of the Authority. Any work performed prior to the execution of the contract by the Authority is voluntary, and represents a gift to the Authority. In the event the notice of award is cancelled or withdrawn, the bidder is not entitled to any remuneration for any work performed prior to the execution of the contract.

(h) Upon the successful bidder's submission of all required documentation or materials as specified in the NOA, and the Authority's acceptance of such documentation, the Authority will execute the design-build contract and provide the successful bidder with the fully-executed design-build contract.

§ 19:36-7.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern protests and administrative hearings regarding design-build procurements, including protests challenging the form of the RFQ or the RFP, the ranking of bidders during the RFQ phase, and the scoring of technical proposals of bidders.

(b) For purposes of this subchapter, protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

§ 19:36-7.2 Subject matter, time limitations, and who may request hearings

(a) Administrative hearings before the Authority may include the following subject matter and may be requested by the following entities:

1. RFQ process or documents: A bidder that intends to submit or has submitted a statement of qualifications for the first phase of the design-build procurement, may request an informal hearing before the Authority to protest the RFQ process or documents by submitting a written protest to the Authority at least five business days prior to the date and time scheduled for opening of the statements of qualifications, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the scheduled opening of statements of qualifications, or that fails to provide the specific reasons for and arguments supporting the protest.

2. RFP process or documents: A bidder that intends to submit or has submitted proposals for the second phase of the design-build procurement, may request an informal hearing before the Authority to protest the RFP process or documents by submitting a written protest to the Authority at least five business days prior to the date and time scheduled for opening of the technical proposals, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials or other documents that support the protestor's position, and must indicate
whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the scheduled opening of technical proposals, or that fails to provide the specific reasons for and arguments supporting the protest.

3. Short listing: A bidder protesting its failure to be short listed, or the short listing of another bidder may request an informal hearing before the Authority to protest the selection of the short list by submitting a written protest to the Authority setting forth the specific grounds for challenging the short listing. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. A bidder protesting the short list must submit a written protest within five business days of the public announcement of the short list on the Authority's website, www.njsda.gov. The Authority may deny any protest that is filed more than five business days after the public announcement of the short list, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

4. Technical and price proposal scoring: A bidder protesting the scoring of its technical and/or price proposals, or those of another bidder, may request an informal hearing before the Authority to protest the scoring of technical and/or price proposals, by submitting a written protest to the Authority setting forth the specific grounds for challenging such scorings. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing. The protestor must submit a written protest within five business days of the public announcement of the bidders' scores. The Authority may deny any such protest that is filed more than five business days after the public announcement of the bidder's scores, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

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

6. Performance evaluation: A firm that is dissatisfied with its performance evaluation on an Authority project may request an informal hearing before the Authority by submitting to the Authority a written protest setting forth the specific grounds for such protest, within 15 calendar days after the date of receipt of written notification of the performance evaluation. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than 15 calendar days after the firm's receipt of written notification of the performance evaluation, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

§ 19:36-7.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold an informal hearing. Alternatively, the Authority may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the Authority may waive the hearing and issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within five business days of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written decision will issue prior to the opening of statements of qualification or proposals, respectively. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed to all potential bidders by addendum.
3. In an informal hearing, the Authority may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify, or amend the time frames or any other requirements provided in this subchapter. In these instances, the Authority shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. Upon filing of the initial pleading in a contested case, the Board of the Authority may, by resolution, either retain the matter for hearing directly, or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

§ 19:36-8.1 Design and construction

(a) The design-builder shall employ or contract with the architect of record and shall be responsible for the technical integrity of final project design, constructability, extensions of the design, and operability and maintainability, pursuant to the design-build information package and/or in the design-build contract.

(b) The role of the design-builder may include, but need not be limited to, the management and control of quality, cost and the integrated schedule for design, permit applications, material and equipment acquisition, construction, training for operation and maintenance, inspection and close out of the school facilities project.

(c) The Authority's review and acceptance of interim design submissions and/or construction documents is for the purpose of mutually establishing a conformed set of contract documents compatible with the requirements of the work. Neither the Authority's nor the construction manager's review and acceptance of interim design submissions or construction documents shall be deemed to transfer design liability from the design-builder to the Authority.

(d) Once the plans and specifications are complete, and have been accepted by the Authority, the design-builder shall submit the completed plans and specifications for the school facilities project to the Department for approval of final educational adequacy, pursuant to N.J.A.C. 6A:26-5.4. Upon the approval of the plans and specifications by the Commissioner, the design-builder shall submit them to the DCA for review and approval in accordance with N.J.A.C. 5:23-4.24.

§ 19:36-8.2 Costs in excess of guaranteed maximum price

If a design-build contract is procured as a GMP contract, the design-builder shall be responsible for cost overruns in excess of the GMP, as properly adjusted, pursuant to N.J.A.C. 6A:26-5.4. If the design-builder's cost of work and fee are less than the GMP as properly adjusted, the cost savings shall accrue to the Authority, but may be shared by the design-builder and the Authority in accordance with the terms of the design-build contract.

§ 19:36-8.3 Deletion or substitution of key team members

(a) No substitutions or deletions of key team members may be made during the selection process or after award of the contract, without prior written approval from the Authority.

(b) Unauthorized changes to a bidder's key team members who were specifically identified in the response to the RFP at any time during the selection process may result in the elimination of the bidder from further consideration.
§ 19:36-9.1 Applicability and effect

(a) Notwithstanding any provisions of N.J.A.C. 19:38 to the contrary, the following provisions will apply to the process and consideration of performance evaluations for contracts procured under this chapter.

1. Every design-builder awarded a design build contract procured pursuant to this chapter will be subject to evaluation in accordance with N.J.S.A. 18A:7G-36. The performance evaluation will consider the design-builder's performance as a contractor in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out.

2. The design-builder's performance will be evaluated periodically during the progress of the project. The evaluation will be performed by a reviewer with direct involvement in the management or supervision for the project.

3. The design-builder's performance evaluations will be used by the Authority in evaluating and scoring bidders as to their prior experience on Authority projects, in accordance with the provisions of this chapter, N.J.A.C. 19:38, or 19:38B.

§ 19:36-9.2 Evaluation rating values

(a) Notwithstanding any provisions of N.J.A.C. 19:38 to the contrary, design-builders shall be evaluated on their construction performance with respect to the various evaluation categories using the following evaluation ratings:

1. Outstanding (O) or 100 percent--far exceeds the contract requirements by consistently exhibiting excellent performance. Always meets, and almost always exceeds the contract requirements;

2. Very Good (VG) or 90 percent--often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;

3. Satisfactory (S) or 80 percent--provides an acceptable level of performance consistently meeting the contract requirements;

4. Marginal (M) or 70 percent--performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and

5. Unsatisfactory (U) or 60 percent--fails to meet important contract requirements, resulting in a negative impact on the entire project.

(b) These numerical scores may be subject to special adjustment factors for certain categories deemed by the Authority to be particularly critical to contractor performance. The numerical ratings for each category shall be tabulated to arrive at an overall numerical evaluation score for each performance evaluation.

§ 19:36-9.3 Consideration of performance evaluations

(a) For contracts procured pursuant to the provisions of N.J.A.C. 19:38, performance evaluations shall be considered in accordance with that chapter.

(b) For contracts procured pursuant to this chapter or N.J.A.C. 19:38B, the process for evaluating a firm's prior performance on Authority projects in a selection process shall be specified in the RFP. Such process shall consist of:

1. A mathematical tabulation and averaging of the scores of all prior performance evaluations within a relevant time period;

2. Consideration of particularly favorable or unfavorable evaluations individually and with reference to other evaluations;

3. Consideration of multiple evaluations over the course of a given project, to show consistency of performance, deterioration of performance or efforts at improvement and recovery; or

4. A combination of the above methodologies.
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TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 38. PROCEDURES FOR LOW-BID PROCUREMENT OF CONSTRUCTION CONTRACTS FOR
SCHOOL FACILITIES PROJECTS


Title 19, Chapter 38 -- Chapter Notes

CHAPTER AUTHORITY:

CHAPTER SOURCE AND EFFECTIVE DATE:
R.2014 d.001, effective November 8, 2013.
See: 45 N.J.R. 1592(a); 46 N.J.R. 131(a).

CHAPTER EXPIRATION DATE:
Chapter 38, Procedures for Low-Bid Procurement of Construction Contracts for School Facilities Projects, expires on

CHAPTER HISTORICAL NOTE:
Chapter 38, Procedures for Bidding for the New Jersey Schools Construction Corporation's School Facilities Projects
for the Schools Construction Program, was adopted as new rules by R.2006 d.193, effective May 15, 2006. See: 37
N.J.R. 3801(a), 37 N.J.R. 4207(a), 38 N.J.R. 2199(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 38, Procedures for Bidding for the New Jersey Schools Construction
Corporation's School Facilities Projects for the Schools Construction Program, was scheduled to expire on May 15,

Chapter 38, Procedures for Bidding for the New Jersey Schools Construction Corporation's School Facilities Projects
for the Schools Construction Program, was readopted as R.2014 d.001, effective November 8, 2013. As part of R.2014
d.001, Chapter 38 was renamed Procedures for Low-Bid Procurement of Construction Contracts for School Facilities
Projects, effective January 6, 2014. See: Source and Effective Date. See, also, section annotations.

§ 19:38-1.1 Applicability

This chapter applies to all construction contracts with the New Jersey Schools Development Authority, except for
design-build contracts. "Design-build contract" means a written contract, entered into between a contractor and the Au-
authority, which provides both for construction services and for the performance of architectural services by an architect retained by the contractor pursuant to a separate written contract.

§ 19:38-1.2 Definitions

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


"Agency of government" means any Federal, state, regional, county, or local government agency, in this or any other state, including any department, division, commission, authority, office, branch, section, political subdivision or other governmental or quasi-governmental entity.

"Aggregate Rating" means the limit of the outstanding dollar value of all contracts, public and private, which a firm may perform at a given time as assigned by the Authority's Notice of Prequalification in effect at the time of the contractor's bid, which shall be identical to that which is assigned by the New Jersey Department of Treasury, Division of Property Management and Construction. Should the Division of Property Management and Construction modify a firm's aggregate rating after the Authority has issued a Notice of Prequalification, the Aggregate Rating issued by the Authority is considered modified to be identical to that of the Division of Property Management and Construction.

"Authority" or "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 Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.

"Bid" means the Project Rating Proposal and the Price Proposal.

"Bid advertisement" means the advertisement by the New Jersey Schools Development Authority setting forth the information as required by N.J.S.A. 52:18A-243 and shall be part of the contract documents.

"Bid documents" means the bid advertisement, the project manual, general conditions, supplemental conditions, plans, specifications, scopes of work, Instructions to Bidders, addenda, form of Project Rating Proposal, form of Price Proposal, and any other documents provided to the bidder by the Authority prior to the submission of the Price Proposal.

"Contract" means the entire and integrated agreement between the firm and the New Jersey Schools Development Authority encompassing all of the contract documents.

"Contract documents" means the bid advertisement, the executed form of contract, project manual, general conditions, supplemental conditions, plans, specifications, scopes of work, Instruction to Bidders, addenda, Project Rating Proposal, Price Proposal, executed change orders, other amendments, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials.

"DPMC" means the Division of Property Management and Construction in the New Jersey Department of the Treasury.

"DPMC 27" means the request for classification form to be submitted to the DPMC by a firm seeking classification with the DPMC in accordance with the DPMC rules at N.J.A.C. 17:19.

"DPMC Classification" means the process and product of assigning specific construction categories or trades and the maximum Aggregate Rating which define the eligibility of firms to engage in public work as determined by the DPMC in accordance with the DPMC rules at N.J.A.C. 17:19-1.

"EFCFA" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72.

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

"Grant funded district" means a district which receives funding for a school facilities project from the Authority pursuant to section 15 of EFCFA, N.J.S.A. 18A:7G-15.
"Instructions to Bidders" means that portion of the bid and contract documents setting forth the requirements and procedures for bidding on an Authority project.

"Irregular bid" means a Project Rating Proposal or a Price Proposal that does not conform to the bid and contract documents for the schools facilities package.

"Notice of DPMC Classification" means the document(s) from the DPMC notifying the Firm of the specific construction categories or trades and of the maximum Aggregate Rating for which the firm may perform work, in accordance with the DPMC rules at N.J.A.C. 17:19.

"Notice of Prequalification" means the letter from the Authority issuing the firm its prequalification.

"Prequalification" means the process and product of being approved by the Authority to perform work in a given trade and within a given aggregate limit on school facilities packages and grant funded projects.

"Price Proposal" means that part of the bid to be submitted by the firm setting forth the firm's bid price, including any and all information and documents required by the Instructions to Bidders, the bid advertisement or addenda.

"Project management firm" or "PMF" means the firm engaged by the Authority to provide overall construction management services, oversight, direction, coordination, and reporting in connection with school facilities projects.

"Project Rating" means the maximum amount a firm may bid on any school facilities package based upon the information contained in a firm's Project Rating Proposal.

"Project Rating Proposal" means that part of the bid to be submitted by the firm setting forth the firm's bid price, including any and all information and documents required by the Instructions to Bidders, the bid advertisement or addenda.

"Schools Construction Program" or "School Program" means the over-all program mandated by the Act for the design, renovation, repair, and new construction of primary and secondary public schools throughout the State, through the implementation of school facilities projects.

"Schools facilities package" or "package" means any and all of the school facilities projects that are identified in the Bid Documents.

"School facilities project" or "project" means the demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or capital maintenance, in accordance with the Department of Education's rules at N.J.A.C. 6A:26, of all or any part of a school facility or of any personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment. Each school facilities project that is part of the firm's work is identified in the contract documents.

"School facility" means and includes any structure, building or facility used wholly or in part by a school district for academic purposes.

"State" means the State of New Jersey, or any of the departments or agencies in the Executive Branch of government.

"Work" means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies and other incidentals to be furnished, provided or performed by the firm, as required by the contract documents, including all efforts necessary or appropriate to achieve final acceptance and completion.

§ 19:38-2.1 Necessity for Prequalification

(a) Only those firms holding a valid Notice of Prequalification issued by the Authority in accordance with the procedures in N.J.A.C. 19:38A shall be eligible to bid for work on a school facilities package. A firm's prequalification must be valid on the due date for the submission of the Project Rating Proposal and on the due date for the submission of the Price Proposal.

(b) The Authority may establish appropriate and special prequalification requirements as may be necessary in order to ensure competitive bidding on any and all school facilities projects or as may be dictated by the unique or specialized nature of the work to be performed.
§ 19:38-3.1 Contents of the bid

(a) A bid consists of two separate proposals:

1. The first proposal is the Project Rating Proposal, which consists of information regarding the "other factors" as defined in the Act which will be evaluated by the Authority. The Authority will determine a firm's Project Rating based on this Proposal. A firm may not submit a Project Rating Proposal prior to the effective date of the firm's prequalification. If, in the prior 24-month period, a firm has been assigned a Project Rating, the firm may so indicate on the signed Project Rating Proposal submitted for each project and may request that the Authority apply the prior Project Rating to the current bid, provided that the firm certifies that there has been no change regarding safety, prevailing wage record, or its Authority Project Evaluation Record, since the prior Project Rating was assigned.

2. The second proposal is the Price Proposal which shall contain the price the firm bids for the work as well as other information and documents, as required by the contract documents. A firm may not submit a Price Proposal if it has not been assigned a Project Rating.

§ 19:38-3.2 Fraudulent statements

Any firm or individual who makes, or causes to be made, a false, deceptive or fraudulent statement in its bid or in the course of any hearing under this chapter may be disqualified from bidding, suspended and/or debarred and may be subject to prosecution pursuant to applicable law.

§ 19:38-3.3 Submission of Project Rating Proposal

(a) The Project Rating Proposal shall be delivered by the firm to the Authority at the hour, date, and place specified in the bid advertisement as may be modified by addendum. Project Rating Proposals will be accepted only from firms currently prequalified with the Authority in accordance with N.J.A.C. 19:38A.

(b) An irregular bid may be rejected for failure to comply with the bid and contract documents.

(c) The Authority shall examine the Project Rating Proposal and all documents required to be submitted with the Project Rating Proposal for completeness and conformity with bidding requirements. If the Authority determines that a Project Rating Proposal received for a school facility package must be rejected as being non-responsive, it shall notify the firm in writing of the rejection of its Project Rating Proposal and the reason for the rejection within 10 business days of the receipt of the Project Rating Proposal unless there are circumstances that require additional time.

§ 19:38-3.4 Calculation of the Project Rating

(a) Firms shall supply the information required for the calculation of a Project Rating in the trade for which the firm is seeking a Project Rating. The Project Rating shall be based on the following factors:

1. A check of references supplied by the firm on projects completed by the firm in the past seven years. This includes information regarding the firm's performance on other school facilities projects;

2. Information regarding the firm's safety record;

3. Information regarding the firm's prevailing wage record;

4. The firm's Authority project evaluation record; and

5. Other information deemed relevant by the Authority.

§ 19:38-3.5 Determination of Project Rating

(a) A firm's Project Rating for the trade shall be determined by the following:
A \times (100\% + B + C + D) \times E

where:

A = the firm's largest completed project in a specific trade listed in the Project Rating Proposal
B = the sum of the Reference Adjustment calculated pursuant to this chapter
C = the Safety Adjustment calculated pursuant this chapter
D = the Prevailing Wage Adjustment calculated pursuant to this chapter
E = the average of the firm's Project Evaluations

A firm's Project Rating for a trade cannot exceed the firm's Aggregate Rating and cannot exceed 170 percent of the firm's largest listed completed project.

(b) Reference Adjustment Calculation: A firm will be required to list in its Project Rating Proposal a minimum of two projects completed within the past seven years. The firm shall also provide project contacts for those projects. The Authority shall select, at its discretion, two projects to be confirmed and shall contact the owner's contact identified by the firm. If the Authority cannot contact an owner's contact, the Authority will contact the firm for another owner's contact for that project. If the firm is unable to provide an additional owner's contact, or if the Authority is unable to contact the additional owner's contact provided by the firm, the Authority will not use that project in the determination of the firm's Project Rating. The Authority will confirm the firm's performance on the job and assign a percentage value to the responses received. Project contacts will be asked if the performance in each of the following seven categories "exceeded expectations," "met expectations," or fell "below expectations" and the Authority will assign to the response the percentage adjustment listed below:

<table>
<thead>
<tr>
<th></th>
<th>Exceeded</th>
<th>Met</th>
<th>Below</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ Safety</td>
<td>+5 percent</td>
<td>+3 percent</td>
<td>-5 percent</td>
</tr>
<tr>
<td>Quality of the construction.</td>
<td>+5 percent</td>
<td>+2 percent</td>
<td>-5 percent</td>
</tr>
<tr>
<td>Timeliness of the work performed.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Efficiency of the firm's contract administration.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Supervision of subcontractors.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Firm's level of cooperation during construction.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Timeliness and efficiency of punch list work corrections.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
</tbody>
</table>

1. If an owner's contact rates a firm "below expectations" in either safety or quality of construction, or if the project reference adjustment is -5 or lower, the Authority will not use that project in the determination of the firm's Project Rating.

2. The Authority will total the project reference adjustments together and the sum shall be the Reference Adjustment. This Reference Adjustment shall be used as "B" in the calculation of the firm's Project Rating in (a) above.

(c) Bidders shall provide mandatory safety information as follows:

1. The firm will be required to list its most recent New Jersey Workers Compensation Insurance Experience Modification Rate (NJEMR) on its Project Rating Proposal. For any firm that has not performed work in New Jersey prior to the submission of this Project Rating Proposal, or for which the NJEMR has not been calculated, the firm will be required to submit its most recent Experience Modification Rate (EMR) for all other States for which it has performed
work. The Authority will then calculate the average of the other states' EMRs. Where appropriate, the firm's NJEMR or its average EMR as calculated by the Authority will be assigned a percentage value as listed below:

- **EMR is less than or equal to .80**: +30 percent
- **EMR is greater than .80 but less than or equal to .90**: +20 percent
- **EMR is greater than .90 but less than or equal to 1.00**: +10 percent
- **EMR is greater than 1.00 but less than or equal to 1.10**: -10 percent
- **EMR is greater than 1.10 but less than or equal to 1.20**: -20 percent
- **EMR is greater than 1.20**: -40 percent

2. The firm shall be required to list safety information in its Project Rating Proposal. The safety information supplied will be assigned a percentage value as listed below:

- **Employee of the firm completed an OSHA 500 or OSHA 502 course in last 4 years.**: +2 percent
- **Employee of the firm completed Council on Certification of Health, Environmental and Safety Technologists (CCHEST) "Safety Trained Supervisor in Construction" course.**: +2 percent
- **Employee of the firm completed Associated General Contractors of America (AGCA) "Safety Management Training Course."**: +2 percent

The percentage value for the EMR and the percentage value for the Safety Information shall be added together and this total shall be the Safety Adjustment. The Safety Adjustment shall be used as "C" in the calculation of the firm's Project Rating in (a) above.

(d) Prevailing Wage: The firm will be required to list its prevailing wage record with the New Jersey Department of Labor and Workforce Development on its Project Rating Proposal. The Authority will assign a prevailing wage percentage value as listed below:

- **None**: 0 percent
- **One**: -10 percent
- **More than one**: -20 percent

This percentage value shall be the Prevailing Wage Adjustment. The Prevailing Wage Adjustment shall be used as "D" in the calculation of the firm's Project Rating in (a) above.

(e) Project Evaluations: Every construction project managed by the Authority will be evaluated by two evaluators for the following: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; subcontractors; small business goals; and close-out.

1. Evaluation rating values are:
   i. Outstanding (O) or 100 percent - far exceeds the contract requirements by consistently exhibiting excellent performance. Typically meets and regularly exceeds the contract requirements;
   ii. Very Good (VG) or 90 percent - often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;
iii. Satisfactory (S) or 80 percent - provides an acceptable level of performance consistently meeting the contract requirements;

iv. Marginal (M) or 70 percent for scheduling, management, cost control and change orders, subcontractors, close out and 40 percent for quality of work, safety and industrial hygiene, and small business goals - performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and

v. Unsatisfactory (U) or 60 percent for scheduling, management, cost control and change orders, subcontractors, close out and 20 percent for quality of work, safety and industrial hygiene, and small business goals - fails to meet important contract requirements, resulting in a negative impact on the entire project.

2. The contractor's Performance Evaluation Summary Rating shall be the mathematical average of the two evaluators' ratings. In the event that there are multiple Performance Evaluation Summary Ratings for a contractor, the contractor's Performance Evaluation Summary Rating shall be the mathematical average of all Performance Evaluation Summary Ratings.

3. The Authority will assign a Project Evaluation Performance Multiplier as listed below:

<table>
<thead>
<tr>
<th>Performance Evaluation Summary Rating</th>
<th>Performance multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>80 points or higher</td>
<td>1.00</td>
</tr>
<tr>
<td>70 points to 79.9 points</td>
<td>.50</td>
</tr>
<tr>
<td>69.9 points or lower</td>
<td>.25</td>
</tr>
</tbody>
</table>

This Performance Multiplier shall be used as "E" in the calculation of the firm's Project Rating. In the event that a contractor does not have a Performance Evaluation Summary Rating, the Authority will disregard the Performance Multiplier in the calculation of the firm's Project Rating in (a) above.

§ 19:38-3.6 Submission of Price Proposal

(a) Price Proposals will be received at the time, date, and place specified in the bid advertisement as may be modified by addendum. Price Proposals will be accepted only from firms currently prequalified with the Authority and which have submitted a Project Rating Proposal in accordance with the Instructions to Bidders and this chapter.

(b) An officer or employee of the Authority will open each bid session as near to the time specified in the advertisement as is practical. The Authority representative will announce the school facilities packages on which bids are being received during that bid session. The Authority representative will then declare the bidding closed. No bids will be accepted after the bidding has been closed.

(c) The Price Proposals will be opened and total lump sum base bid prices as well as prices for any and all alternates, if applicable, will be read.

(d) Unless otherwise directed by the Authority, each Price Proposal shall be accompanied by a bid proposal bond in an amount equal to or greater than 10 percent of the bid price. Each bid bond shall reference the package to which it applies.

1. Bid bonds shall comply with the requirements of this chapter and relevant State statutes. Bid bonds covering Authority packages shall be issued only in accordance with N.J.S.A. 2A:44-143 through 147 to the contractor and shall indicate aggregate bonding limits; by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

2. Bid bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

3. Two or more companies may underwrite the bid bond on a package if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the bid bond. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligation shall be executed by the principal and sureties jointly and severally.

(e) The Authority shall examine all the Price Proposals and all documents required to be submitted with the Price Proposals for completeness, conformity with requirements and mathematical accuracy. Adjustments will be made by the
Authority where necessary to establish the correct total bid amount. If the Authority determines that a Price Proposal received for a school facility package must be rejected as being non-responsive, it shall notify the firm in writing of the rejection of its Price Proposal as being non-responsive and the reason for the rejection within 10 business days of the receipt of Price Proposals, unless there are circumstances that require additional time.

(f) The submission of a Price Proposal is conclusive evidence that the firm has completely reviewed the bid and contract documents and fully understands and agrees to all of the requirements, terms and conditions set forth therein.

§ 19:38-3.7 Special Project Rating and Price Proposal requirements

With respect to N.J.A.C. 19:38-3.5 and 3.6, the Authority may establish appropriate and special requirements and/or waive requirements as may be necessary in order to ensure competitive bidding on any and all school facilities projects or as may be dictated by the unique and specialized nature of the work to be performed.

§ 19:38-3.8 Requirements to bid within a firm's Aggregate Rating and Project Rating

(a) A firm shall not submit a Price Proposal that exceeds its Project Rating in the trade classification required to bid the package.

(b) A firm shall not submit a Price Proposal which causes the total outstanding amount of all of its existing contracts, as defined in the Authority backlog form, both public and private, to exceed its Aggregate Rating.

(c) A firm shall include with its Price Proposal a completed Authority backlog form, which is a statement of the current value and status of its backlog of uncompleted construction work as of the Price Proposal due date and certification that the award of the subject schools facilities package will not cause the firm to exceed its Aggregate Rating.

(d) If a question arises as to whether an amount bid for a schools facilities package is within a firm's existing Project Rating or the firm's Aggregate Rating, the Price Proposal shall be opened and if the Price Proposal exceeds the firm's Project Rating or Aggregate Rating, the bid shall be rejected.

(e) A firm shall not be awarded a school facilities project that exceeds its Project Rating.

(f) A firm shall not be awarded a school facilities package which, when added to the backlog of uncompleted construction work as defined in and shown on the completed Authority's backlog form, would exceed the firm's Aggregate Rating. The backlog of uncompleted construction work shall be the total contract value of unbilled work, as evidenced by the most recent approved invoice (or other similar documentation) received by the firm before the date of the Price Proposal.

(g) If a firm successfully bids for two or more school facilities packages, which, either in combination with each other or in combination with the backlog of uncompleted construction work on other currently held contracts would exceed the firm's Aggregate Rating, the firm shall be awarded only those school facilities packages which in combination fall within the firm's Aggregate Rating as set forth in N.J.A.C. 19:38-3.9.

§ 19:38-3.9 Multiple bids

(a) A firm may submit multiple bids when the sum of the bids exceeds the firm's aggregate rating; however, a firm may not enter into any contracts in excess of its Aggregate Rating as set forth on the Authority's backlog form submitted with the Price Proposal. Upon receipt of multiple bids, the Authority, at its sole discretion, shall determine which contract or contracts are to be awarded to such firm within the firm's aggregate rating.

(b) If a bidder submits bids on two or more packages at the same bid session, that bidder must have a current Aggregate Rating greater than or equal to the combined amount of its bids, unless a reservation has been placed in each bid limiting the maximum gross amount of awards acceptable to the bidder at that particular bid letting. If such reservations are placed in the bids, the Authority will select which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved.
§ 19:38-3.10 Withdrawal or substitution of bid prior to bid opening

A firm may withdraw a bid or substitute a bid with another by submitting a letter to the Authority prior to the bid opening. The withdrawal or substitution shall include the name of the firm, the date and time of the original Project Rating Proposal and Price Proposal, the name of a principal of the firm responsible for the action, and the action to be taken.

§ 19:38-3.11 Irregular bids

(a) Bids will be considered irregular and may be rejected for failure to comply with the bid and contract documents for reasons that may include, but are not limited to, the following:

1. If the bid is on a form other than that furnished by the Authority or if the form is altered or any part thereof is detached or incomplete;
2. If the bid is not properly signed or sealed;
3. If the bid is not typed or completed in ink;
4. If there are unauthorized additions, conditions or alternate bids, or irregularities of any kind that may tend to make the bid incomplete, indefinite, or ambiguous as to its meaning;
5. If the bid contains any provisions reserving the right to accept or reject an award, or in any way submits a contingent bid to enter into a contract pursuant to any award. The prohibition does not include a reservation limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting. However, the Authority will make the selection of which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved;
6. If the bid contains any alterations to any prices or amounts that have been established by the Authority in the bid and contract documents;
7. If the Price Proposal fails to contain a price for an alternate or allowance required by the bid and contract documents;
8. If the Price Proposal is not accompanied by a bid bond as required by the bid and contract documents;
9. If the firm fails to acknowledge addenda, letters, and other notices required to be acknowledged that have been sent by the Authority or the PMF;
10. If the firm fails to name in the bid proposal identify subcontractors required to be named by the bid and contract documents;
11. If the firm submits a bid that exceeds the firm's Project Rating or its Aggregate Rating;
12. If the bidder submits a bid which exceeds its Project Rating in the trade classification to bid the package or its aggregate limit; or
13. If the Authority deems it advisable to do so in the interest of the State or the public interest.

§ 19:38-4.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern challenges to an action of the Authority in the issuance of a Project Rating, in the issuance of a bid advertisement or an issuance of proposed contract documents, or to the acceptance of a Price Proposal for school facilities packages.

(b) For purposes of this subchapter, protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.
§ 19:38-4.2 Bid protests, hearing procedures, time limitations

(a) A challenge to the following actions of the Authority shall be made as follows:

1. Project Rating: If a firm is dissatisfied with its Project Rating, the firm must submit a written protest to the Managing Director of Procurement, setting forth all arguments, materials, or other documents that may support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing.

   i. If the Project Rating Proposal is received by the Authority more than 10 days prior to the date for submission of the Price Proposal, the written request must be received by the Authority within five calendar days after the date of the notification of the firm's Project Rating.

   ii. If the Project Rating Proposal is received by the Authority less than 10 days prior to the date for the submission of the Price Proposal, but not on the same day as the submission of the Price Proposal, the written request must be received by the Authority at least three business days prior to the date for submission of the Price Proposal.

   iii. If the Project Rating Proposal is received by the Authority on the same day as the Price Proposal, the written request must be received by the Authority within five days of the receipt of both the Project Rating Proposal and the Price Proposal.

2. Bid and Contract Documents: A firm intending to submit a Price Proposal for a school facilities project and objecting to a requirement of the bid and/or contract documents must submit a written protest to the Managing Director of Procurement at least three business days prior to the opening of the Price Proposals, setting forth in detail the grounds for such protest. The protest must contain all arguments, materials, or other documents that may support the protestor's position. The Authority may disregard any protest of bid and contract documents, which is filed less than three business days prior to the scheduled Price Proposal opening or which fails to provide the specific reasons for and arguments supporting the protest.

3. Price Proposal: A firm protesting the rejection of its Price Proposal or the submission of a Price Proposal by another firm must submit a written protest to the Managing Director of Procurement setting forth the specific grounds for challenging the acceptance or rejection of the Price Proposal. The protest must contain all arguments, materials or other documents that may support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing. A firm protesting the rejection of its own Price Proposal must submit a written protest within five days of receipt of its rejection. A firm protesting the rejection of the submission of a Price Proposal by another firm must submit a written protest within five calendar days after the opening of the Price Proposals.

§ 19:38-4.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant the opportunity for an informal hearing regarding a bid protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to requesting or requiring a hearing. Alternatively, the Authority may determine that sufficient information already exists in the record so that a decision may be made without a hearing and the Authority may waive the hearing and issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within 48 hours of receipt of all documents related to said protest.

2. Informal hearings will be held, where feasible, within five calendar days of the receipt of the request. Hearings will be heard, where practicable, by an impartial hearing officer designated by the Managing Director of Procurement. The hearing officer shall issue a final written decision within 10 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of a Project Rating, the written decision will issue prior to the opening of Price Proposals for the school facilities package, which is the subject of the protest. If the decision, which is based upon a protest of the bid and contract documents, results in a modification of the bid and contract documents, such decision shall be conveyed to all potential firms by addendum.

3. In an informal hearing, the Managing Director of Procurement may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements
provided in this section. In these instances, the Managing Director of Procurement shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

§ 19:38-5.1 Contracts

(a) The Authority will send the successful firm a Notice of Award letter. The Notice of Award letter shall contain a list of the additional documents required to be submitted by the contractor with the executed contract. The Authority will specify the time within which the executed contract and required documents must be returned.

(b) Each payment and each performance bond must be in an amount at least equal to the total contract price.

1. All bonds shall comply with the requirements of this chapter and relevant State statutes. All bonds submitted by the contractor shall be issued only in accordance with N.J.S.A. 2A:44-143 through 147 to the contractor and shall indicate aggregate bonding limits.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

3. Two or more companies may underwrite the payment and performance bonds on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the bonds. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligations must be executed by the principal and sureties jointly and severally.

(c) If the contractor fails to return the executed contract and bonds and other required documents within the time specified by the Authority, the Authority may take whatever action is appropriate and authorized by law and by the contract documents, including, but not limited to, proceeding to recover under the bid bond.

(d) After execution by the Authority, a copy of the signed contract will be sent to the contractor.
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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 47 No. 4, February 17, 2015 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 38A. PROCEDURES FOR PREQUALIFICATION OF CONTRACTORS AND PROFESSIONAL SERVICES CONSULTANTS FOR THE NEW JERSEY SCHOOLS CONSTRUCTION PROGRAM


Title 19, Chapter 38A -- Chapter Notes

CHAPTER AUTHORITY:


CHAPTER SOURCE AND EFFECTIVE DATE:


See: 45 N.J.R. 1597(a); 46 N.J.R. 134(a).

CHAPTER EXPIRATION DATE:


CHAPTER HISTORICAL NOTE:

Chapter 38A, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, was adopted as new rules by R.2006 d.194, effective May 15, 2006. See: 38 N.J.R. 473(a), and 38 N.J.R. 2204(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 38A, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, was scheduled to expire on May 15, 2013. See: 43 N.J.R. 1203(a).

Chapter 38A, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, was readopted as R.2014 d.002, effective November 8, 2013. As a part of R.2014 d.002, Subchapter 4. Revocation, Suspension and Debarment, was renamed Revocation, Suspension, and Debarment, effective January 6, 2014. See: Source and Effective Date. See, also, section annotations.

Administrative correction. See: 46 N.J.R. 304(a).
§ 19:38A-1.1 Purpose, scope, and applicability

These rules are promulgated by the New Jersey Schools Development Authority (the 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 rules are promulgated to implement Sections 26, 59, 60, and 61 of the Act (N.J.S.A. 18A:7G-26 and 18A:7G-33 through 35), and N.J.S.A. 52:34-9.3. These rules shall apply to the procurement of contractors and consultants and their use of subcontractors and subconsultants on all school facilities projects and pre-development activities undertaken by the Authority and to certain categories of such firms who are engaged to provide goods and/or services to school districts which undertake their own school facilities projects and receive funding from the Authority. These rules are adopted in order to provide the mechanism whereby firms wishing to work on school facilities projects and pre-development activities may be prequalified by the Authority. Any firm which, pursuant to these rules, is required to be prequalified by the Authority in order to provide goods and/or services for school facilities projects and pre-development activities, shall, at a minimum, comply with the requirements of this chapter, as applicable.

§ 19:38A-1.2 Construction of rules

This chapter shall be liberally construed to permit the Authority to discharge its statutory functions under the Act.

§ 19:38A-1.3 Definitions

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


"Adverse action" means a debarment, a revocation of a current, valid prequalification, or the denial of a timely and complete application to renew a current, valid prequalification.

"Affiliates": Firms or persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, a common license holder, or common use of employees. It is also an indication of control if a firm is organized, activated or applies for prequalification following the debarment, suspension, or proposed debarment of another firm with the same or similar management, ownership, or key persons.

"Agency of government" means any Federal, state, regional, county, or local government agency, in this or any other state, including any department, division, commission, authority, office, branch, section, political subdivision or other governmental or quasi-governmental entity.

"Application" means the forms, certifications, and accompanying documents filed in connection with a firm's request for prequalification, including such documents as are required by or are expressly relied upon by the Authority, which are mandatory and which must be made under oath or by certification on forms designated by the Authority. The submission shall include:

1. A list of the names and titles of all individuals who own 10 percent or more of any class of stock in the corporation or are a 10 percent or more partner or participant in the firm;

2. Disclosure of any judgments, convictions or criminal indictments for any conduct constituting a crime under local, state or Federal law;

3. Disclosure of any judgments, injunctions or liens obtained by an agency of government including, but not limited to, judgments based on taxes owed and fines and penalties assessed by an agency of government.

4. Disclosure of any civil or administrative proceedings alleging violations of federal, state or local laws, rules or regulations, including health laws, unemployment insurance or workers' compensation coverage or claim requirements, wage and hour laws, labor laws, the Employee Retirement Income Security Act of 1974 (Pub.L. 93-406, 29 U.S.C. §§ 1001 et. seq.), securities laws, environmental laws, safety laws, licensing laws, tax laws and antitrust laws;
5. Disclosure of any Federal, state or local debarment, disqualification, revocation, suspension, non-responsibility finding or denial of prequalification; and

6. Any other information or documents that the Authority or OGI deems necessary from a specific applicant.

"Authority" or "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, which is statutorily charged with undertaking and funding school facilities pursuant to the Act.

"Authority-managed project" means a school facilities project or pre-development activity undertaken by the Authority. It includes projects in the Abbott districts, districts with a district aid percentage of 55 percent or more, level II districts and those districts with a district aid percentage less than of 55 percent which elect to have the Authority undertake their school facilities projects. As used in this definition, "Abbott district" means as defined in N.J.S.A. 18A:7F-3 and "level II district" means a school district which is directed by the commissioner of education to enter Level II monitoring pursuant to the provisions of N.J.S.A. 18A:7A-14.

"Bid," for Authority-managed projects, means the Project Rating Proposal and the Price Proposal.

"Burden of proof" means the obligation to meet the requirements of this chapter that a fact be proved either by a preponderance of the evidence or by clear and convincing evidence, as the case may be.

"CEO" means the Chief Executive Officer of the Authority.

"Clear and convincing evidence" means evidence or information sufficient to produce a firm belief as to the truth of the matter sought to be established.

"Contractor" means those persons or firms engaged by the school district or the Authority to undertake the construction or the acquisition and installation of the school facilities project. There may be either a single "general" contractor who has overall contractual responsibility for delivering all of the services needed to complete the school facilities project or there may be multiple contractors who have responsibility for delivering particular aspects of the school facilities project.

"Debarment" means an exclusion by the Authority from bidding, proposing, or contracting with the Authority, or with any school district for a school facilities project or predevelopment activity, or from providing goods or services on any school facilities project or predevelopment activity, for a definite period of time.

"DPMC" means the Division of Property Management and Construction in the Department of Treasury.

"DPMC Classification" means the process and product of assigning specific construction categories or trades and the maximum aggregate rating which define the eligibility of firms to engage in public work as determined by the DPMC in accordance with the DPMC rules at N.J.A.C. 17:19.

"DPMC Prequalification" means the process and product of assigning specific professional disciplines and the maximum prequalification level which define the eligibility of firms to provide professional consultant services as determined by the DPMC in accordance with the DPMC rules at N.J.A.C. 17:19-5.

"Discipline" means the technical expertise of professionals in the firm applying for prequalification.

"Firm" or "person" means any natural person, association, company, contractor, corporation, joint stock company, limited liability company, partnership, sole proprietorship, or other business entity, including their assignees, lessees, receivers or trustees.

"Initial application" means any application for prequalification other than a timely application to renew a current, valid prequalification.

"Key person" means any individual employed by the firm in a supervisory capacity or empowered to make discretionary decisions with respect to fees and/or contracts within the State. "Key person" also means any person who owns a beneficial interest of 10 percent or more in the firm, the managing members of limited liability companies and corporate officers and directors, and individuals able to bind the firm to New Jersey bids and/or contracts of $ 50,000 or more and/or authorized to sign checks to make payments of $ 50,000 or more in connection with New Jersey contracts.
"Material testing laboratory" means a laboratory engaged in the testing of samples and other materials that is engaged by the Authority or its contractor or professional services consultant for a school facilities project or pre-development activity.

"Notice of DPMC Classification" means the document(s) from the DPMC notifying the Firm of the specific construction categories or trades and of the maximum aggregate rating for which the firm may perform work, in accordance with the DPMC rules at N.J.A.C. 17:19.

"Notice of DPMC Prequalification" means the document(s) from the DPMC notifying the Firm of the specific professional disciplines and of the maximum prequalification level for which the firm may provide professional consultant services, in accordance with the DPMC rules at N.J.A.C. 17:19-5.

"Notice of Prequalification" means the letter from the Authority issuing the firm its Prequalification.

"Office" or "OGI" means the Office of Government Integrity in the Department of Law and Public Safety.

"Pre-development activities" means the activities that must be undertaken prior to submitting a school facilities project application to the Department of Education for approval and calculation of preliminary eligible costs, as defined at N.J.S.A. 18A:7G-3. Such activities may also include:

1. Site analysis;
2. Acquisition of land;
3. Environmental remediation;
4. Site development;
5. Feasibility studies, including studies to determine the viability of new Construction versus rehabilitation;
6. Design work;
7. Acquisition of and design work for temporary facilities; and
8. Such other activities as may be specified in N.J.A.C. 19:34-1.2 and 6A:26-1.2.

"Preponderance of the evidence" means evidence or information sufficient to establish that the matter sought to be proved is more probable than not. If the evidence or information is in equipoise, the burden has not been met.

"Prequalification" means the approval of a firm by the Authority enabling the firm to submit a bid for, and be awarded, a contract or to work as a subcontractor on any school facilities project or pre-development activity, or to enable a professional to submit a proposal for, and to be awarded, a professional consultant services contract or to serve as a subconsultant on any school facilities project or pre-development activity.

"Price Proposal" means that part of the bid to be submitted by the firm setting forth the firm's bid price, including any and all information and documents required by the instructions to bidders, the bid advertisement or addenda.

"Professional services consultants" or "consultants" means consultants, providing professional services associated with research, development, design and construction administration, alteration, or renovation in connection with school facilities projects or predevelopment activities or the school construction program, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. Notwithstanding anything to the contrary, "professional services consultants" for the purposes of this chapter shall mean those consultants who provide "professional architectural, engineering or land surveying services" within the meaning of N.J.S.A. 52:34-9.2, and shall also include project management firms, which are firms engaged by the Authority to provide overall construction management services, oversight, direction, coordination, and reporting in connection with school facilities projects.

"Project Rating Proposal" means that part of the bid to be submitted by the firm for issuance by the Authority of the project rating.

"Proposal" means the technical proposal, or fee proposal, or both, as the case may be, submitted by a consultant in response to a request for proposals.
"Request for proposals" means the request for technical proposals and/or fee proposals issued by the Authority in connection with the selection of a professional services consultant or contractor for a school facilities project, pre-development activity, or other type of engagement for the school construction program, as the case may be.

"School contract" means, with respect to the Authority, a contract entered into between the Authority and a contractor or professional services consultant; and with respect to a school district, a contract entered into between the school district and a contractor or professional services consultant.

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or 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 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.

"School facility" means and includes any structure, building or facility used wholly or in part for academic purposes by a school district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration.

"Subconsultant" means a consultant to whom the consultant subcontracts part of the work for which the consultant is responsible.

"Subcontractor" means the contractor to whom a contractor subcontracts part of the work for which the contractor is responsible.

"Suspension" means an exclusion by the Authority from bidding, proposing, or contracting with the Authority, or with any school district for a school facilities project or predevelopment activity, or from providing goods or services on any school facilities project or predevelopment activity, for a period of time, pending the completion of an investigation, legal proceedings, or administrative proceedings.

§ 19:38A-2.1 Requirement to be prequalified

(a) For Authority-managed projects, a contractor or professional services consultant that desires to submit bids or proposals for school contracts is required to be prequalified by the Authority pursuant to this chapter. A contractor must be SDA prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Classification as of the due date for the submission of the Project Rating Proposal. A professional services consultant must be SDA prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Prequalification, by the time specified in N.J.A.C. 19:38C for the appropriate category of contract.

(b) For Authority-managed projects, all subcontractors required to be named in the bid, whether pursuant to N.J.S.A. 52:18A-243, the advertisement for the specific contract, or the contract documents, are required to be SDA prequalified pursuant to these regulations, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC classification, prior to the submission of the Price Proposal. All subconsultants required to be named in the proposal are required to be SDA prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC prequalification, by the time specified in the request for proposals.

(c) For Authority-managed projects, in addition to the requirements of (a) and (b) above:

1. All subcontractors of any tier in the trades listed in this paragraph, engaged in subcontractors valued at $500,000 or more, whether required to be named in the bid or not, are required to be prequalified by the Authority pursuant to this chapter. Such subcontractors must be SDA prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Classification, prior to performing the work. These subcontractor trades are:

   i. Construction Manager as Constructor;
   ii. Design Build;
   iii. General Construction;
   iv. General Construction/Alterations and Additions;
v. Concrete/Foundation/Footings/Masonry work;
v. Demolition;
vi. Structural Steel and Ornamental Iron;
viii. Plumbing;
ix. Heating, Ventilation and Air Conditioning;
x. Sprinkler Systems;
xi. Electrical;
xii. Roofing-Membrane EPDM;
xiii. Roofing-Membrane PVC/CPE/CSPE;
xiv. Roofing-Membrane Modified Bitumen;
xv. Roofing-Urethane;
xvi. Roofing-Built Up;
xvii. Roofing-Metal;
xviii. Roofing-Tile/Slate/Shingles;
xix. Asbestos Removal/Treatment;
x.x. Asbestos Removal/Mechanical; and
xx. Lead Paint Abatement; and

2. All subconsultants of any tier in the disciplines listed in this paragraph, engaged in subcontracts valued at $500,000 or more, whether required to be named in the proposal or not, are required to be prequalified by the Authority pursuant to this chapter. Such subconsultants must be SDA prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Prequalification, prior to performing the work. These subconsultant disciplines are:

   i. Architecture:
   ii. Engineering (electrical, HVAC, plumbing, civil, structural and environmental);
   iii. Land Surveying;
   iv. Asbestos Safety Control Monitoring;
   v. Materials Testing Laboratories; and
   vi. Construction Management.

   (d) For school facilities projects undertaken by a school district and funded under N.J.S.A. 18A:7G-15, a contractor or construction management firm that wishes to be able to submit bids or proposals for school contracts above the bid threshold specified in N.J.S.A. 18A:18A-3 is required to be prequalified by the Authority pursuant to this chapter. A contractor or construction management firm must be prequalified prior to the submission of its bid or proposal. Subcontractors in the trades specified in N.J.S.A. 18A:18A-18 must be prequalified prior to entering into the subcontract.

   (e) For the following types of projects, the prequalification requirements shall be the same as for Authority-managed projects:

   1. Community early childhood educational projects undertaken by the community provider pursuant to an agreement under N.J.S.A. 18A:7G-5s;
   2. Demonstration projects undertaken pursuant to N.J.S.A. 18A:7G-6;
   3. School facilities projects undertaken by a school district pursuant to an agreement under N.J.S.A. 18A:7G-13a; and
4. Projects to acquire, construct, or renovate temporary facilities undertaken pursuant to a funding agreement with the Authority.

(f) Neither the Authority nor any school district receiving funds pursuant to the Act shall contract for school facilities projects or pre-development activities with any contractor, professional services consultant, or construction management firm required to be prequalified by this chapter, unless that firm has been prequalified by the Authority. No contractor, professional services consultant, or construction management firm contracted for a schools facilities project or pre-development activity shall use on the project any subcontractor or subconsultant required to be prequalified by this chapter, unless that firm has been prequalified by the Authority at the time specified in this chapter. Any failure to comply with this chapter shall entitle the Authority to terminate or suspend its contract with the contractor, professional services consultant, or construction management firm or to terminate its payment of contract-related funds to the school district.

(g) If two or more firms which are individually DPMC classified or prequalified propose to form a joint venture for a school contract, each firm comprising the joint venture must be individually SDA prequalified in accordance with this chapter.

§ 19:38A-3.1 Prequalification application

(a) A firm seeking initial prequalification with the Authority must apply to DPMC and obtain a contractor DPMC Classification or consultant DPMC Prequalification. Upon securing a DPMC Classification or Prequalification, the firm shall submit an application to the Authority. See N.J.S.A. 18A:7G-34.

(b) A firm seeking to renew an existing SDA prequalification must file a timely and complete renewal application. A renewal application will be considered timely if it is received by SDA no later than 10 business days after the expiration date of the existing SDA prequalification. A renewal applicant must apply to DPMC and obtain a contractor DPMC Classification or consultant DPMC Prequalification. Because the DPMC and SDA expiration dates generally coincide, a renewal applicant may submit its SDA renewal application including either:

1. A copy of its renewed Notice of DPMC Classification or Prequalification, if available; or if not available,

2. A certification on a form developed by the Authority, that the applicant firm has filed with DPMC to renew its DPMC Classification or Prequalification. A firm which files a renewal application before receiving its Notice of DPMC Classification or Prequalification must provide a copy of the DPMC Notice to SDA, within five business days of receiving it. If the firm's DPMC application is denied or otherwise closed without being granted, the firm must notify SDA within five business days of its being advised of DPMC's action. A renewal applicant will have a maximum of 60 days from the date its renewal application is received by SDA to provide SDA with a copy of its renewed Notice of DPMC Classification or Prequalification. If the renewal applicant does not file a copy of its renewed Notice of DPMC Classification or Prequalification within that time, the renewal application may be administratively closed.

(c) An application will be reviewed initially to determine if the application is complete. Incomplete applications may be administratively closed with no further action by the Authority.

(d) The OGI shall review each complete application for the purpose of determining the responsibility of the firm, including the character, honesty and integrity of any key person, any person required to be listed in the application or otherwise shown to have a beneficial interest in the firm.

(e) The OGI as part of its review may request additional information from the firm. A failure by the firm to provide the information within the time specified by the OGI may result in the application being deemed incomplete and administratively closed with no further action.

(f) Upon an initial application, the firm has the burden of demonstrating a satisfactory record of responsibility by a preponderance of the evidence. The determination shall be made based on the firm's completed application and any other information requested or obtained by the Authority or the OGI. The OGI shall submit its recommendation regarding prequalification of the firm to the Authority.

§ 19:38A-3.2 Notice of Prequalification determination
(a) Upon a determination by the Authority that the firm should be prequalified, the Authority shall send to the firm a Notice of Prequalification. The Authority will post a listing of prequalified firms on the Authority's website.

(b) A firm will be notified in writing if its application is administratively closed.

(c) If prequalification is denied, the firm will be notified in writing of the reasons for the denial. Any firm protesting the denial of an initial application for prequalification shall provide information in writing to the Authority, to explain why it should be granted prequalification. The firm shall submit written information to the Corporation within 30 calendar days of receiving the notice of denial, unless a longer time is agreed to by the Authority. The Authority's decision on the protest shall be embodied in a written decision provided to the firm, which shall constitute final agency action by the Authority.

(d) A firm whose initial prequalification application has been denied may not participate in a school facilities project or pre-development activity in any capacity as to which prequalification is required. The firm may reapply for prequalification upon curing the deficiency which led to the denial of prequalification.

(e) Prequalification approval for any firm is non-transferable and shall be valid only for a fixed length of time, which shall coincide with the firm's DPMC Classification or Prequalification, but may not exceed two years.

(f) Throughout the term of prequalification, a firm shall notify the Authority and the OGI in writing of any material change in the information on its application, within 10 business days of when such change occurs.

(g) Any prequalification approved by the Authority under interim procedures in place prior to May 15, 2006 shall remain valid until the expiration date assigned at the time that prequalification was approved.

§ 19:38A-4.1 Grounds for revocation of prequalification or denial of a renewal application

(a) The Authority has the burden of proof in revoking a current, valid prequalification, and in denying a timely, complete application to renew a current, valid prequalification.

(b) Any prequalification may be revoked or a renewal may be denied by the Authority for any of the following causes:

1. Fraud, deceit, or misrepresentation in securing prequalification, failure to supply information, or the supplying of information which is untrue or misleading, as to a material fact pertaining to the responsibility of the firm, any key person, or any person required to be listed in the application;

2. Lack of responsibility, integrity, reliability, expertise, competency, or lack of any required license or permit, to engage in contracting or professional consultant services by the firm or any key person;

3. Conviction of the firm, any key person, or any person required to be listed in the application, of any of the following crimes under the laws of New Jersey or the equivalent thereof under the laws of any other jurisdiction:

   i. Murder, kidnapping, robbery, criminal usury, arson, burglary, any crime of the third degree or above specified in Chapters 14, 20 or 21 of Title 2C of the New Jersey Statutes, any offense specified in Chapters 27, 28 or 30 of Title 2C of the New Jersey Statutes, racketeering, violation of the criminal provisions of the New Jersey Antitrust Act, P.L. 1970, c. 73 (N.J.S.A. 56:9-1 et seq.), any purposeful or knowing violation of the criminal provisions of any environmental protection law, any criminal violation or disorderly persons offense under the Act, any offense showing lack of business integrity or honesty, or an attempt or conspiracy to commit any of the violations listed above; or

   ii. Any other offense, attempt or conspiracy to commit any offense under any state or Federal law which indicates that prequalification of the firm would be inimical to the policy of the Act, the integrity of school facilities projects, or the public interest.

   iii. The provisions of this paragraph shall not apply with regard to any conviction which occurred more than 10 years before the application, or to any conviction which has been addressed by a judicial order of expungement or a pardon; however, the Authority may consider the conduct underlying the criminal conviction;

4. The commission by the firm, key person or any person who is required to be listed in the application of any act or acts which would constitute any offense enumerated in (b)3 above, even if such conduct has not been or may not be prosecuted under the criminal laws of this State or any other jurisdiction or has been prosecuted under the criminal laws
of this State or any other jurisdiction and such prosecution has been terminated in a manner other than with a conviction;

5. Identification of the firm, any key person, any person required to be listed in the application, or any other person shown to have a beneficial interest in the business of the firm, as a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel, where such identification, membership or association creates a reasonable belief that the participation of that person in any activity financed under the Act would be inimical to the policies of the Act or the public interest. For the purposes of this paragraph, "career offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and a "career offender cartel" means any group of persons who operate together as career offenders;

6. Failure of the firm, a key person or any person who is required to be listed on the application to cooperate or comply with orders issued by any legislative investigatory body or other official investigatory body of any state or its subdivisions or of the United States when such body is engaged in the investigation of crimes or misconduct relating to public works contracting, official corruption, corrupt practices or organized crime activity;

7. Violations of any of the laws governing the conduct of elections of the State of New Jersey or of its political subdivisions;

8. Violations of the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.,) or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the "Act prohibiting discrimination by industries engaged in defense work in the employment of persons therein" (N.J.S.A. 10:1-10 et seq.);

9. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

10. Violations of any laws governing the licensing or conduct of occupations or professions or regulated industries, or violation of contractual or statutory provisions regulating contingent fees;

11. Willful failure to perform in accordance with contract specifications or within contractual time limits;

12. Failure to perform or less than satisfactory performance in accordance with the terms of one or more contracts, provided that such failure or less than satisfactory performance has occurred within a reasonable time preceding the application;

13. Debarment, disqualification, revocation or suspension of the firm's right to bid or contract by an agency of government, if based on a cause equivalent to one set forth in this subchapter;

14. Offering, conferring, or agreeing to confer any benefit to induce the Authority, a school district, or any person either to perform or violate an official duty, or to violate the provisions of these regulations or of any law related to or implicating integrity or any rule or regulation adopted pursuant thereto; or

15. Any other cause of such serious and compelling nature that the granting of prequalification would be inconsistent with the policies of the Act or the public interest.

(c) The rendering of a final judgment, including by a guilty plea or plea of nolo contendere, by a court of competent jurisdiction or by an administrative agency empowered to render such judgment, shall be sufficient but not required to establish the existence of the criteria set forth in (b)7, 8, 9, and 10 above.

(d) If a firm, key person, or person required to be listed in the application has been convicted of a crime which may be grounds for denial of a renewal application or revocation of prequalification, the Authority may consider any of the following actions taken or proposed by the firm in determining whether to deny renewal of, or revoke, prequalification:

1. Changes in the firm's organizational structure to reduce the opportunity and motivation of individual employees to engage in illegal activity, including procedures for informing employees of the requirements of relevant state and Federal law;

2. Changes in the firms long and short term planning to ensure that the firm implements procedures and policies to prevent future violations of the law;

3. Changes in the firm's legal, accounting, or other internal or external control and monitoring procedures to discourage or prevent future violations of state or Federal law;
4. Changes in the firm's ownership, control, personnel, and personnel selection practices and the implementation of a reward or disincentive system in order to encourage employees to comply with relevant state and Federal law;

5. Agreement by the firm to permit monitoring by or on behalf of the Authority for a specific length of time of any changes in the firm's policy, procedure, or structure to insure the continued responsibility and integrity of the firm, the cost of such monitoring to be borne by the firm; or

6. Any other actions taken by the firm which demonstrate the firm's current responsibility and integrity.

§ 19:38A-4.2 Effect of revocation of prequalification or denial of a renewal application

A firm whose renewal prequalification application has been denied, or whose prequalification has been revoked, may not participate in a school facilities project or predevelopment activity in any capacity as to which prequalification is required; provided, however, that in its sole discretion, the Authority or school district, as appropriate, may permit the firm to complete some or all of its existing school contracts when doing so is in the public interest. The firm may reapply for prequalification upon curing the deficiency which led to the denial or revocation of prequalification.

§ 19:38A-4.3 Grounds for suspension

In the public interest, the Authority may suspend a firm for any cause specified in N.J.A.C. 19:38A-4.1, or upon reasonable suspicion that such cause exists.

§ 19:38A-4.4 Conditions for suspension

(a) The conditions for the suspension of a firm shall include the following:

1. Suspension shall be imposed only upon approval of the CEO and the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the CEO and the Attorney General and shall be rendered in the best interest of the State.

3. Suspension shall not be based upon unsupported accusation, but upon reasonable suspicion that cause exists.

4. In assessing whether reasonable suspicion exists, consideration shall be given to the credible information provided to or obtained by the Office, to the existence or absence of corroboration as to important allegations, and to inferences that may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 19:38A-4.1(b) may be established by the rendering of a final judgment or judgment of conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment or by other information that such causes did in fact occur.

6. A suspension invoked by another agency of government for a cause equivalent to one described in N.J.A.C. 19:38A-4.1(b) may be the basis for the imposition of a concurrent suspension by the Authority, which may impose such suspension when found to be in the best interest of the State.

7. Suspension may include all known affiliates of a firm, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

§ 19:38A-4.5 Procedures, period of suspension, and scope of suspension

(a) The Authority may suspend a firm, provided that at least 10 days before the effective date of the suspension, the Authority provides such firm with a written notice:

1. Stating that a suspension has been imposed and stating its effective date;
2. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;

3. Stating that the suspension is for a temporary period pending the completion of an investigation and any legal proceedings that may ensue; and

4. Indicating that, if such legal proceedings are not commenced, or the suspension removed within 60 days of the date of such notice, the firm or the individual will be given either a statement of the reasons for the suspension and an opportunity for a hearing, or a statement declining to give such reasons which sets forth the Authority's position regarding the continuation of the suspension. Where the Authority suspends a firm based on a suspension by any other agency of government, the Authority shall identify same as a reason for the suspension.

(b) A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation has been initiated within that period, or unless debarment action has been commenced. When prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

§ 19:38A-4.6 Grounds for debarment

(a) A firm or person may be debarred for any of the causes listed in N.J.A.C. 19:38A-4.1.

(b) The Authority shall have the burden of proof by clear and convincing evidence in any debarment action. The rendering of a final judgment, including by a guilty plea or plea of nolo contendere, by a court of competent jurisdiction or by an administrative agency empowered to render such judgment, shall be sufficient but not required to establish the existence of the causes set forth in N.J.A.C. 19:38A-4.1(b)7, 8, 9, and 10.

(c) The existence of any of the causes listed in N.J.A.C. 19:38A-4.1 shall not necessarily require that a firm or person be debarred. In each instance, the decision to debar shall be made within the discretion of the Authority unless otherwise required by law and shall be rendered in the best interests of the State.

(d) All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance, and in deciding whether to debar.

(e) If a firm, key person, or person required to be listed in the application has been convicted of a crime which may be grounds for debarment, the Authority may consider any of the actions listed in N.J.A.C. 19:38A-4.1(d), which are taken or proposed by the firm, in determining whether to debar.

§ 19:38A-4.7 Effect of debarment or suspension

(a) Any firm which has been debarred or suspended is precluded during the period of debarment or suspension from bidding on, proposing on, or entering any contract or subcontract for a school facilities project or pre-development activity managed or funded by the Authority, and from providing any goods or services on any school facilities project or pre-development activity managed or funded by the Authority; provided, however, that in its sole discretion, the Authority or school district, as appropriate, may permit the firm to complete some or all of its existing school contracts when doing so is in the public interest.

(b) Debarment shall be for a reasonable, definitely stated period of time, which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the firm is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed.

(c) Debarment may include all known affiliates of a firm, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(d) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced at the discretion of the Authority upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material
evidence; reversal of a conviction or judgment; actual change of ownership, management, or control; or the elimination of the causes for which the debarment was imposed.

§ 19:38A-4.8 Notice of adverse action

When the Authority determines to deny a timely and complete renewal application, revoke prequalification, or debar, it shall serve written notice upon the subjects of the adverse action, clearly stating the causes for the adverse action.

§ 19:38A-4.9 Appeal process

(a) Any firm or person which is the subject of an adverse action, and which desires to appeal the Authority's determination, must transmit a written request to the Authority within seven calendar days of receipt of the notice of adverse action.

(b) If the adverse action is based upon an agency of government's prior similar action, the Authority may also impose a similar adverse action without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar adverse action to that party, and affords that party an opportunity to present information in its behalf to explain why the proposed similar adverse action should not be imposed in whole or in part.

(c) If the adverse action determination is based upon a criminal, civil or administrative judgment, the criminal, civil, or administrative judgment shall be proof of any fact essential to sustain it. The validity of the judgment may not be challenged on appeal.

(d) Upon timely appeal, a hearing shall be afforded in the following circumstances:

1. When a firm or person is proposed for debarment;
2. When a current, valid prequalification is revoked; or
3. When a timely and complete application to renew a current, valid prequalification is denied.

(e) Hearings under (d) above shall be conducted by the Office of Administrative Law in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A final decision in such matters shall be made by the Board of Directors of the Authority.

(f) Nothing contained in this chapter shall be construed to limit the authority of the Authority to refrain from contracting within the discretion allowed by law.
Title 19, Chapter 38B -- Chapter Notes

CHAPTER AUTHORITY:


CHAPTER SOURCE AND EFFECTIVE DATE:


See: 45 N.J.R. 112(a), 45 N.J.R. 2263(b).

CHAPTER EXPIRATION DATE:


CHAPTER HISTORICAL NOTE:


Chapter 38B, Procedures for Price and Other Factors Procurement of Construction Contracts for New School Facilities Projects, was adopted as new rules by R.2013 d.116, effective October 7, 2013. See: Source and Effective Date.

§ 19:38B-1.1 Purpose and applicability of rules

(a) This chapter is designed to implement the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.) (the "Act"), by establishing procedures for the procurement of contractors to permit the Authority to carry out its broad statutory mandate to plan, design and construct school facilities projects and effectively administer the Authority's schools construction program. Specifically, these rules are intended to implement the provisions of N.J.S.A. 52:18A-243, which authorizes the procurement of contractors through the consideration of "price and other factors."

(b) These rules provide for the Authority to award construction contracts based on the selection of a bidder whose bid proposal, conforming to the invitation to bids, is determined to be "most advantageous" to the SDA, based upon a
combination of cost and qualitative factors, with consideration given to price at least equal to the consideration given to all other factors combined, pursuant to the Authority's originating statute at N.J.S.A. 52:18A-243. The rules provide for a selection process that includes:

1. The public advertisement of a request for proposals (RFP) that describes the school facilities project, outlines the scope of work for the project, outlines the criteria to be used for selection and the weight that will be given to each of these criteria in the evaluation process;

2. The submission of Project Rating Proposals and the issuance of a Project Rating by the Authority; and

3. The submission of responses to the RFP which include the price proposal and the technical submittal.

(c) These rules further provide for a selection committee, comprised of representatives of the Authority and the SDA school district, to provide technical review and evaluation services, including the evaluation and scoring of technical submittals submitted in response to an RFP.

(d) Notwithstanding any provision of N.J.A.C. 19:38 to the contrary, these rules are intended to apply to the Authority's procurement of school facilities construction contracts with a construction cost estimated to exceed $5,000,000 and may be applied to other contracts at the option of the Authority. These rules are not required to be applied to the Authority's procurement of construction contracts for "emergent projects." Such "emergent projects" and addition and renovation contracts may continue to be procured pursuant to the Authority's procedures described in N.J.A.C. 19:38.

§ 19:38B-1.2 Definitions

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


"Aggregate rating" means the limit of the outstanding dollar value of all contracts, public and private, which a firm may perform at a given time as assigned by the New Jersey Schools Development Authority's Notice of Prequalification in effect at the time of the contractor's bid which shall be identical to that which is assigned by the New Jersey Department of the Treasury, Division of Property Management and Construction. Should the Division of Property Management and Construction modify a firm's aggregate rating after the Authority has issued a Notice of Prequalification, the aggregate rating issued by the Authority is considered modified to be identical to that of the Division of Property Management and Construction.

"Authority" or "SDA" means the New Jersey Schools Development Authority, an entity formed pursuant to P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation. The Authority is statutorily charged with undertaking and funding school facilities projects pursuant to the Act.

"Best value selection" means a selection process in which consideration is given to both a price proposal and a technical proposal, and the award of the contract is based upon a combination of price and qualitative considerations.

"Bid" means the technical proposal and the price proposal.

"Bidder" or "firm" means a contractor that submits a response to a request for proposals for a construction procurement under this chapter.

"Board" means the governing body of the Authority, consisting of the members of the Authority as outlined in N.J.S.A. 52:18A-237.

"Construction documents" means the plans, specifications and other documents which set forth in detail the design for, and other necessary requirements relating to, the construction of the school facilities project.

"Construction manager" or "CM" means the person or firm engaged by the Authority to act as the Authority's representative for the school facilities project and to provide construction management services, in connection with construction of the project.
"Contract" means the written, integrated agreement between the Authority and the contractor setting forth the obligations of the parties, including, but not limited to, the performance of work and the basis of payment. The contract includes the construction documents.

"Contract milestones" means the dates identified in the contract by which the contractor must complete certain critical activities to advance the project.

"DCA" means the New Jersey Department of Community Affairs.

"Emergent project" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students and staff, as defined by N.J.A.C. 6A:26-1.2.

"Key team member" means an individual identified by a bidder in the response to the RFP and made part of the contract as having a responsible role in the successful completion of the school facilities project.

"New Jersey Workers' Compensation Insurance Experience Modification Rate" or "EMR" means the adjustment factor calculated by the New Jersey Compensation Rating and Inspection Bureau (NJCRIB) for each individual employer based upon the record of payrolls expended and losses incurred during a three-year experience period. It provides a method of comparing the injury record of an individual employer with the standard performance of an average employer of the same size and industry type. The EMR is used by insurers for pricing of the employer's workers' compensation insurance and adjusts the premium so as to reward or penalize the employer for the relative success of his efforts to control the frequency and severity of work injuries.

"Notice of Award" means a notice from the Authority to the bidder issued prior to award, setting forth the Authority's intention to enter into a contract with the bidder.

"Notice of Prequalification" means the letter from the Authority notifying a firm that it has secured Authority prequalification for the applicable period.

"Prequalification" means the Authority's approval of a firm to bid on Authority projects, pursuant to N.J.A.C. 19:38A.

"Project Rating" or "Project Rating Limit" means the maximum amount a firm may bid on any individual school facilities package based upon the information contained within a firm's Project Rating Proposal.

"Project Rating Proposal" means that part of the bidder's submittal in response to the RFP that provides the information to allow the Authority to calculate a Project Rating for the bidder.

"Protest" means a challenge to a decision, statement, action or omission of the Authority.

"Ranking" means the process of listing responsive bidders in order of highest to lowest total scores, based upon selection criteria set forth in the RFP.

"Request for proposals" or "RFP" means the document issued by the Authority that describes the procurement process and forms the basis for the technical submittals.

"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 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 school district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39 (N.J.S.A. 18A:7G-3).

"Selection committee" means the group(s) responsible for review and evaluation of bidders' submissions in response to an RFP in connection with a procurement of a contractor for a school facilities project.
"Selection coordinator" means the administrator of the operations and procedures of the selection process, whose activities shall include, but are not limited to, scheduling of meetings, preparing agendas, recording scores, verifying submittal information, preparing minutes of selection committee meetings, and other similar administrative duties.

"Small business enterprise" or "SBE" means a firm that is registered as a "small business" with the New Jersey Department of the Treasury, Division of Minority and Women Business Development pursuant to N.J.A.C. 17:14-3.1.

"Specification" means a written description included as part of the construction documents setting forth the detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or work to be incorporated into the school facilities project, or a requirement of the work to be performed. A specification may include a statement of any of the Authority's requirements and may provide for inspection, testing or the preparation of a construction item before procurement. Specifications shall augment and complement the drawings and plans prepared by the Authority's design consultant.

"Submittal" means the response to a request for proposals, and may include the technical submittal or price proposals, as indicated in the text.

"Substantial completion" means that point in time in the progress of the school facilities project when certain conditions specified by the contract have occurred, including, but not limited to, the issuance of a temporary certificate of occupancy, the creation of a punch list, and the determination that the school facilities project is ready for occupancy in accordance with its intended use.

"Technical submittal" means that portion of a response to a request for proposals which documents the bidder's submission of information to address evaluation factors other than price.

"Weighted criteria process" means a form of best value selection in which a percentage of evaluation weight is pre-established for qualitative factors and for price, and the award of a contract is based upon the highest total points earned by a bidder.

"Work" means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies, and other incidentals to be furnished, provided, or performed by a contractor as required by the contract documents, including all efforts necessary and appropriate to complete the construction, as described in and reasonably inferable from the construction documents and the contract.

§ 19:38B-2.1 Prequalification requirements

(a) Only those firms holding a valid Notice of Prequalification shall be eligible to submit a Project Rating Proposal and response to an RFP under this chapter. In order to be eligible, the firm's prequalification must be valid on the due date for the submission of the Project Rating Proposal, and on the due date for the submission of technical submittals and price proposals.

(b) The Authority may establish appropriate and special prequalification requirements as may be necessary in order to ensure competitive technical submittals and price proposals, or as may be dictated by the unique or specialized nature of the work to be performed under the agreement.

§ 19:38B-2.2 Advertising

(a) Advertising shall be performed in accordance with N.J.S.A. 52:18A-243(h). In addition, such advertising may also be placed:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. By written notice to New Jersey trade groups or professional societies; or
3. By use of direct mailings to contractors.

(b) Any advertisement shall be made in the form and in the time required to promote competition and shall describe any specific information that a bidder must submit by the date and time specified in the advertisement. The advertise-
ment shall include or describe the evaluation criteria, other than price, that shall be applied in the selection process for determining the winning bidder.

§ 19:38B-2.3 Rejection of submittals; cancellation of procurement or award

(a) Submittals received after the submission date and time prescribed in the advertisement and RFP shall be rejected.

(b) The Authority may reject any submittal for any reason, in accordance with law, when it is otherwise deemed to be in the public interest to do so. The Authority may reject all submittals and cancel a procurement for excessive cost, insufficient competition, insufficient funds, or any other reason, in accordance with law, that it deems to be in the public interest.

(c) The Authority may cancel a Notice of Award at any time prior to execution of an agreement by the Authority, if the Authority deems it advisable to do so in the interest of the State or the public interest.

§ 19:38B-2.4 Validity and execution of agreement

No agreement is valid or binding on the Authority unless and until it is executed by an appropriately authorized representative of the Authority.

§ 19:38B-2.5 Termination

All agreements executed pursuant to this chapter shall provide for, among other things, termination for the convenience of the Authority and for cause.

§ 19:38B-2.6 Disclosure and publicity

(a) Any and all submissions made in response to an RFP are subject to the provisions of the Open Public Records Act, P.L. 2001, c. 404, N.J.S.A. 47:1A-1 et seq., and the exceptions from disclosure provided therein.

(b) Contractors shall notify the Authority prior to the issuance of press releases and other public dissemination of information concerning a school facilities project, and such shall acknowledge Authority financing and assistance in the undertaking of the school facilities project.

§ 19:38B-2.7 Access and record retention

(a) The contractor shall keep and maintain, and shall require all subcontracted parties to keep and maintain, those records and accounts for school facilities project activities as necessary in order to evidence compliance with the Act and all applicable regulations and contractual requirements. Such records shall be retained by the contractor for 10 years following substantial completion of a school facilities project, and any additional period required for the resolution of litigation, claims or audit findings, and shall thereafter be transferred to the Authority, unless the Authority, in its sole discretion, requests an earlier transfer of such records from the contractor to the Authority or another designated entity. At any time, upon request of the Authority, the contractor shall make records relating to the project available to the Authority, within four business days of the request for documents, and at no cost to the Authority.

(b) In the event that any litigation, claim, audit or request pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., relating to the procurement or the performance of work under the agreement is commenced prior to expiration or termination of the agreement, all records relating to the procurement and the contract shall be retained until all litigation, claims, audit findings, document requests, and related appeals, if any, have been resolved with finality.

(c) The contractor shall provide the State Comptroller and the State Auditor all records and accounts pertaining to school facilities projects to aid the State Comptroller and the State Auditor in their investigations, examinations and
inspections of the activities related to the financing and construction of school facilities projects. The contractor shall cooperate, upon request, in sharing information with other state or Federal entities.

§ 19:38B-2.8 Fraudulent statements

Any firm or individual who makes, or causes to be made, a false, deceptive, or fraudulent statement in its submittal in response to the RFP or in its Project Rating Proposal or in the course of any hearing under this chapter may be disqualified from bidding, suspended and/or debarred and may be subject to prosecution pursuant to applicable law.

§ 19:38B-2.9 Deletion or substitution of key team members

(a) No substitutions or deletions of key team members may be made during the selection process or after award of the contract, without prior written approval from the Authority.

(b) Unauthorized changes to a bidder's key team members who were specifically identified in the response to the RFP at any time during the selection process may result in the elimination of the bidder from further consideration.

§ 19:38B-3.1 Initiation

A procurement under this chapter shall be initiated by the public advertisement of a request for proposals (RFP). The advertisement shall specify the dates for submission of responses to the RFP, including the submission of a Project Rating Proposal which shall precede the date for submission of technical submittals in response to the RFP.

§ 19:38B-3.2 Submission of Project Rating Proposal

(a) A firm must submit a Project Rating Proposal and receive a Project Rating from the Authority in order to submit a technical submittal in response to an RFP under this chapter.

(b) The Project Rating Proposal shall be delivered by the firm to the Authority at the hour, date and place specified in the bid advertisement as may be modified by addendum. Project Rating Proposals will be accepted only from firms currently prequalified with the Authority in accordance with N.J.A.C. 19:38A. A firm may not submit a Project Rating Proposal prior to the effective date of the firm's prequalification.

(c) The Authority shall examine the Project Rating Proposal and all documents required to be submitted with the Project Rating Proposal for completeness and conformity with bidding requirements. If the Authority determines that a Project Rating Proposal received for a school facility package must be rejected as nonresponsive, it shall notify the firm in writing of the rejection of its Project Rating Proposal and the reason for the rejection within 10 business days of the receipt of the Project Rating Proposal unless there are circumstances that require additional time.

§ 19:38B-3.3 Prior Project Rating

If, in the prior 24-month period, a firm has been assigned a Project Rating, the firm may so indicate on the signed Project Rating Proposal submitted for each project and may request that the Authority apply the prior Project Rating to the current bid, provided that the firm certifies that there has been no change regarding safety, prevailing wage record, or its Authority Project Evaluation Record since the prior Project Rating was assigned.

§ 19:38B-3.4 Calculation of the Project Rating

(a) Firms shall supply the information required for the calculation of a Project Rating in the trade for which the firm is seeking a Project Rating. The Project Rating shall be based on the following factors:
1. A check of references supplied by the firm on projects completed by the firm in the past seven years. This includes information regarding the firm's performance on other school facilities projects;
2. Information regarding the firm's safety record;
3. Information regarding the firm's prevailing wage record; and
4. Other information deemed relevant by the Authority.

§ 19:38B-3.5 Determination of Project Rating

(a) A firm's Project Rating for a particular trade shall be determined in accordance with the following formula:

\[ A \times (100\% + B + C + D) \]

where:

- \( A \) = the firm's largest completed project in a specific trade listed in the Project Rating Proposal;
- \( B \) = the sum of the Reference Adjustment calculated pursuant to this chapter;
- \( C \) = the Safety Adjustment calculated pursuant to this chapter; and
- \( D \) = the Prevailing Wage Adjustment calculated pursuant to this chapter.

(b) The Project Rating assigned for procurements under this chapter shall not include consideration of the firm's prior Authority Project Evaluations, or calculation of a Performance Evaluation Multiplier.

(c) A firm's Project Rating for a trade cannot exceed the firm's Aggregate Rating and cannot exceed 170 percent of the firm's largest listed completed project.

§ 19:38B-3.6 Reference adjustment calculation

(a) A firm will be required to list in its Project Rating Proposal a minimum of two projects completed within the past seven years. The firm shall also provide project contacts for those projects. The Authority shall select, at its discretion, two projects to be confirmed and shall contact the owner's contact identified by the firm. If the Authority cannot contact an owner's contact, the Authority will contact the firm so that the firm may identify another owner's contact for that project. If the firm is unable to provide an additional owner's contact, or if the Authority is unable to contact the additional owner's contact provided by the firm, the Authority will not use that project in the determination of the firm's Project Rating.

(b) The Authority will confirm the firm's performance on each project referenced and assign a percentage value to the responses received. Project contacts will be asked if the performance in each of the following seven categories "exceeded expectations," "met expectations," or fell "below expectations" and the Authority will assign to the response the percentage adjustment listed below:

<table>
<thead>
<tr>
<th>EXPECTATIONS</th>
<th>Exceeded Expectations</th>
<th>Met Expectations</th>
<th>Below Expectations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety</td>
<td>+5 percent</td>
<td>+3 percent</td>
<td>-5 percent</td>
</tr>
<tr>
<td>Quality of the construction.</td>
<td>+5 percent</td>
<td>+2 percent</td>
<td>-5 percent</td>
</tr>
<tr>
<td>Timeliness of the work performed.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Efficiency of the firm's contract administration.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Supervision of subcontractors.</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
<tr>
<td>Firm's level of cooperation during</td>
<td>+2 percent</td>
<td>+1 percent</td>
<td>-2 percent</td>
</tr>
</tbody>
</table>
construction.
Timeliness and +2 percent +1 percent -2 percent
efficiency of punch list work corrections.

1. If an owner's contact rates a firm "below expectations" in either safety or quality of construction, or if the project reference adjustment is -5 or lower, the Authority will not use that project in the determination of the firm's Project Rating.

2. The Authority will total the project reference adjustments together and the sum shall be the reference adjustment. This reference adjustment shall be used as "B" in the calculation of the firm's Project Rating in *N.J.A.C. 19:38B-3.5*.

§ 19:38B-3.7 Safety adjustment calculation

(a) Bidders shall provide mandatory safety information as follows:

1. The firm will be required to list its most recent New Jersey Workers Compensation Insurance Experience Modification Rate (NJEMR) on its Project Rating Proposal. For any firm that has not performed work in New Jersey prior to the submission of this Project Rating Proposal, or for which the NJEMR has not been calculated, the firm will be required to submit its most recent Experience Modification Rate (EMR) for all other states for which it has performed work. The Authority will then calculate the average of the other states' EMRs. Where appropriate, the firm's NJEMR or its average EMR as calculated by the Authority will be assigned a percentage value as listed below:

<table>
<thead>
<tr>
<th>EMR Range</th>
<th>Percentage Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>EMR is less than or equal to .80</td>
<td>+30 percent</td>
</tr>
<tr>
<td>EMR is greater than .80 but less than or equal to .90</td>
<td>+20 percent</td>
</tr>
<tr>
<td>EMR is greater than .90 but less than or equal to 1.00</td>
<td>+10 percent</td>
</tr>
<tr>
<td>EMR is greater than 1.00 but less than or equal to 1.10</td>
<td>-10 percent</td>
</tr>
<tr>
<td>EMR is greater than 1.10 but less than or equal to 1.20</td>
<td>-20 percent</td>
</tr>
<tr>
<td>EMR is greater than 1.20</td>
<td>-40 percent</td>
</tr>
</tbody>
</table>

2. The firm shall be required to list safety information in its Project Rating Proposal. The safety information supplied will be assigned a percentage value as listed below:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee of the firm completed an OSHA 500 or OSHA 502 course in last four years.</td>
<td>+2 percent</td>
<td>0 percent</td>
</tr>
<tr>
<td>Employee of the firm completed Council on Certification of Health, Environmental and Safety Technologists (CCHEST) &quot;Safety Trained Supervisor in Construction&quot; course.</td>
<td>+2 percent</td>
<td>0 percent</td>
</tr>
<tr>
<td>Employee of the firm completed Associated General Contractors of America (AGCA) &quot;Safety Management Training Course.&quot;</td>
<td>+2 percent</td>
<td>0 percent</td>
</tr>
</tbody>
</table>

The percentage value for the EMR and the percentage value for the safety information shall be added together and this total shall be the safety adjustment. The safety adjustment shall be used as "C" in the calculation of the firm's Project Rating in *N.J.A.C. 19:38B-3.5*.

§ 19:38B-3.8 Prevailing wage adjustment calculation
(a) The firm will be required to list in its Project Rating Proposal its prevailing wage violations issued by the New Jersey Department of Labor and Workforce Development for the previous five years.

(b) The Authority will calculate a prevailing wage adjustment by applying the following percentage values in accordance with whether the firm has been adjudicated as having committed one or more prevailing wage rate violations during the past five years:

<table>
<thead>
<tr>
<th>Number of Violations</th>
<th>Percentage Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>0 percent</td>
</tr>
<tr>
<td>One</td>
<td>-10 percent</td>
</tr>
<tr>
<td>More than one</td>
<td>-20 percent</td>
</tr>
</tbody>
</table>

This percentage value shall be the prevailing wage adjustment. The prevailing wage adjustment shall be used as "D" in the calculation of the firm's Project Rating in N.J.A.C. 19:38B-3.5.

§ 19:38B-4.1 Request for proposals

(a) The RFP shall include, but shall not be limited to:

1. A general description of the school facilities project;
2. The scope of work;
3. The minimum qualification requirements for bidders, including, but not limited to, the appropriate classifications and aggregate rating limits assigned by the New Jersey Department of the Treasury, Division of Property Management and Construction;
4. The plans and specifications for the project;
5. Technical submittal and price proposal forms;
6. The form of contract;
7. The instructions and requirements for preparing a response to the RFP;
8. The criteria for evaluation of submittals and price proposals and the relative weight of each criterion;
9. Budget limits for the project;
10. Requirements for bid bonds, performance bonds, payment bonds and insurance;
11. Schedule requirements in the form of major contract milestones to be achieved; and
12. The documents required to be submitted upon the notice of award, pursuant to (b) below.

(b) The RFP shall require the initial submission of a Project Rating Proposal, followed by the concurrent submission of a technical submittal and a separate price proposal. The technical submittal and price proposal shall be evaluated separately, in accordance with the evaluation factors and process set forth in the RFP.

(c) The RFP shall specify the date, place, and time for the submission of the Project Rating Proposal, the technical submittal, and price proposal to the Authority.

(d) The Authority may provide for a pre-proposal conference at which bidders may ask questions and seek clarification of the information, data or documents contained within the RFP. The RFP will provide the date, time, and location for all conferences, and shall indicate if the conference is mandatory for all bidders.

(e) Site visits and interviews may be scheduled as part of the evaluation process. The RFP shall indicate if a site visit and/or interview is mandatory.

(f) A bidder's submission of a technical submittal and price proposal evidences the bidder's complete review of the RFP and all associated documents and full understanding of, and agreement with, all of the requirements, terms, and conditions set forth therein.
§ 19:38B-4.2 RFP evaluation criteria

(a) The RFP phase of the procurement process may include, without limitation, consideration of the following factors, in addition to the consideration of price:

1. The bidder's experience on identified projects of similar size, scope and complexity;
2. The experience of the bidder's key team members on projects of similar size, scope and complexity;
3. The bidder's prior performance on projects for the Authority, as evidenced by performance evaluations as specified in the RFP;
4. The bidder's concurrent commitment of staff and resources to other projects, and the bidder's ability to fulfill the contract as affected by the commitment of staff and resources to another contract with the Authority, or to contracts with any other public or private entity;
5. The prior affirmative action experience of the prospective bidder;
6. Consideration of the bidder's aggregate rating from the Department of the Treasury, Division of Property Management and Construction, which is affected by prior affirmative action experience;
7. Consideration of the bidder's staffing capabilities, such as the bidder's plan for staffing the project (distinguishing between self-performed and subcontracted work), including recruitment methods and proposed sources of supply for skilled labor;
8. The bidder's history and experience with respect to conformance to project schedules on similar projects, including timely completion of punch list items;
9. The bidder's project safety record including Occupational Safety and Health Administration (OSHA) violations and/or penalties;
10. The bidder's history of or experience with assertion of claims or requests for adjustment of compensation on similar projects, and the results of such claims or requests;
11. The bidder's history of cure notices on projects of similar size or complexity;
12. The bidder's experience with payment of, or liability for, liquidated damages on projects of similar size and complexity;
13. The bidder's history with respect to timely payment of subcontractors; and
14. Any other pertinent information necessary to establish the qualifications of the prospective bidder to undertake the contract.

§ 19:38B-5.1 Selection coordinator

Prior to the advertisement of the RFP, the Authority will select a member of staff to serve as selection coordinator for the procurement, who shall be responsible for scheduling of meetings, preparing agendas, recording scores, verifying submittal information, preparing minutes of selection committee meetings, and other similar administrative duties.

§ 19:38B-5.2 Composition and responsibilities of selection committee

(a) Prior to the receipt of responses to the RFP, the Authority shall establish a selection committee to review and evaluate submissions received in response to a procurement under this chapter. Each member of a selection committee shall have the relevant experience as set forth in N.J.S.A. 52:34-10.3(c), necessary to evaluate the submissions.

(b) The members of the selection committee shall consist of a majority of Authority representatives and, if the SDA school district in which the school facilities project is located elects to participate in the selection process, a representative of the SDA school district, pursuant to N.J.S.A. 52:18A-243g.
(c) Each member of the selection committee shall be responsible for evaluating and scoring the technical submittals in accordance with the weighted criteria process set forth in the RFP.

(d) Once the responses are received and the identity of the bidders is ascertained, the members of the selection committee will be notified of the identity of all firms that submitted a bid. Each member of the selection committee, prior to the evaluation of any submission, shall execute a certification that he or she has no personal interest, financial or familial, in any of the bidders to be evaluated, or the principals, subsidiaries or parent companies thereof. Furthermore, should any of the selection committee members indicate that a conflict or personal interest exists once the identity of the bidders is revealed, that member shall not serve on the selection committee and may be replaced.

(e) The names of the members of the selection committee shall be made public once the contract is awarded, pursuant to N.J.S.A. 52:34-10.3(c).

§ 19:38B-5.3 Evaluation of additional materials or additional considerations

(a) In addition to the selection committee's review of written responses to the RFP, the selection evaluation process may include:

1. Evaluation of bidders' participation in interviews; and

2. Evaluation of any other components of the evaluation process determined, in the sole discretion of the Authority, to be appropriate.

(b) The Authority shall examine all submittals for completeness and conformity with the requirements of the RFP. If the Authority determines that a submittal must be rejected as non-responsive, it shall notify the bidder in writing of the rejection of its submittal and the reason for the rejection within 10 business days of receipt of the submittal, unless there are circumstances that require additional time.

(c) The members of the selection committee shall individually and independently evaluate each bidder's technical submittal, and performance and participation in interviews and other specified elements of the technical submission. Each member of the selection committee shall assign scores to the submittals, in accordance with the evaluation criteria and relative weights specified for each criterion, as set forth in the RFP. The members of the selection committee shall then submit their scores for each technical submittal to the selection coordinator.

(d) The selection coordinator shall compile the evaluation scores of the committee members for the technical submittals in accordance with the procedures outlined in the RFP.

§ 19:38B-6.1 Submission of price proposal

(a) The price proposal shall be submitted with the technical submittal in a separate sealed envelope and shall document the bidder's price for construction of the school facilities project, in accordance with the requirements of the RFP. The envelope shall indicate clearly that it is the price proposal and shall identify the bidder's name, project number, and any other information required by the RFP. The price proposals shall remain sealed throughout the technical submittal evaluation process until the time for opening of price proposals as indicated in the RFP, and as modified by addendum.

(b) Each price proposal shall be accompanied by an Uncompleted Contracts Form, executed by the bidder, which is a statement of the current value and status of the bidder's backlog of uncompleted construction work as of the price proposal due date, and which includes a certification that, if the bidder is awarded the contract for the construction of the schools facility project that is the subject of the procurement, the award will not cause the bidder to exceed its aggregate rating. The backlog of uncompleted construction work shall be the total contract value of unbilled work, as evidenced by the most recent approved invoice (or other similar documentation) received by the firm before the date of the submission of the price proposal. A bidder shall not submit a price proposal that causes the total outstanding amount of all of its existing contracts, both public and private as described in the Uncompleted Contracts Form, to exceed its aggregate rating. A bidder shall not be awarded a school facilities package which, when added to the backlog of uncompleted construction work as defined in and shown on the executed Authority backlog form, would exceed the bidder's aggregate rating. Nor may a bidder submit, or the Authority award a contract based on, a price proposal that names a subcontractor whose aggregate rating would exceed the subcontractor's aggregate rating, if the subcontractor's contract
for the school facilities package at issue were added to the subcontractor's existing backlog of uncompleted work. The same bidder may submit multiple bids to the Authority for several procurements, meaning bids for consideration on separate projects being procured concurrently, when the sum of the outstanding bids exceeds the firm's aggregate rating; however, a firm may not enter into any contracts in excess of its aggregate rating as set forth on the Authority's Uncompleted Contracts Form submitted with the price proposal. Upon receipt of multiple bids from a bidder, the Authority, at its sole discretion, shall determine which contract or contracts are to be awarded to such firm within the firm's aggregate rating. If a firm successfully bids for two or more school facilities packages, which, either in combination with each other or in combination with the bidder's backlog of uncompleted construction work on other currently held contracts, would exceed the bidder's aggregate rating, the firm shall be awarded only those school facilities packages which in combination fall within the firm's aggregate rating as set forth in N.J.A.C. 19:38-3.9.

(c) Each price proposal shall be accompanied by a bid bond in the form and amount specified in the RFP. Bid bonds shall comply with the requirements of this chapter and with relevant State statutes.

1. Each bid bond shall reference the procurement package to which it applies.

2. Bid bonds covering Authority procurement packages shall be issued only in accordance with N.J.S.A. 2A:44-143 through 147.

3. Bid bonds shall be issued to the contractor, and shall indicate aggregate bonding limits.

4. Bid bonds shall be issued by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

5. Bid bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

§ 19:38B-6.2 Evaluation of price proposal and selection of awardee

(a) Prior to the advertisement of the RFP, the Authority shall establish the maximum point score for the lowest responsive price proposal. All other price proposals greater than the lowest responsive price proposal will be assigned scores based upon the percentage that the proposal exceeds the lowest responsive price proposal.

(b) The price proposals shall be opened and examined for completeness and conformity with the requirements of the RFP. The bidder shall show all bid amounts in both words and figures. In the event of a discrepancy between the words and figures, the amount shown in words shall govern. A price proposal deemed non-responsive will be rejected and the bidder will be notified in writing of the rejection within five business days of the opening of price proposals, unless there are circumstances that require additional time.

1. Where unit prices are requested, in the event of a discrepancy between the unit price bid for any scheduled bid item and the extension shown for that item under the column of the Price Proposal Form designated "Bid Amount," the unit price is to govern. Where a unit price is bid, but no extension is provided, the SDA will provide the extension based on the unit price bid and the estimated quantity for the bid item.

2. Where an extension is provided in the "Bid Amount" column, but no unit price appears in the "Unit Price" column of the Price Proposal Form, the SDA will provide the unit price by dividing their "Bid Amount" figure provided by the bidder by the estimated quantity.

(c) The selection coordinator shall assign the maximum price points to the lowest responsive total dollar proposal. All other responsive proposals shall be scored based upon the percentage that each proposal exceeds the lowest proposal.

(d) The selection coordinator shall determine the combined scores for each bidder based on their technical and price proposals, with consideration of price at least equal to the consideration given to all other factors. The bidder with the highest overall score shall be recommended to the Board of the Authority for an award. All recommendations for award are subject to the approval of the Board. Following Board approval, the Authority will issue a written notice of award to the successful bidder.

§ 19:38B-6.3 Withdrawal of price proposal
A bidder may withdraw a price proposal or substitute a price proposal with another by submitting a letter to the Authority prior to the deadline for submission of price proposals. The withdrawal or substitution shall include the bidder's name, the date and time of the submission of the original price proposal, the name of a principal of the firm responsible for the withdrawal or substitution, and the requested action to be taken.

§ 19:38B-7.1 Contract approval and execution

(a) Upon approval of a recommendation for award by the Board, the Authority shall issue a Notice of Award letter to the bidder. The Notice of Award is not binding on the Authority until the Authority has executed the contract, and the Notice of Award does not authorize the commencement of work under the contract. No person shall perform any work in furtherance of the contract unless and until the Authority executes the contract and issues a Notice to Proceed.

(b) The Notice of Award letter shall contain a list of the additional documents required to be submitted by the bidder with the executed contract, including the requirements for payment and performance bonds. The Notice of Award will specify the time within which the bidder must submit to the Authority the executed contract and other documents required by the Notice of Award. Within the time period specified in the Notice of Award, the bidder shall properly and duly execute the contract and deliver to the Authority the executed contract, as well as performance and payment bonds and all other documents required by the RFP or the Notice of Award letter.

(c) Each payment and each performance bond must be in an amount at least equal to the total contract price.

1. All bonds shall comply with the requirements of this chapter and relevant State statutes. All bonds submitted by the bidder shall be issued only to the bidder, and shall conform to the provisions of N.J.S.A. 2A:44-143 through 147 and shall indicate aggregate bonding limits.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

(d) If the bidder fails to return the required documents within the time specified by the Authority, the Authority may take whatever action is appropriate and authorized by law including, but not limited to, withdrawing or cancelling the notice of award to the delinquent bidder and awarding the contract to the next-higher ranked bidder, cancelling the procurement or proceeding to recover under the bid bond submitted.

(e) Upon the successful contractor's submission of any required documentation or materials as specified in the notice of award, and the Authority's acceptance of such documents, the Authority will execute the agreement and provide the successful contractor with a fully-executed agreement.

§ 19:38B-8.1 Applicability and effect

(a) Notwithstanding any provisions of N.J.A.C. 19:38 to the contrary, the following provisions will apply to the process and consideration of performance evaluations for contracts procured under this chapter.

1. Every contractor awarded a construction contract procured pursuant to this chapter will be subject to evaluation in accordance with N.J.S.A. 18A:7G-36. The performance evaluation will consider the contractor's performance in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out.

2. The contractor's performance will be evaluated periodically during the progress of the project. The evaluation will be performed by a reviewer with direct involvement in the management or supervision for the project.

3. The contractor's performance evaluations will be used by the Authority in evaluating and scoring bidders as to their prior experience on Authority projects, in accordance with the provisions of this chapter or N.J.A.C. 19:38.

§ 19:38B-8.2 Evaluation rating values

(a) Notwithstanding any provisions of N.J.A.C. 19:38 to the contrary, contractors shall be evaluated with respect to the various evaluation categories using the following evaluation ratings:
1. Outstanding (O) or 100 percent--far exceeds the contract requirements by consistently exhibiting excellent performance. Always meets, and almost always exceeds the contract requirements;

2. Very Good (VG) or 90 percent--often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;

3. Satisfactory (S) or 80 percent--provides an acceptable level of performance consistently meeting the contract requirements;

4. Marginal (M) or 70 percent--performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and

5. Unsatisfactory (U) or 60 percent--fails to meet important contract requirements, resulting in a negative impact on the entire project.

(b) The numerical scores in (a) above may be subject to special adjustment factors for certain categories deemed by the Authority to be particularly critical to contractor performance. The numerical ratings for each category shall be tabulated to arrive at an overall numerical evaluation score for each performance evaluation.

§ 19:38B-8.3 Consideration of performance evaluations

(a) For contracts procured pursuant to the provisions of N.J.A.C. 19:38, performance evaluations shall be considered in accordance with that chapter.

(b) For contracts procured pursuant to this chapter, the process for evaluating a contractor's prior performance on Authority projects in a selection process shall be specified in the RFP. Such process may consist of:

1. A mathematical tabulation and averaging of the scores of all prior performance evaluations within a relevant time period;

2. Consideration of particularly favorable or unfavorable evaluations individually and with reference to other evaluations;

3. Consideration of multiple evaluations over the course of a given project, to show consistency of performance, deterioration of performance or efforts at improvement and recovery; or

4. A combination of the methodologies in (b)1 through 3 above.

§ 19:38B-9.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern protests of the Authority's decisions with respect to procurements under this chapter, including challenges to the form of the RFP, the evaluation and scoring of bidders' technical proposals, and the award of contracts.

(b) For purposes of this subchapter, protests of the type described in (a) above are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

§ 19:38B-9.2 Protests, hearing procedures, and time limitations

(a) A challenge to the following actions of the Authority shall be made as follows:

1. Project Rating limit: A bidder that has submitted or that intends to submit a Project Rating Proposal, and that objects to the Project Rating process or documents, must submit a written protest to the Authority, setting forth in detail the grounds for such protest, within five business days of receipt of notification of the Authority's assignment of a Project Rating or notification of rejection of the bidder's Project Rating Proposal. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after
notification of assignment of the Project Rating or notification of rejection of the Project Rating Proposal, or that fails to provide the specific reasons for and arguments supporting the protest.

2. RFP process or documents: A bidder that has submitted or that intends to submit proposals in response to the RFP, and that objects to the RFP process or documents, must submit a written protest to the Authority at least three business days prior to the opening of the technical proposals, setting forth in detail the grounds for such protest. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than three business days prior to the scheduled opening of technical proposals, or that fails to provide the specific reasons for and arguments supporting the protest.

3. Technical and price proposal scoring: A bidder protesting the scoring of its technical and/or price proposals, or those of another bidder, must submit a written protest to the Authority setting forth the specific grounds for challenging such scorings. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and must indicate whether the protestor requests an informal hearing. The protest must be submitted in writing, within five business days of the public advertisement of the bidders' scores. The Authority may deny any such protest that is filed more than five business days after the public advertisement of the bidder's scores, or that fails to provide the specific reasons for and arguments supporting the protest.

4. Performance evaluation: A contractor that is dissatisfied with its performance evaluation on an Authority project may request an informal hearing before the Authority by submitting to the Authority a written protest setting forth the specific grounds for such protest, within 15 calendar days after the date of receipt of written notification of the performance evaluation. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than 15 calendar days after the contractor's receipt of written notification of the performance evaluation, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

§ 19:38B-9.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant the opportunity for an informal hearing regarding a protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion whether to hold an informal hearing. Alternatively, the Authority may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the Authority may waive the hearing and issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within five business days of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time period is required. For all protests of the RFP processes and documents, the written decision will issue prior to the opening of statements of qualification or proposals, respectively. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed to all eligible bidders by addendum.

3. In an informal hearing, the Authority may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements provided in this section. In these instances, the Authority shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his or her designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, as applicable.
5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq. Upon filing of the initial pleading in a contested case, the Board of the Authority may by resolution either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
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TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 38C. PROCUREMENT OF ARCHITECTS, ENGINEERS, LAND SURVEYORS, AND OTHER PROFESSIONAL SERVICES CONSULTANTS


Title 19, Chapter 38C -- Chapter Notes

CHAPTER AUTHORITY:

(related authority).

CHAPTER SOURCE AND EFFECTIVE DATE:


See: 43 N.J.R. 3153(a), 44 N.J.R. 1551(a).

CHAPTER EXPIRATION DATE:

Chapter 38C, Procurement of Architects, Engineers, Land Surveyors, and Other Professional Services Consultants, expires on April 4, 2019.

CHAPTER HISTORICAL NOTE:

Chapter 38C, Procurement of Architectural, Engineering, Land Surveying, and Related Professional Consultant Services, was adopted as R.2005 d.60, effective February 7, 2005. See: 36 N.J.R. 4087(a), 37 N.J.R. 516(b).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from February 7, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Chapter 38C, Procurement of Architectural, Engineering, Land Surveying, and Related Professional Consultant Services, was readopted as R.2012 d.085, effective April 4, 2012. As a part of R.2012 d.085, Chapter 38C was renamed Procurement of Architects, Engineers, Land Surveyors, and Other Professional Services Consultants; Subchapter 3, Selection Procedures--Category One Contracts, was renamed Selection Procedures--Agreements not Exceeding the State Bid Threshold Pursuant to N.J.S.A. 52-34-7b; Subchapter 4, Selection Procedures--Category Two Contracts, was repealed; Subchapter 5, Selection Procedures--Category Three Contracts, was renamed Selection Procedures--Agreements Exceeding the State Bid Threshold, as Adjusted, Pursuant to N.J.S.A. 52-34-7b; Subchapter 6, Selection Procedures--Category Four Contracts, was renamed Waiver of Advertising; Subchapter 7, Selection Procedures--Category Five Contracts, was renamed Selection Procedures--Term Agreements; and Subchapter 8, Engagement
Title Insurance Companies, Subchapter 9, Engagement of Appraisers, Subchapter 10, Engagement of Experts and Subchapter 11, Protests and Hearing Procedures, were adopted as new rules, effective May 7, 2012. See: Source and Effective Date. See, also, section annotations.

§ 19:38C-1.1 Purpose and scope of rules

This chapter is designed to implement the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended, and P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., by establishing procedures for the procurement of professional consulting services, so that the Authority may carry out its broad statutory mandate to plan, design and construct school facilities projects and effectively administer the Authority's schools construction program. This chapter is also designed to implement the provisions of P.L. 1997, c. 399, N.J.S.A. 52:34-9.1 et seq., which govern procedures generally applicable to the Authority's award of contracts for professional architectural, engineering, and land surveying services.

§ 19:38C-1.2 Definitions

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


"Agreement" means the written agreement between the Authority and the architectural, engineering, land surveying, or other professional services consultant for the provision of services.

"Appraiser" means a firm that provides an unbiased analysis, opinion, or conclusion on the value of real property.

"Authority" or "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 Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.

"Board" means the governing body of the Authority, consisting of the members of the Authority as outlined in N.J.S.A. 52:18A-237.

"Commissioner" means the Commissioner of the Department of Education.

"Compensation" means the payment(s) due to the professional services consultant for services rendered.

"Corporation" or "SCC" means the New Jersey Schools Construction Corporation, the entity formed pursuant to N.J.S.A. 34:1B-159 and the predecessor to the Authority, which was abolished by P.L. 2007, c. 137.

"Department" means the New Jersey Department of Education.

"Emergent project" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff, as defined by N.J.A.C. 6A:26-1.2.

"Expert" means an individual or firm with a high degree of skill or knowledge in a specific subject engaged or to be engaged by the Authority for purposes of litigation support, including, but not limited to, testimony as an expert witness.

"Fee proposal" means the proposal submitted by the professional services consultant in the form and manner provided for in the request for qualifications or request for proposals, which specifies the fees proposed for the provision of services.

"Key team member" means a principal, partner, or officer of the professional services consultant, project executive, senior principal, studio head, project manager, project architect, construction administrator, job captain, or any other
title required in the request for qualifications or request for proposals, and represented in a proposal as having a responsible role in the successful completion of services required in the agreement.

"Moral integrity review" means an investigation, performed by the Authority or members of the New Jersey State Police or other investigative body on behalf of the Authority, of a firm that seeks to enter an agreement with the Authority.

"NJEDA" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c. 80, N.J.S.A. 34:1B-1 et seq., as amended, or any successor thereto.

"Notice of award" means a written notice issued to a professional services consultant by the Authority indicating that the professional services consultant has been selected to perform certain services pursuant to an Authority procurement process and that upon the Authority's receipt of certain required documentation, the Authority intends to enter an agreement with the professional services consultant for the performance of those services.

"Other facilities" means those facilities that are not school facilities projects as defined by the Act, namely, athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, facilities used for non-instructional or non-educational purposes, and any structure, building, or facility used solely for school administration.

"Pre-construction activities" means the work that must be undertaken prior to submitting a school facilities project application to the Department for approval and calculation of preliminary eligible costs. Such activities may include:

1. Site analysis;
2. Acquisition of land;
3. Remediation;
4. Site development;
5. Feasibility studies including studies to determine the viability of new construction versus rehabilitation;
6. Design work;
7. Acquisition of and design work for temporary facilities; and
8. Such other activities as may be specified in N.J.S.A. 18A:7G-5 or N.J.A.C. 19:34-1.2 or 6A:26-1.2.

"Pre-qualified" or "pre-qualification" means the approval of a professional services consultant by the Authority pursuant to N.J.A.C. 19:38A.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in section 7 of P.L. 2000, c. 72, N.J.S.A. 18A:7G-7 or as otherwise provided pursuant to section 5 of P.L. 2000, c. 72, N.J.S.A. 18A:7G-5 and which shall be deemed to include the costs of construction and other allowable costs.

"Professional services consultant" or "consultant" means the architect, engineer, land surveyor, or other individual or professional firm providing services related to its respective occupation, which require unique professional or technical skills, licenses, or other credentials, associated with research, development, design, construction, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. The professional services consultant may provide services including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, appraisals, planning, programming, conceptual designs, plans, and specifications, cost estimates, construction management, inspections, submittal reviews, testing, commissioning, provision of title insurance, preparation of operating and maintenance manuals, and other related services, and shall include those consultants who provide "professional architectural, engineering, or land surveying services" within the meaning of N.J.S.A. 52:34-9.2.

"Proposal" means the response submitted by a professional services consultant with respect to a request for qualifications or a request for proposals.

"Protest" means a challenge to a decision, statement, action, or alleged inaction of the Authority.
"Ranking" means the process of listing responsive professional services consultants in order of highest to lowest total scores, based upon selection criteria set forth in the RFQ and/or RFP.

"Request for proposals" or "RFP" means a request for technical proposals and/or fee proposals for the selection of a professional services consultant.

"Request for qualifications" or "RFQ" means a written request issued by the Authority seeking submissions from professional services consultants, including statements of qualifications, experience, and/or organizational information, as well as any additional information deemed necessary by the Authority, in connection with the selection of a professional services consultant for a school facilities project, pre-construction activity, or other type of engagement for the school construction program.

"School construction program" means the program of school facilities projects and related activities undertaken by the Authority pursuant to the Act.

"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 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.

"School facility" means and includes any structure, building or facility used wholly or in part for educational purposes by a district, and facilities that support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, but shall exclude other facilities as elsewhere defined in this section.

"SDA school district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39, N.J.S.A. 18A:7G-3.

"Selection committee" means the group(s) responsible for review and evaluation of professional services consultants' responses to RFQs and/or RFPs in connection with a procurement of one or more professional services consultants for an engagement with the Authority when the compensation for the engagement is anticipated to exceed the State bid advertisement threshold pursuant to N.J.S.A. 52:18A-243.

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

"Services" means the duties and responsibilities to be performed by the professional services consultant pursuant to the agreement, and includes all other labor, materials, and equipment provided or to be provided to fulfill such obligations.

"Small business enterprise" or "SBE" means a firm that is registered as a "small business" with the New Jersey Department of the Treasury, Division of Minority and Women Business Development pursuant to N.J.A.C. 17:14-3.1.

"Task order" means a contractual document, containing a scope of work, negotiated costs, and schedule, which the Authority issues to a professional services consultant, pursuant to a term agreement.

"Term agreement" means an agreement whereby the Authority may engage a professional services consultant for a defined period of time.

"Title insurance" means a policy issued by a title insurance company insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title of the subject property and includes searches relating to the title of the subject property.

"Title insurance company" means a title insurance company duly authorized to transact the business of issuing title insurance in the State of New Jersey.
§ 19:38C-2.1 Scope

This subchapter addresses the manner in which SDA shall engage a professional services consultant; provides for the methodologies; identifies the qualitative factors used in evaluating proposals; and provides the process for the rejection of proposals and the approval, execution, and termination of agreements.

§ 19:38C-2.2 Pre-qualification requirement

(a) A professional services consultant seeking to be engaged by the Authority must be pre-qualified by the Authority at the time of submission of a response to an RFQ and/or an RFP, if pre-qualification is required by N.J.A.C. 19:38A, except if otherwise expressly provided in this chapter.

(b) The Authority shall establish pre-qualification requirements as may be necessary in order to ensure competitive proposals, or as may be dictated by the unique or specialized nature of the services to be performed under the agreement.

(c) All professional services consultants that seek to be engaged by the Authority are subject to a moral integrity review, even where Authority pre-qualification is not required. If the results of the moral integrity review are negative or unsatisfactory in that they indicate any circumstance that would justify a revocation of pre-qualification under N.J.A.C. 19:38A-4.1, the Authority shall reject the professional services consultant's proposal pursuant to N.J.A.C. 19:38C-2.6.

§ 19:38C-2.3 Selection procedures based on type of engagement

The Authority may establish different procedures, as set forth in this chapter, for the selection of professional services consultants based on the type of professional services consultant to be engaged or the contract value.

§ 19:38C-2.4 Advertising

(a) The Authority shall advertise for all procurements in accordance with N.J.S.A. 52:18A-243(h). In addition, such advertising may also be placed:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. By written notice to New Jersey professional societies; or
3. By use of direct mailings to consultants.

(b) Any advertisement shall be made in the form and in the time required to promote competition and shall describe any specific information that an interested professional services consultant must submit, as well as the date and time of the deadline for submissions.

(c) The advertisement shall specify the evaluation criteria that shall apply to the proposals.

§ 19:38C-2.5 Evaluation

(a) The ranking of professional services consultants shall be performed pursuant to evaluation criteria established by the Authority for each particular engagement, and by the weights established for such criteria. In selecting the most highly qualified professional services consultants, the selection committee shall consider the criteria and relative weights of such criteria, as set forth in the RFP and/or RFQ.

(b) The Authority may require the submission of proposals, requests for clarifying technical and/or organizational information, interviews, site visits, and pre-proposal conferences; however, all such requirements will be set forth in the RFP and/or RFQ.
(c) Nothing in this chapter shall be construed to limit the Authority's ability to obtain services pursuant to an SBE set-aside procurement under *N.J.A.C. 19:39.*

§ 19:38C-2.6 Rejection of proposals; cancellation of procurement or award

(a) Proposals received after the submission date and time prescribed in the RFQ and/or RFP shall be rejected.

(b) The Authority may reject any proposal for any reason, in accordance with law, when it is otherwise deemed to be in the public interest to do so. The Authority may reject all proposals and cancel a procurement, for excessive cost, insufficient competition, or any other reason, in accordance with law, that it deems to be in the public interest.

(c) The Authority may cancel an award at any time before the execution of an agreement by all parties.

§ 19:38C-2.7 Approval and execution of agreement

No agreement is valid or binding on the Authority unless and until it is executed by the Authority.

§ 19:38C-2.8 Termination

All agreements executed pursuant to this chapter shall provide for, among other things, termination for the convenience of the Authority and for cause.

§ 19:38C-2.9 Disclosure and publicity

(a) Any and all submissions made in response to an RFQ and/or an RFP are subject to the provisions of the Open Public Records Act, *N.J.S.A. 47:1A-1* et seq., including the exceptions from disclosure provided therein.

(b) Consultants shall notify the Authority prior to the issuance of press releases and other public dissemination of information concerning a school facilities project and such shall acknowledge Authority financing and assistance in the undertaking of the school facilities project.

§ 19:38C-2.10 Performance evaluation

(a) The Authority shall have the right to consider the performance of a professional services consultant as a factor in the ranking of the consultant when evaluating proposals.

(b) Performance evaluations may include, but are not limited to, the following factors:

1. Quality of work;
2. Scheduling;
3. Management;
4. Cost control/amendments;
5. Subconsultants;
6. Close out; and
7. Any other factors affecting a consultant's performance.

§ 19:38C-3.1 Scope
This subchapter sets forth the procedural requirements applicable to the procurement of agreements for professional services consultants where such agreements specify compensation not exceeding the State bid advertisement threshold of $36,000, as adjusted, pursuant to N.J.S.A. 52:34-7b, except for those procurements in which the Authority, at its sole option, determines to apply the procedures of N.J.A.C. 19:38C-5. This subchapter shall not apply to the procurement of appraisers or title insurance companies.

§ 19:38C-3.2 Solicitation

In accordance with N.J.S.A. 52:34-7, the Authority shall not be required to advertise the procurement of agreements for professional services consultants where such agreements provide for compensation below the State bid threshold. The Authority reserves the right to waive any prequalification requirements for a procurement pursuant to this subchapter.

§ 19:38C-3.3 Evaluation

Proposals shall be evaluated based on fees and/or the evaluation criteria appropriate for the particular procurement. The Authority may request clarifying technical and/or organizational information from any professional services consultant prior to finalizing the evaluation.

HISTORY:

Amended by R.2012 d.085, effective May 7, 2012.

See: 43 N.J.R. 3153(a), 44 N.J.R. 1551(a).

Substituted "fees and/or" for "price and", "Authority" for "Corporation", and "professional services consultant" for "entity submitting a proposal".

§ 19:38C-3.4 Selection

The Authority shall select the proposal that is in the best interest of the school construction program, based on fees and/or the evaluation criteria established for the selection.

Title 19, Chapter 38C, Subchapter 4. (Reserved)

§ 19:38C-5.1 Scope and applicability

This subchapter sets forth the procurement procedures that shall apply to agreements for professional services consultants with compensation exceeding the amount set forth in N.J.S.A. 52:34-7b. At the option of the Authority, the procedures specified in this subchapter may apply to an engagement with compensation below the amount set forth in N.J.S.A. 52:34-7b. This subchapter shall not apply to the procurement of appraisers or title insurance companies.

§ 19:38C-5.2 Initiation

The procurement of a professional services consultant shall be initiated by the public advertisement of a request for qualifications, a request for proposals, or both, except in circumstances where a waiver of advertising is permitted under N.J.A.C. 19:38C-6.
§ 19:38C-5.3 Selection committee

(a) Prior to the receipt of proposals, the Authority shall establish a selection committee or committees to review and evaluate the proposals. Each member of the selection committee shall have the relevant experience necessary to evaluate the proposals. Each member of a selection committee shall be responsible for independently evaluating and scoring the proposals.

(b) Once the responses are received and the identity of the vendors is ascertained and communicated to the members of the selection committee, each member of the selection committee, prior to the evaluation of any proposal, shall execute a certification that he or she has no personal interest, financial or familial, in any of the vendors to be evaluated, or the principals, subsidiaries, or parent companies thereof. Furthermore, should any of the selection committee members indicate that a conflict or personal interest exists once the identity of the vendors is revealed, that member shall not serve on the selection committee and may be replaced.

(c) The names of the members of the selection committee shall be made public once the contract is awarded, pursuant to N.J.S.A. 52:34-10.3(c).

§ 19:38C-5.4 Selection evaluation criteria

(a) The selection evaluation criteria may include the following: the firm's experience on projects of a similar size and nature; project team experience; past project performance; project approach; understanding of project needs and project schedule; and budget and cost estimating. Selection evaluation criteria may also include any other criteria as determined to be appropriate in the sole discretion of the Authority.

(b) The selection evaluation criteria and the specific weight assigned to each criterion for each professional services consultant procurement shall be established by the Authority prior to advertisement and the criteria and weights shall be incorporated into the RFQ and/or RFP for the procurement.

(c) When the procurement is for professional services consultants other than architects, engineers, and/or land surveyors, the Authority may provide that a fee proposal shall be one of the qualitative factors upon which professional services consultants will be evaluated.

§ 19:38C-5.5 Selection evaluation process

(a) The members of the selection committee will evaluate the submissions and other information comprising the evaluation process and shall assign scores based upon the evaluation criteria stated in the RFQ and/or RFP.

(b) In addition to the review of responses to an RFQ and/or RFP the evaluation process may include:

1. Review of responses to requests for additional or clarifying information;

2. Participation in interviews; and/or

3. Any other components determined, in the sole discretion of the Authority, to be appropriate.

(c) Site visits, pre-proposal conferences, and interviews may be scheduled. Attendance shall be mandatory when so stipulated in the RFP or RFQ.

(d) The selection coordinator shall compile the evaluation scores of the committee members, as well as any points assigned in the consideration of a fee proposal in accordance with N.J.A.C. 19:38C-5.7(a), if applicable, and shall prepare a ranking in accordance with the procedures specified in the RFQ and/or RFP, which shall be deemed a final ranking if no shortlisting process, as set forth in this section, is called for in the RFQ.

(e) If a shortlisting process is specified by the selection procedures described in the RFQ, the selection coordinator shall review the ranking and identify the short list of firms.

1. Once the short list is determined, the Authority shall publish the short list on the Authority's website and/or provide written notification to all firms that supplied responses to the RFQ of the names of the firms selected for the short list.
2. If additional information is required, the Authority shall request such information from all of the shortlisted firms prior to the final ranking. The members of the selection committee shall review and evaluate the additional information provided by the shortlisted firms, in accordance with the procedures specified in the RFQ and/or RFP, and shall assign scores based upon the evaluation criteria stated in the RFQ and/or RFP, as applicable. At the sole discretion of the Authority, interviews may be held with the shortlisted firms prior to the determination of the final ranking. The members of the selection committee shall evaluate the additional information, and interviews, if any, and shall assign scores to each. The selection coordinator shall combine all evaluation scores in accordance with the procedures outlined in the RFQ and/or RFP, and prepare a final ranking.

§ 19:38C-5.6 Submission of fee proposals

A fee proposal shall be submitted in accordance with the process set forth in either an RFQ or RFP. A fee proposal shall be submitted in a separate sealed envelope. The envelope shall indicate clearly that it is the fee proposal and shall identify the firm's name, project number, and any other information required by the RFQ or RFP. The fee proposals shall remain sealed until such time as provided in N.J.A.C. 19:38C-5.7(a) or (b), as applicable.

§ 19:38C-5.7 Consideration of fee proposals

(a) In the event the fee proposal is one of the qualitative factors for the evaluation of the proposals, the Authority shall open the sealed fee proposals and assign the maximum points to the lowest total fee proposal. All other proposals shall be scored based upon the percentage that each proposal exceeds the lowest proposal. The scores of the fee proposals shall then be utilized to finalize the ranking undertaken by the selection committee, pursuant to N.J.A.C. 19:38C-5.5(d).

(b) In the event the fee proposal is not a qualitative factor for the evaluation of the proposal, the Authority shall open the sealed fee proposals at a predetermined date and time after the final ranking has been prepared. Using the fee proposals as a guide, the Authority shall negotiate an agreement with the highest-ranked consultant at a fee determined by the Authority to be fair and reasonable. Should the Authority be unable to negotiate a satisfactory fee with the highest-ranked consultant, the Authority shall terminate negotiations with the highest-ranked consultant, and may then terminate the procurement or may then undertake negotiations with the second-highest ranked consultant. Failing accord with the second highest-ranked consultant, the Authority shall terminate negotiations with the second highest-ranked consultant and may then terminate the procurement or may undertake negotiations with the third highest-ranked consultant. In the event that the Authority is unable to agree to a satisfactory fee with any of the three highest-ranked firms, the Authority may select additional consultants in the order of their ranking and continue negotiations, until either an agreement is reached or the procurement is canceled or terminated.

§ 19:38C-5.8 Recommendation

Based on the process set forth in this subchapter, the selection coordinator shall recommend the most technically qualified consultant at final compensation determined to be fair and reasonable. If the recommendation is approved, the Authority will issue a written notice of award to the successful professional services consultant.

§ 19:38C-5.9 Execution of agreement

Upon the successful professional services consultant's submission of any required documentation or materials as specified in the notice of award, and the Authority's acceptance of such documents, the Authority will execute the agreement and provide the successful professional services consultant with a fully-executed agreement.

§ 19:38C-5.10 Confidentiality
The selection evaluations, rankings, negotiations, and fee proposals of all firms, as well as all discussions and correspondence, relating to the selection of a professional services consultant shall remain confidential and exempt from production under the Open Public Records Act, N.J.S.A. 47:1-1 et seq., until a notice of award has been issued.

§ 19:38C-6.1 Scope

This subchapter shall govern the procurement of an agreement through the Authority's grant of a waiver of advertising pursuant to N.J.S.A. 52:34-10. While the Authority shall normally procure professional services consultants through a competitive selection process initiated by advertising, in those limited situations where it is not possible, feasible or prudent to advertise, this subchapter shall apply to the procurement of professional services consultant agreements.

§ 19:38C-6.2 Circumstances justifying waiver of advertising; pre-qualification

(a) The Authority may grant a waiver of public advertisement in the following limited circumstances:

1. The engagement to be made is with the Federal government, or any State government or any agency or political subdivision thereof;

2. A public exigency exists in which professional services must be purchased immediately and are necessary to mitigate an emergency situation;

3. Only one professional services consultant is capable of or available to provide the services at the time they are required; or

4. When the services required are available through participation in an existing contract between a vendor and any department, division, office, agency, bureau, or section of the United States, or any authority or instrumentality created or chartered thereby and any department, division, office, agency, bureau, or section of New Jersey or any state of the United States other than New Jersey, or any political subdivision thereof including, but not limited to, municipalities, or any other authority or instrumentality created or chartered thereby, provided that:

   i. The existing contract was the result of a competitive selection process;

   ii. The terms of the existing contract permit such Authority participation;

   iii. The price of the services being procured is no greater than the price offered to the original governmental unit party to the existing contract;

   iv. The Authority receives the benefit of any price reductions mandated by the original governmental unit party during the term of the existing contract and is protected from price increases during that time; and

   v. The price of services being procured is no greater than the price of the same or equivalent goods or services under any existing New Jersey State contract.

(b) At the option of the Authority, the Authority may waive pre-qualification of a professional services consultant procured pursuant to public exigency under (a)2 above.

§ 19:38C-6.3 Solicitation

(a) With respect to a circumstance arising under N.J.A.C. 19:38C-6.2, whenever practical, the Authority will undertake a competitive selection process for agreements of this type to the extent it is feasible and economical to do so. This less formal process may include obtaining at least three telephonic quotations or obtaining written quotations from at least three separate professional services consultants.

1. Proposals shall be evaluated based on proposed fees and the evaluation criteria appropriate for the particular procurement. The Authority may request clarifying technical and/or organizational information from any entity submitting a proposal, prior to finalizing the evaluation.
2. The Authority shall select the proposal that is in the best interest of the Authority and the school construction program, based on proposed fees and the evaluation criteria established for the selection.

3. The competitive selection process used shall be memorialized in the recommendation of award.

§ 19:38C-7.1 Scope

This subchapter provides for the use of term agreements by the Authority to serve a variety of consultant needs in accordance with its statutory responsibilities to administer the schools construction program. This subchapter further provides for the issuance of task orders, in accordance with a term agreement.

§ 19:38C-7.2 General requirements

(a) A term agreement is an agreement whereby the Authority may engage a professional services consultant or consultants for a defined period of time, rather than for a defined project or projects.

(b) Term agreements may be used by the Authority to retain professional services consultants when:

1. There is a need to expedite emergent projects or emergent project requirements;

2. There is a need to accomplish any study, evaluation, review, assessment, or other professional services relating to a school facilities projects on an "on call" basis; or

3. There is a need to address the program-wide requirements of the Authority.

(c) Procurement of a term agreement shall be in accordance with the selection procedures set forth at N.J.A.C. 19:38C-5, except that fee proposals may be based upon hourly or daily rates and/or other methods for determining costs over a specific time period.

(d) Term agreements shall be for a specific time period and maximum contract value, which shall be set forth in the term agreement. The Authority shall set forth a budget and schedule for each proposed task order under a term agreement prior to its assignment to a professional services consultant. The time in which services are to be performed under a task order may extend past the expiration date of a term agreement, as long as the task order was executed prior to the expiration date.

(e) The Authority may enter into a term agreement with any consultant engaged pursuant to the provisions of this chapter for a term, not to exceed three years, unless a longer time period is expressly authorized by law, and for a value that shall not exceed a ceiling stated in the agreement.

(f) Notwithstanding the foregoing, term agreements for provision of professional services in litigation matters shall be for a term not to exceed two years, pursuant to Executive Order No. 37 (2006).

§ 19:38C-7.3 (Reserved)

§ 19:38C-7.4 (Reserved)

§ 19:38C-8.1 Scope

This subchapter, exclusively, shall govern the Authority's engagement of title insurance companies.

§ 19:38C-8.2 Master list

The Authority shall establish and maintain a master list of title insurance companies, which are on the list of title insurance companies authorized to write title insurance policies in New Jersey as compiled by the New Jersey Depart-
ment of Banking and Insurance and rated "A" or higher by a major credit rating agency. The master list shall be updated by the Authority on a quarterly basis.

§ 19:38C-8.3 Procurement by competitive bidding for individual engagement

(a) When the Authority deems it in the best interest of a school facilities project or the school construction program to make use of an individual competitive procurement to secure title insurance, it shall solicit proposals for title insurance by means of a request for proposals presented to at least three separate title insurance companies randomly selected from the master list. Authority staff shall prepare a memorandum indicating the number of entities contacted and the number of proposals received, including prices.

(b) The proposals shall be evaluated by the Authority based on price and the title insurance company's experience with the property or area comprising and surrounding the site for the particular school facility at issue. The Authority may request clarifying technical and/or organizational information from those entities submitting proposals prior to determining the final ranking.

§ 19:38C-8.4 Procurement through term agreements specifying fixed rates

(a) In the event that the Authority determines that it would be in the best interest of the school construction program to make use of a term agreement approach to the procurement of title insurance, it may extend an offer to all title insurance companies on the master list to enter into an agreement that may extend for a term not to exceed three years. The compensation paid under any such term agreement shall be in accordance with a fixed schedule of rates and charges, and the contract value shall not exceed a stated ceiling during its term. The Authority may extend such term agreement offers at such frequency as it determines is in the best interest of the school construction program, provided that no title insurance company may be engaged under more than one such term agreement at a time. All term agreements with title insurance companies shall provide for, among other things, termination for the convenience of the Authority and termination for cause.

(b) During the term of such an agreement, the Authority may assign to a title insurance company one or more task orders identifying specific properties or sites for which to provide title insurance for purposes of one or more school facilities projects based upon the following criteria:

1. The title insurance company's experience with the property or area comprising and surrounding the site for the particular school facility at issue;
2. Present capacity of the firm to provide the required services; and
3. Equitable allocation of task order assignments among all title insurance companies engaged by the Authority under a term agreement.

§ 19:38C-9.1 Scope

This subchapter, exclusively, shall govern the engagement of appraisers.

§ 19:38C-9.2 Master list

(a) The Authority shall establish and maintain and update on a quarterly basis, a master list of appraisers. The master list shall be created based upon the list of appraisers maintained by the New Jersey Department of Transportation and the list of appraisers previously engaged by the Authority. Firms may apply for inclusion on the master list by submitting to the Authority a statement of qualifications, which shall include, but not limited to, the following:

1. A resume;
2. Experience with condemnation projects carried out by governmental entities and a full description of same; and
3. Experience with other governmental entities.

(b) Authority staff shall evaluate the statement of qualifications submitted by a firm seeking inclusion in the master list-based criteria including:

1. The firm's experience with condemnation projects carried out by governmental entities; and
2. The firm's compliance with the Uniform Standards of Professional Appraisal Practice, as published annually by the Appraisal Standards Board of the Appraisal Standards Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, DC 20005.

§ 19:38C-9.3 Procurement by competitive bidding for individual engagement

(a) When the Authority deems it is in the best interest of a school facilities project or the school construction program to make use of an individual competitive procurement to engage an appraiser, it shall solicit proposals for appraisal services by means of a request for proposals presented to at least three separate appraisers chosen from the master list based upon the following:

1. Geographic proximity to the school facilities project; and
2. If applicable, the need for a particular specialty.

(b) The Authority shall prepare a memorandum indicating the number of entities contacted and of proposals received, including prices.

(c) The proposals will be evaluated by the Authority based on price and the following evaluative criteria:

1. Licensing status;
2. Professional designations;
3. Previous experience on similar projects;
4. Geographic proximity to the school facilities project; and
5. Present capacity of a firm to complete solicited services.

(d) The Authority may request clarifying technical and/or organizational information from those entities submitting proposals prior to determining the final ranking.

§ 19:38C-9.4 Procurements through term agreements specifying fixed rates

(a) In the event that the Authority determines that it would be in the best interest of the school construction program to make use of a term agreement approach to the procurement of appraisal services, it may extend an offer to all firms on the master list to enter into an agreement that may extend for a term not to exceed three years. The compensation paid under any such term agreement shall be in accordance with a fixed schedule of rates and charges and the contract value shall not exceed a stated ceiling during its term. The Authority may extend such term agreement offers at such frequency as it determines is in the best interest of the school construction program, provided that no appraiser may be engaged under more than one such term agreement at a time. All term agreements with appraisers shall provide for, among other things, termination for the convenience of the Authority and termination for cause.

(b) During the term of such an agreement, the Authority may assign to an appraiser a task order identifying specific sites to appraise for purposes of one or more school facilities projects based upon the following criteria:

1. Licensing status;
2. Professional designations;
3. Previous experience on similar projects;
4. Geographic proximity to the school facilities project or projects;
5. Present capacity of the firm to complete the required services; and
6. Equitable allocation of task order assignments among all appraisers engaged by the Authority under a term agreement.

§ 19:38C-10.1 General requirements

Experts for litigation support or real estate transaction support may be retained through outside counsel on behalf of the Authority, or procured directly by the Authority, using any of the procurement methods set forth in this chapter.

§ 19:38C-11.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern protests and administrative hearings regarding the Authority's conduct of procurements for professional services consultants, including protests challenging:

1. The form of advertisements for procurement;
2. The form of the RFQ or the RFP for a given procurement;
3. The scoring of proposals or the ranking of firms;
4. The selection of professional services consultants for unadvertised procurements under N.J.A.C. 19:38C-3 or 6;
5. The issuance of a task order under a term agreement under N.J.A.C. 19:38C-7.4; and
6. Performance evaluations for professional services consultants.

(b) For purposes of this subchapter, protests of the type described in (a) above are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

§ 19:38C-11.2 Subject matter, time limitations, and who may request hearings

(a) Administrative hearings before the Authority may include the following subject matter and may be requested by the following entities:

1. RFQ process or documents. A consultant that has submitted or intends to submit a proposal in response to an RFQ, may request an informal hearing before the Authority to protest the RFQ process or documents by submitting a written protest to the Authority at least five business days prior to the date and time scheduled for receipt of proposals, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials, or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for, and arguments supporting, the protest;

2. RFP process or documents. A consultant that has submitted or intends to submit a proposal in response to an RFP, may request an informal hearing before the Authority to protest the RFP process or documents, by submitting a written protest to the Authority setting forth in detail the grounds for such protest, at least five business days prior to the date and time scheduled for receipt of the proposals. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for and arguments supporting the protest;

3. Short list. A consultant protesting its failure to be included in a short list, or protesting the inclusion of another consultant on a short list, may request an informal hearing before the Authority to protest the selection of the short list, by submitting to the Authority a written protest setting forth the specific grounds for challenging the short list, within five business days of the public announcement of the short list. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public an-
nouncement of the short list, or any protest that fails to provide the specific reasons for and arguments supporting the protest;

4. Master list. An appraiser or title insurance firm protesting its failure to be included in a master list may request an informal hearing before the Authority to protest the composition of the master list by submitting to the Authority a written protest setting forth the specific grounds for challenging the composition of the master list, within five business days of notification of the firm's failure to be included on the master list. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after notification of the firm's failure to be included on the master list, or any protest that fails to provide the specific reasons for and arguments supporting the protest;

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

6. Unadvertised contracts. A professional services consultant may request an informal hearing before the Authority to protest the award of a contract to another professional services consultant by submitting to the Authority a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award of the contract. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for and arguments supporting the protest;

7. Task order assignment. A professional services consultant that has received an award under a term agreement procurement may request an informal hearing before the Authority to protest the award or assignment of a task order to another professional services consultant, by submitting to the Authority a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award or assignment of the task order. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award or assignment of the task order, or any protest that fails to provide the specific reasons for and arguments supporting the protest; or

8. Performance evaluation. A professional services consultant that is dissatisfied with its performance evaluation on an Authority project may request an informal hearing before the Authority by submitting to the Authority a written protest setting forth the specific grounds for such protest, within 15 calendar days after the date of receipt of written notification of the performance evaluation. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than 15 calendar days after the consultant's receipt of written notification of the performance evaluation, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

§ 19:38C-11.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold an informal hearing. Alternatively, the Authority may determine that sufficient information already exists in the record, so that a decision may be made without a hearing, and the Authority may issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within five business days of receipt of all documents related to the protest.
2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written decision will issue prior to the opening of proposals. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed by addendum to all consultants eligible for the procurement at issue.

3. In an informal hearing, the Authority may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements provided in this subchapter. In these instances, the Authority shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his or her designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. Upon filing of the initial pleading in a contested case, the Board of the Authority may by resolution either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.