

CHAPTER 38A

PROCEDURES FOR PREQUALIFICATION OF CONTRACTORS AND PROFESSIONAL SERVICES CONSULTANTS FOR THE NEW JERSEY SCHOOLS CONSTRUCTION PROGRAM

Authority

P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238k) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.); and N.J.S.A. 52:34-9.3 (enabling statutes).

Source and Effective Date

R.2014 d.002, effective November 8, 2013.
See: 45 N.J.R. 1597(a); 46 N.J.R. 134(a).

Chapter Expiration Date

Chapter 38A, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, expires on November 8, 2020.

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.

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SUBCHAPTER 1. GENERAL PROVISIONS

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.

Amended by R.2014 d.002, effective January 6, 2014.
See: 45 N.J.R. 1597(a), 46 N.J.R. 134(a).

Section was "Purpose, scope and applicability". Rewrote the section.

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.

Amended by R.2014 d.002, effective January 6, 2014.
See: 45 N.J.R. 1597(a), 46 N.J.R. 134(a).

Substituted "Authority" for "Corporation".

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:

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137.

"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