

CHAPTER 19

CLASSIFICATION AND QUALIFICATION OF BIDDERS

Authority

N.J.S.A. 52:35-1 et seq.

Source and Effective Date

R.2000 d.76, effective January 28, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Executive Order No. 66(1978) Expiration Date

Chapter 19, Classification and Qualification of Bidders, expires on January 28, 2005.

Chapter Historical Note

Chapter 19, Rules Governing the Classification and Qualification of Bidders, was adopted as R.1970 d.91, effective July 31, 1970. See: 2 N.J.R. 57(c), 2 N.J.R. 78(b).

Pursuant to Executive Order No. 66(1978), Chapter 19, Rules Governing the Classification and Qualification of Bidders, was readopted as R.1990 d.193, effective March 8, 1990. See: 22 N.J.R. 329(b), 22 N.J.R. 1150(b).

Chapter 19, Rules Governing the Classification and Qualification of Bidders, was repealed and Chapter 19, Classification and Qualification of Bidders, was adopted as new rules by R.1995 d.90, effective February 21, 1995, operative March 23, 1995. See: 26 N.J.R. 4747(b), 27 N.J.R. 755(a).

Pursuant to Executive Order No. 66(1978), Chapter 19, Classification and Qualification of Bidders, was readopted as R.2000 d.76, effective January 28, 2000. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 1. GENERAL PROVISIONS

17:19-1.1 Definitions

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

“Affiliate” or “related party” means firms and/or persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

“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 or other governmental or quasi-governmental entity.

“Classification” means the process and product of assigning specific construction categories or trades and the maximum aggregate workload level(s) which define the eligibility of prospective bidders as determined by the Division, in accordance with this chapter.

“Director” means the Director of the Division of Property Management and Construction (hereinafter referred to as DPMC) in the Department of the Treasury.

“Division” means the Division of Property Management and Construction (DPMC) in the Department of the Treasury.

“Person” means any individual, partnership, association, corporation or joint stock company, their lessees, trustees, assignees or receivers appointed by any court whatsoever.

“Public work” means any public building or other public betterment, work or improvements constructed, repaired or improved wholly or in part at the expense of the public.

“Questionnaire” means the Request for Classification (GSA-27).

“Request for Classification or Questionnaire” means the PMC-27.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Inserted “Affiliate” or “related party”, “Agency of government” and “Division”; in “Director”, substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction; in “Person”, substituted a reference to partnerships for a reference to copartnerships; and rewrote “Questionnaire” as “Request for Classification or Questionnaire”.

SUBCHAPTER 2: RULES

17:19-2.1 Statements required from prospective bidders; contents

(a) Any person proposing to submit bids on public work shall submit to the Director a statement under oath on a form designated as Request for Classification (PMC-27) Current Issue. The PMC-27 shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership, relationships and prior experience of the prospective bidder and shall be used by the Division of Property Management and Construction (DPMC) in classifying prospective bidders pursuant to N.J.S.A. 52:35-1 et seq.

(b) Each PMC-27 submission shall include:

1. A certified audited, or reviewed, financial statement or compilation of financial statements. The financial statement shall include a signed cover letter, by an accountant complete with a balance sheet, related statements of income and retained earnings and cash flows and notes to financial statements in complete detail and shall comprise a full one year accounting cycle. Such statements shall be in conformity with generally accepted accounting principles and be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-29 et seq. who is independent of and not an employee of the contractor for which the financial statements are being provided:

i. The certified audited financial statements shall have an unqualified opinion. The compilation or CPA review of financial statements shall be in conformity with generally accepted accounting principles.

ii. Submission of a CPA compilation of financial statements will limit a contractor’s maximum aggregate rating to \$5,000,000.

iii. Submission of a CPA review of financial statements will limit contractor’s maximum aggregate rating up to \$15,000,000.

iv. Submission of a certified audited financial statement will be required for aggregate ratings exceeding \$15,000,000.

v. Submission of combined or consolidated statements is not acceptable, unless complete supplementary (combining or consolidating) information is included within the report. This information shall be of such detail as to show the singular financial condition of the entity being classified;

2. A statement as to organization, which shall demonstrate the adequacy of such organization (officers and key management personnel) to undertake a project in the classification desired;

3. A statement as prior to experience, which shall show the number of years the prospective bidder has been engaged in the contracting business and shall further disclose the bidder’s experience over that period. In such statement, the applicant may demonstrate the experience of officers, managers and key personnel prior to their affiliation with applicant, which information shall be considered by the DPMC;

4. A statement as to the past performance, which shall give an accurate and complete record of work completed in the past four years, by the contractor (not by subcontractors or individuals employed by others) giving the names of the projects, type of work, location, contract price and the names of the owner and of the architect/engineer in charge for the owner. This statement shall also disclose any terminations, labor problems experienced, any failure to complete a contract on schedule, any failure to meet contractual Affirmative Action or Department of Labor wage requirements, and any penalties imposed on any contract undertaken within the said four year period. The prospective bidder shall explain any of the above problems, failures or penalties encountered during the past four years and what steps have been taken to avoid the recurrence of such problems, failures or penalties;

5. A statement that the applicant has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with New Jersey and Federal laws, rules and regulations;

6. A statement as to bonding capacity, which shall be from a surety authorized to issue bid, performance and payment bonds in the State of New Jersey to the applicant contractor, and shall indicate aggregate bonding limits;

7. If the contractor is a corporation or partnership, a statement setting forth the names and address of all stockholders or partners owning any interest in the contractor. If one or more stockholders or partners is itself, a corporation or partnership, the statement shall also indicate the stockholders holding any of the corporation's stock or the individual partners owning any interest in the partnership. The disclosure shall be continued until the names and addresses of every stockholder or partner has been listed; and

8. A statement setting forth any other pertinent material and facts that will justify the classification and ratings requested by the contractor.

(c) All foreign corporations shall include a current "Certificate of Authority to perform work in New Jersey" as issued by the Department of Treasury pursuant to N.J.S.A. 14A:13-4 et seq.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (b), substituted references to PMC-27 for references to GSA-27 and substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout; in (b)1, rewrote the introductory paragraph and i; in (b)4, inserted a reference to terminations in the second sentence, and inserted a reference to Department of Labor wage requirements in the third sentence; rewrote (b)7; and in (c), substituted a reference to the Department of Treasury for a reference to the Department of State.

17:19-2.2 Fraudulent statements

(a) "Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the questionnaire required to be submitted or in the course of any hearing under this chapter, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than \$100.00 nor more than \$1,000 and shall be permanently disqualified from bidding on all public work of the State; or, in case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, copartnership association or corporation, to pay such fine or undergo imprisonment, not exceeding six months, or both." (N.J.S.A. 52:35-9)

(b) Any false, deceptive, or fraudulent information provided in the PMC-27, "Request for Classification," will be deemed a material breach and the State may declare any resulting contract(s) void and unenforceable and pursue any recourse under N.J.A.C. 17:19-3 and 4.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (b), substituted a reference to PMC-27 for a reference to GSA-27, and added "and pursue any recourse under N.J.A.C. 17:19-3 and 4" at the end.

17:19-2.3 Joint venture statement

(a) Where two or more contractors, each with valid classifications and ratings for the same trade category propose

to form a joint venture for purposes of bidding on one specific project, the ventures shall jointly submit a Statement of Joint Venture Form PMC-606 to the Division which shall:

1. Be received by the Division no less than five days, excluding weekends and/or legal holidays, prior to the bid due date set for the project on which they propose to bid;

2. State the classifications and ratings of the individual venturers;

3. Describe the purpose, structure and resources of the joint venture, and be supplemented by any other information requested by the Division;

4. Include a statement from an authorized surety of the bonding capacities of the individual venturers and the bonding capacity of the joint venture; and

5. Be signed by each of the venturers.

(b) Where two or more contractors holding valid classifications, (same trade) and ratings propose to form a joint venture for the purpose of bidding on a project, the joint venture shall submit with its PMC-606, a statement from an authorized surety of the Joint Venture's bonding capacity.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (b), substituted references to PMC-606 for references to DBC 606; and in (a)1, substituted "days, excluding weekends and/or legal holidays," for "calendar or work days" following "five".

17:19-2.4 Statements from an authorized surety

(a) Any contractor proposing to submit bids on a public works project which requires a performance bond or a payment bond, or both, shall cause to be submitted with its PMC-27 a certified statement of the contractor's bonding capacity. The statement shall be contained on the standardized form entitled "Surety Affidavit" form provided by the DPMC and shall be from a surety authorized to issue bid bonds, performance and payment bonds in the State of New Jersey. This statement shall be used in part by the DPMC in calculating the applicant's aggregate rating, pursuant to N.J.A.C. 17:19-2.9.

(b) A contractor who does not provide a statement of bonding capacity from an authorized surety shall receive an aggregate rating of no more than \$200,000 and shall not be eligible to bid on any projects for which a bond is necessary, but may be eligible to bid on any project for which a bond is not required, within the rating limits described in N.J.A.C. 17:19-2.9.

(c) In the event that a contractor obtains the required bonding statement subsequent to being classified and rated under (b) above, the contractor may apply for an amended classification. Such amendment shall be a prerequisite to the receipt by the contractor of any plans, specifications, proposals and associated documents for the preparation of a competitive bid. Amendments to classification will not be effective until 20 days after the receipt by the DPMC of the required additional information.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (c), substituted references to the DPMC for references to the DBC throughout; in (a), substituted a reference to PMC-27 for a reference to GSA-27, and substituted a reference to standardized forms entitled "Surety Affidavit" for a reference to standardized forms; and in (b), substituted a reference to \$200,000 for a reference to \$100,000.

17:19-2.5 Responsibility determination

(a) For bidders proposing to submit bids on public work, a determination as to responsibility shall be made by the DPMC. Any applicant which has no prior public works experience with the State of New Jersey shall be evaluated on the applicant's financial resources, technical qualifications, organization and facilities, accounting and auditing procedures, integrity, references and experience on previous contracts.

(b) A determination of "responsibility" refers to the apparent ability of the bidder to successfully carry out the requirements of a contract, taking into consideration the following factors:

1. Financial resource;
2. Technical qualifications;
3. Experience;
4. Organization and facilities to carry out the work;
5. Resources needed to meet completion of contracts;
6. Satisfactory performance record for completion of contracts;
7. Accounting and auditing procedures adequate to control property, funds and other assets;
8. Civil rights compliance; and
9. Satisfactory record of integrity.

(c) Upon rendering an affirmative finding of responsibility, the DPMC shall classify a bidder. A notice of classification will be mailed within a 30 day period upon approval.

(d) If a contractor objects to its assigned classification or a bidder objects to the classification of any other bidder, a hearing may be requested pursuant to N.J.S.A. 52:35-4. If a contractor objects to its own classification, the request must be made, in writing, to the Director within 15 calendar days after the date of the classification notice. If a bidder objects to the classification of another bidder, the request must be submitted to the Director in accordance with N.J.S.A. 52:35-4 and within three calendar days after the bid opening or at least three calendar days prior to the proposed date of contract award, whichever date is earlier. If a contractor or bidder remains dissatisfied, an appeal may be made pursuant to N.J.S.A. 52:35-6. The appeal hearing shall be conducted as a contested case 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 Rules of Procedure, N.J.A.C. 1:1.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (c), substituted references to the DPMC for references to the DBC; and in (b), rewrote the introductory paragraph.

17:19-2.6 Performance ratings

(a) For any contractor proposing to submit bids on public work, a performance rating shall be determined. The rating shall be based on the information contained in the Performance Evaluation Form.

(b) For any applicant who has no prior public work experience with the State of New Jersey, the performance rating shall be based on an evaluation of the applicant's references and past experience on private sector projects, as identified in the applicant's form PMC-27.

(c) For any applicant who has prior public works experience with the State of New Jersey, a performance rating shall be based on the project evaluations done for those State projects as follows:

1. A project evaluation shall be made for each of the prime contractors on a public works project. The evaluation shall be made by no less than two persons employed by the State directly involved in the management, supervision or inspection of the project. The evaluators for a given project shall be appointed by the Director or his or her designee.
2. Project evaluations shall be presented on standardized performance evaluation Form-33 provided by the DPMC. Where necessary, interim evaluations may also be prepared and filed as required.
3. While the Director may establish special evaluation criteria for special projects, in general, a project evaluation shall be based on the following factors:
 - i. Schedule adherence, including job planning, manning and submissions;
 - ii. Workmanship;
 - iii. Supervision;
 - iv. Subcontractor performance;
 - v. Compliance with all bidding and contract documents;
 - vi. Cooperation with other prime contractors;
 - vii. Completion of punch list items and prompt furnishing of closeout documents; and
 - viii. Timely and cooperative processing of change orders.
4. A contractor's performance rating shall be calculated as the average of the various project evaluations.

(d) The performance ratings of contractors shall be updated as State work is completed and as these contractors bid on other projects.

(e) A contractor shall be notified of a project evaluation or performance rating which would adversely affect the contractor's classification. The contractor shall be afforded an opportunity to respond to such adverse evaluation or rating.

(f) Where a contractor receives an unfavorable performance rating, and where the contractor's performance exhibits a disregard for its DPMC contractual obligations, the DPMC may institute suspension or debarment proceedings against that contractor, pursuant to Executive Order No. 34(1976) and N.J.A.C. 17:19-3.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (b), substituted a reference to PMC-27 for a reference to GSA-27; and rewrote (c)2 and (f).

Case Notes

School board is to determine job classification. *Bil Jim Const. Co., Inc. v. Manchester Tp. Bd. of Educ.*, 236 N.J.Super. 603, 566 A.2d 585 (L.1989).

Court will determine adequacy of public contract specifications. *Bil Jim Const. Co., Inc. v. Manchester Tp. Bd. of Educ.*, 236 N.J.Super. 603, 566 A.2d 585 (L.1989).

Contract award was vacated where specifications omitted information and allowed school board discretion to supply it after bids were opened. *Bil Jim Const. Co., Inc. v. Manchester Tp. Bd. of Educ.*, 236 N.J.Super. 603, 566 A.2d 585 (L.1989).

17:19-2.7 Bidders to be classified

(a) Upon receipt of the completed PMC-27, the Director or his or her designee shall classify the applicant as to the trade, character, and the dollar value of the work on which the applicant shall be qualified to submit bids. Classifications will be based on the information contained in and with the PMC-27 and on the contractor's performance rating. Applicants shall be classified as to the trades listed on current form PMC-27, as to the dollar value of total projects, public and private, on which they may work at any given time pursuant to the Aggregate Rating Limit.

(b) Bidders shall re-classify every 18 months in order to remain eligible to bid on public work.

(c) A new Request for Classification must be submitted to the DPMC prior to the expiration date which shall be evaluated pursuant to this chapter. Failure to submit a renewal application shall result in the expiration of the classification.

(d) Where, in the course of a classification period, the financial, bonding and/or corporate status of a contractor changes so substantially as to warrant a change of classification or rating, the contractor shall notify the Division, in writing, within 30 days of the change(s) and include the submission of revised Form PMC-27, or applicable portions thereof, as required. Examples of substantial change include, but are not limited to, insolvency, decreases in bonding

capacity, changes in ownership or any of the factors as described in N.J.A.C. 17:19-2.5(b).

1. With this notice, the contractor may also request a change of classification or rating.

2. The DPMC shall review the request for revision and issue a decision not later than 20 days from the date of the request.

3. Any change of classification or rating shall be effective only for the remainder of the original classification period.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a) and (d), substituted references to PMC-27 for references to GSA-27 throughout; rewrote (b) and (c); and in (d), inserted "or any of the factors described in N.J.A.C. 17:19-2.5(b)" at the end of the introductory paragraph, and substituted a reference to the DPMC for a reference to the DBC in 2.

Case Notes

Unsuccessful bidder's omission of prequalification affidavit in bid for contract to add to and alter a school was a waivable, immaterial defect. *Tec Elec., Inc. v. Franklin Lakes Bd. of Educ.*, 284 N.J.Super. 480, 665 A.2d 803 (L.1995).

17:19-2.8 Trade classifications

(a) In order to be classified for a given trade, a contractor must have successfully completed at least two significant projects in that trade within the previous four years. These projects may have been either public projects or private sector projects, or a combination of the two. A contractor must submit copies of executed contracts and a complete description of the work the contractor was responsible for completing with their own workforce as proof.

(b) The trades for which an applicant may request classifications are as listed on the current issue of Form PMC-27.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), rewrote the last sentence; and in (b), substituted a reference to PMC-27 for a reference to GSA-27.

17:19-2.9 Aggregate rating limit

(a) A contractor's aggregate rating shall limit the dollar value of State contracts which the contractor may perform at any given time. The aggregate rating limit shall be based on the following factors:

1. The contractor's net current quick assets reported in its Financial Statement;

2. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.4;

3. The contractor's performance rating as described in N.J.A.C. 17:19-2.6;

4. The contractor's current backlog and/or volume of work; and

5. All other factors as described in N.J.A.C. 17:19-2.5(b).

(b) Net current quick assets shall be determined according to generally accepted accounting principles, but shall not include:

1. Costs and estimated earnings in excess of billings on uncompleted contracts;
2. Any assets not in the name of the contractor;
3. Any past due accounts exceeding 90 days;
4. Any fixed assets or other assets which either are not liquid or are not readily convertible to cash such as assets in escrow;
5. Securities which are not readily saleable;
6. Securities which have been pledged;
7. The cash surrender value of a life insurance policy on the contractor unless that value is verified, in writing, from the insurance company;
8. Any amounts due from related parties or affiliates;
9. Line of credit; and
10. Inventory.

(c) In no event shall a contractor's aggregate rating exceed the contractor's aggregate bonding capacity.

(d) The contractor's aggregate rating shall be calculated as follows:

1. Multiply the contractor's net current assets according to the following table:

<u>Net Current Assets</u>	<u>Multiplier</u>
\$1-20,000	6
\$20,001-40,000	8
\$40,001-80,000	10
\$80,001 or higher	12

2. Multiply the result of this calculation by the performance multiplier based upon at least three projects completed in last four years.

<u>Average Performance Evaluations (APE)</u>	<u>Performance Multiplier</u>
90.0 percent or higher	2.00
80.0 percent to 89.9 percent	1.00
70.0 percent to 79.9 percent	0.50
69.9 percent to 65 percent	0.25

EXAMPLES: The following examples show the effect of a performance multiplier for a contractor (1) having an APE of 90.0 percent or higher and (2) an APE of 80.0 percent to 89.9 percent.

- A = Net Current Assets
- B = Asset Multiplier

C = Calculated Classification Limit

D = Performance Multiplier

E = Final Classification Limit

(Formula) $A \times B = C \times D = E$

1. $85,000 \times 12 = 1,020,000 \times 2.00 = 2,040,000$
2. $85,000 \times 12 = 1,020,000 \times 1.00 = 1,020,000$

3. If a contractor has received no performance evaluations and/or has not completed a project for the DPMC, a performance multiplier of 1.00 will be assigned to that contractor.

4. Where a contractor has not provided a bonding statement as required in N.J.A.C. 17:19-2.4, the contractor's aggregate rating shall be equal to the total obtained above but not greater than \$200,000. Further, the contractor may bid only on projects which do not require any bond.

5. When the contractor's APE is less than 65 percent, the Director may reject the application or assign a classification rating less than that provided for in N.J.A.C. 17:19-2.9, based on all factors relevant to contractor's ability to perform.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted a reference to the following factors for a reference to three factors in the introductory paragraph, and added 4 and 5; in (b), inserted "exceeding 90 days" at the end of 3, deleted a reference to officers, employees, etc. in 8, and added 9 and 10; and in (d), substituted "69.9 percent to 65 percent" for "69.9 percent or lower" in the table in 2, substituted a reference to the DPMC for a reference to the DBC in 3, substituted a reference to \$200,000 for a reference to \$100,000 in 4, and substituted a reference to 65 percent for a reference to 0.25 in 5.

17:19-2.10 Special classification requirements

(a) The Director may establish appropriate and special classification requirements for a given project as may be necessary in order to ensure competitive bidding for that project or as may be dictated by the unique or specialized nature of the work to be performed on that project.

(b) The Director may establish appropriate and special classification requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformity with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously classified contractors via direct mail and/or published in major State newspapers and trade journals.

17:19-2.11 Effective dates of classifications and ratings

(a) A classification or rating resulting from the filing of a PMC-27 shall be effective eight days after receipt of all required and approved information in accordance with this subchapter, or the day following expiration of the existing classification, whichever is later.

(b) A revision or amendment of a classification or rating, resulting from an administrative review or an application for revision, shall be effective 20 days from the date of the approved request but only for the unexpired remainder of the existing classification period.

(c) In order to be an eligible bidder for a project, a contractor must have been assigned by the DPMC a valid classification and rating which is appropriate to the project and which is effective as of the date of the bid due date for the project. Any classification or rating which, as of the date of the bid due date, either has expired or has not yet been assigned, shall not be valid for that bid.

(d) If during a pre-bid review of a bidder's classification rating, a question arises as to whether a bid for a project is within a bidder's existing classification or rating limits, the bid shall be opened, and if it appears that the bid is at variance with the contractor's trade classification or dollar value ratings, the bid shall be rejected.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted a reference to PMC-27 for a reference to GSA-27; and in (c), substituted a reference to the DPMC for a reference to the DBC.

17:19-2.12 Award of contracts exceeding aggregate rating limits

(a) A contractor shall not be awarded a contract which, when added to the backlog of uncompleted work on all other currently held contracts from whatever sources (public or private), would exceed the contractor's aggregate rating limit. For example, for purposes of determining the dollar value of currently held contracts, contracts from the State of New Jersey, from other governmental jurisdictions and from the private sector shall be counted. The backlog of uncompleted work shall be calculated on the cost of completion method.

(b) Where there is a question of whether a contractor's aggregate rating limit can accommodate a given award, the contractor's bid for the contract shall be opened in the normal course, and the contractor's eligibility shall thereafter be computed.

(c) A contractor shall include with each bid a statement of the current value and status of its backlog of uncompleted work, and whether the award of the given contract would exceed its aggregate rating limit. Whether a contract is eligible for a given award shall be determined based on the dollar value of the given contract, the contractor's aggregate rating limit as of the bid due date, and the dollar value of the contractor's uncompleted contract work as of the bid due date.

1. However, where a contractor provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating limit by the time the bid project is scheduled to begin, the Director

shall base this determination on the complexity of the bid project, the duration of the bid project and the risk that the State will encounter if the bid is accepted.

(d) Where a contractor successfully bids for two or more contracts which, either in combination with each other or in combination with the backlog of uncompleted work on other currently held contracts, would exceed the contractor's aggregate rating limit, the contractor shall be awarded only those contracts which in combination fall within the contractor's aggregate rating limit, as follows:

1. Contracts shall be considered for that contractor in chronological order of the bid due dates; and

2. Where a given contract award would exceed the contractor's aggregate limit, the contractor shall not be eligible for that award.

(e) As a contractor completes existing contracts or discrete portions thereof, the contractor's eligibility for new contracts within its existing aggregate rating shall be adjusted accordingly.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), added the last sentence.

Case Notes

Bidder that acted in good faith in calculating work on hand by cost-to-complete method and complying with aggregate rating limit was not precluded from proving after the fact that it qualified, based on clear and convincing evidence that outstanding balance of contracts would be within aggregate limit by bid project's scheduled start date. In re DBC Project No. A0716-00. 303 N.J.Super. 384, 697 A.2d 131 (A.D. 1997).

17:19-2.13 Removal of bidder from approved list

Where the Director determines that a prospective bidder is unqualified to submit bids on any public work, he/she shall so notify the prospective bidder of the proposed debarment, suspension or disqualification. In such circumstances, the contested case hearing provisions of N.J.A.C. 17:19-3 shall be followed.

SUBCHAPTER 3. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

17:19-3.1 Definitions

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

“Debarment” means an exclusion from DPMC contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

“Disqualification” means the denial or revocation of a qualification to bid or otherwise engage in DPMC contracting, which has been granted or applied for pursuant to statute or rules and regulations.

“DPMC contracting” means any arrangement giving rise to an obligation to supply anything to or perform any service for a private or public person where the Division of Property Management and Construction (DPMC) provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service, or the person(s) who may supply or perform the same.

“Person” means any individual, partnership, association, corporation or joint stock company, their lessees, trustees, assignees or receivers appointed by any court whatsoever.

“Suspension” means an exclusion from DPMC contracting for a temporary period of time, pending the completion of an investigation, legal or hearing proceedings.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted references to the DPMC for references to the DBC throughout; deleted “DBC contracting”; inserted “DPMC contracting”; and rewrote “Person”.

17:19-3.2 Causes for debarment of a person(s)

(a) In the public interest, the Division of Property Management and Construction shall debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;
3. Violations of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);
4. Violations of any of the laws governing the conduct of elections of the Federal government, State of New Jersey or of its political subdivisions;

5. Violation of the “Law Against Discrimination” (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), 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 person therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor;

7. Violations of any laws governing the conduct of occupations or professions or regulated industries;

8. Violations of any other laws which may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Division of Property Management and Construction to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment by some other department or agency in the executive branch of any state or Federal government;

14. Making any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commission on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commission on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following:

- i. Any State officer or employee or special State officer or employee having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof; or
- ii. Any person, firm or entity with which the State officer or employee is employed or associated or has an interest in within the meaning of N.J.S.A. 52:13D-13g.

17. Influencing or attempting to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

Amended by R.2000 d.76, effective February 22, 2000.
 See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).
 In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction in the introductory paragraph and 12, and inserted "of any state or Federal government" at the end of 13.

17:19-3.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

- 1. Debarment shall be made only upon approval of the Director, Division of Property Management and Construction, except as otherwise provided by law;
- 2. The existence of any of the causes set forth in N.J.A.C. 17:19-3.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, Division of Property Management and Construction, unless otherwise required by law, and shall be rendered in the best interests of the State;

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted;

4. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)1 through 8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person, unless other cause for debarment exists;

5. The existence of a cause set forth in N.J.A.C. 17:19-3.2(a)9 through 11 shall be established by evidence which the Division of Property Management and Construction determines to be clear and convincing in nature;

6. Debarment for the cause set forth in N.J.A.C. 17:19-3.2(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:19-3.2(a)1 through 12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency.

Amended by R.2000 d.76, effective February 22, 2000.
 See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).
 In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout, and changed N.J.A.C. references in 6.

17:19-3.4 Procedures, period of debarment and scope of debarment affecting the debarment of a person(s)

(a) The procedures, period of debarment and scope of debarment to be followed by the Division of Property Management and Construction are as follows:

- 1. The Division of Property Management and Construction seeking to debar a person or his or her affiliates shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment and indicating that such party will be afforded an opportunity for a hearing if he/she so requests within a stated period of time. All such hearings shall be conducted in accordance with 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, and may be referred to the Office of Administrative Law in the Director's discretion. However, where another department or agency has imposed debarment upon a party, the Division of Property Management and Construction may also impose a similar debarment without affording an opportunity for a hearing, provided that the Division of Property Management and Construction furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information

in its behalf to explain why the proposed similar debarment should not be imposed in whole or in part;

2. 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 party is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed;

3. Except as otherwise provided by law, debarment may be removed or the period thereof may be reduced in the discretion of the Division of Property Management and Construction 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;

4. A debarment may include all known affiliates of a person, 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. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his/her official duty or was affected by him or her with the knowledge or approval of such person.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout, and inserted “; and may be referred to the Office of Administrative Law in the Director’s discretion” at the end of the second sentence in 1.

17:19-3.5 Causes for suspension of a person(s)

In the public interest, the Division of Property Management and Construction shall suspend a person for any cause specified in N.J.A.C. 17:19-3.2, or upon adequate evidence that such cause exists.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted a reference to the Division of Property Management and Construction for a reference to the Division of Building and Construction.

17:19-3.6 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension shall be adhered to:

1. Suspension shall be imposed only upon approval of the Director of the Division of Property Management and Construction, except as otherwise provided by law or code;

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 Director of the Division of Property Management and Construction and shall be rendered in the best interest of the State;

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists;

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which 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. 17:19-3.2(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment or by evidence that such violations of civil or criminal law did in fact occur;

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 17:19-3.2(a)1 through 13 may be the basis for the imposition of a concurrent suspension by the Division of Property Management and Construction, which may impose such suspension when found to be in the best interest of the State.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-3.7 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Division of Property Management and Construction:

1. The Division of Property Management and Construction may suspend a person or his or her affiliates, provided that within 10 days before the effective date of the suspension, the Division of Property Management and Construction provides such party with a written notice:

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Director, Division of Property Management and Construction determines that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a contested case hearing conducted in accordance with 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, if he or she so requests, or a statement declining to give such reasons and setting forth the Division of Property Management and Construction's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Division of Property Management and Construction, the latter shall note the fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after given due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of such person.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-3.8 Disqualification of a person(s)

The disqualification of a person shall be based upon the responsibility of the bidder as determined by the factors set forth in N.J.A.C. 17:19-2.5.

17:19-3.9 Extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Division of Property Management and Construction, including any contracts which utilize State funds. When it is determined by the Director of the Division of Property Management and Construction to be essential to the public interest, an exception from total exclusion may be made with respect to a particular State contract.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-3.10 Prior notice by Division of Property Management and Construction

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given to the Attorney General and the State Treasurer.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

17:19-3.11 List of debarred, suspended or disqualified persons

The Division of Property Management and Construction shall supply to the State Treasurer a monthly list of all persons having been debarred, suspended or disqualified in accordance with the procedures prescribed in this subchapter. Such list shall at all times be available for public inspection.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted a reference to the Division of Property Management and Construction for a reference to the General Services Administration.

17:19-3.12 Director's authority to contract

Nothing contained in this chapter shall be construed to limit the authority of the Director of the Division of Property Management and Construction to refrain from contracting within the discretion allowed by law.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted a reference to the Division of Property Management and Construction for a reference to the Division of Building and Construction.

SUBCHAPTER 4. HEARING PROCEDURES

17:19-4.1 Hearings; subject matter

(a) Administrative hearings conducted by the Division of Property Management and Construction (DPMC) may be called as follows:

1. Informal hearings requested by any participating bidder protesting an award by the Director, Division of Property Management and Construction;
2. Informal hearings requested by a consultant/contractor regarding evaluation or re-evaluation of classification for bidding;
3. Formal hearings heard by the Director, 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, to suspend or debar a current or prospective bidder from doing business with

the State of New Jersey for any of the reasons enumerated in N.J.A.C. 17:19-3; or

4. Certain other matters of dispute that may occur relative to the activities of the Division of Property Management and Construction.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-4.2 Parties who may request hearings

(a) The following parties may request hearings in the above named matters:

1. The Director, Division of Property Management and Construction;
2. Any consultant/contractor that has submitted a bid for the contract in question; or
3. Any consultant/contractor duly objecting to a classification.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted a reference to the Division of Property Management and Construction for a reference to the Division of Building and Construction in 1, and deleted "relative to evaluation of performance" at the end of 3.

17:19-4.3 Request for hearings; hearing procedures; time limitations

(a) Any participating bidder seeking a hearing shall make written request to the Director setting forth the specific grounds for challenging the award. The request must be received by DPMC Director within five calendar days after the opening of bids.

(b) Any consultant/contractor seeking to challenge a classification issued as a result of evaluation or re-evaluation must make written request to the Director setting forth the specific grounds for the challenge. Such request must be duly submitted within 15 calendar days after the date of receipt of DPMC's written notification of classification.

(c) Hearings which are not under the jurisdiction of the Office of Administrative Law shall be informal and held, where feasible, within 15 calendar days of receipt of request. Hearings will be heard, where practicable, by an impartial hearing officer. The hearing officer shall prepare a report to the Director within 10 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. The hearing report shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the hearing officer's report and have 10 calendar days to provide written comments or exceptions to the Director. Subsequent to the 10 calendar day period for exceptions, the Director shall make a final judgment on the matter.

(d) Such informal hearings as convened under these rules are fact-finding for the benefit of the Director. The Director may determine that sufficient information already exists in the records so that a decision can be made without an informal hearing. The Director may waive the informal hearing and publish a final decision accordingly.

(e) The Director may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames noted above. In these instances, the Director shall document for the record the rationale for such amendment and give adequate notice to the parties involved.

(f) Hearings in those matters which are contested cases as defined pursuant to N.J.A.C. 1:1 shall be held under the jurisdiction of the Office of Administrative Law except in those instances where the Director reserves the right to hear the case in person. The judge designated by the Office of Administrative Law shall prepare a recommended report and decision to the Director within 45 calendar days of the conclusion of the hearing. The hearing report shall be advisory in nature and not binding on the Director. All parties shall receive a copy of the administrative law judge's report and decision, and shall have 13 days from the date the administrative law judge's initial decision was mailed to provide written comments or exceptions to the Director, who shall make a final judgment in the matter within 45 calendar days following receipt of the comments or exceptions. Pursuant to N.J.S.A. 52:14B-10, failure to modify or reject the hearing report will result in the adoption of the decision of the administrative law judge as the final decision of the Director, Division of Property Management and Construction.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), (b) and (f), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction; and in (b), substituted a reference to 15 calendar days for a reference to five calendar days.

17:19-4.4 Necessary parties to the hearing

(a) In those instances where a hearing is requested by a participating bidder, the Director shall extend invitations to all consultants/contractors who participated in the bidding for the contract in question. The extent of the participation of these parties shall be limited to those matters in question as expressed by the complainant. The Director has discretionary authority to exclude invitations to bidders in those cases where such bidders are deemed to have no potential interest in the outcome of the hearing.

(b) Representatives of the protesting bidder or bidders, or in the case of debarment/suspension proceedings or of classification disputes, representatives of the party or parties against whom the action is called, shall be necessary parties to the hearing. Any such party has a right to be represented by counsel for such hearings, if desired.

(c) The State shall be represented by the Office of the Attorney General where necessary, as well as responsible members of the Division of Property Management and Construction staff and the using agency concerned.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (c), substituted a reference to the Division of Property Management and Construction for a reference to the Division of Building and Construction.

17:19-4.5 Effect of requests for hearings on contract award

(a) The Division of Property Management and Construction shall, except in those instances noted in (b) below, hold, in situations where there has been a bypass of the apparent low bidder, all awards of contracts for at least five calendar days pending the outcome of any protests filed by interested parties. In these situations, all bidders will be notified of the intent to award to the successful bidder. If, in fact, the award of the contract is protested, the Division of Property Management and Construction shall not award the contract in question until the completion of the hearing process.

(b) The Director may, in those instances where the failure to award the contract will result in substantial costs to the State of New Jersey, or in those instances where the public exigency so requires, award the contract notwithstanding the provisions in (a) above. The Director shall document all cases where such action is required and shall notify all interested parties.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction throughout.

17:19-4.6 Discovery procedures

The Director shall be entitled, upon request, to review all records and documents used in evidence by a complainant. Such documents shall be made available to the Division of Property Management and Construction at the cost of reproduction, if such reproduction is required.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Substituted a reference to the Division of Property Management and Construction for a reference to the Division of Building and Construction.

SUBCHAPTER 5. CONSULTANT PREQUALIFICATION AND SELECTION PROCEDURES

17:19-5.1 Purpose

The consultant selection procedures are established to give qualified architectural, engineering, construction man-

agement or other consultant firms an open opportunity to be selected for State project assignments on the basis of demonstrated competence and experience. Selection of consultants based upon a combination of technical qualifications and cost proposals enables the public interest to be best served.

17:19-5.2 Scope

(a) The principal elements of the consultant selection procedures provide for:

1. Verifying the qualifications of firms interested in providing consultant services to the State;
2. Initiating and advertising projects (which may include other solicitation requirements);
3. Screening all interested and qualified firms;
4. Evaluating procedures by Selection Committee; and
5. Obtaining final approval by the Director.

17:19-5.3 Definitions

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

“Agency consultant” means a firm providing technical and professional services in support of construction projects for State government agencies.

“Chairperson” means the principal member of the selection committee who is responsible for the management of the selection process.

“Client agency” means that Department or other element of State government for which the Division provides consultant selection services for design and construction projects.

“Construction cost estimate” for the purpose of these procedures means the estimated construction cost of a specific project.

“Consultant” means an architect, engineer, construction manager, or other consultant providing technical and professional services in support of a design or construction project.

“Consultant selection committee” (Committee) means the body responsible for the review, evaluation and selection of consultant firms for State projects.

“Cost proposal” means a specific fee proposal covering compensation for services as specified. Each shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

“Director” means the Director of the Division of Property Management and Construction or his or her duly authorized representative.

“Division” means the Division of Property Management and Construction in the Department of the Treasury.

“Major project” means a project with an anticipated fee greater than that allowed by the term contract or a project of a complex or specialized nature which includes technical work requiring special licenses or certifications, new building technologies or processes, historical renovations, the potential for unforeseeable conditions which may increase the project cost significantly, the need for increased competition, and/or the need to combine several small components or projects to ensure effective coordination and completion of the project(s) as determined by the Director.

“Member” means an individual appointed to serve on a selection committee.

“Prequalification” means a process of reviewing information and experience data to determine the prequalification level and professional disciplines of consultant firms.

“Prequalification level” means the maximum construction cost estimate dollar level for which a consultant is prequalified. Prequalification rating levels are established and periodically adjusted by administrative procedure authorized by the Director, in accordance with this subchapter.

“Screening” or “ranking” means the process of evaluation utilized by the Committee to determine those firms to be given final consideration from among the total applicants for a specific project.

“Selection coordinator” means the administrator of the day-to-day committee operations and procedures, including advertising of projects, scheduling of meetings, preparing agendas, recording scores, preparing minutes of committee meetings and similar administrative responsibilities.

“Technical scoring” means the process of developing numerical ratings of consultants by individual Committee members in their evaluation of those firms seeking assignments.

“Term contract” means contracts awarded to multiple consultants for a specific time period based upon hourly rates.

“Work order” means a Division form utilized by an agency consultant to submit proposals based on term contract hourly rates for work done for State government agencies.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Deleted “Administrator”; in “Agency consultant”, substituted a reference to State government agencies for a reference to client agencies; in “Director” and “Division” substituted references to the Division of Property Management and Construction for references to the Division of Building and Construction; and rewrote “Major project” and “Work order”.

17:19-5.4 Prequalification of consultant firms

(a) Firms desiring to be considered for consultant work with the Division shall submit prequalification forms as specified by the Division. These forms provide comprehensive information on the management of the firm, its financial history, the type and value of past project work and other related information. This information is used to assist in the evaluation of firms for Division work and to establish the maximum construction cost estimate dollar level and professional disciplines for which the firm is qualified. The result of this evaluation is the firm’s “prequalification.”

(b) Review of the firm by the Division shall be completed within 30 calendar days of receipt of fully completed prequalification forms, and a notification of results shall be mailed to the firm within the same time period.

(c) If a prequalification is denied, the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the Division.

(d) If a firm does not agree with its prequalification as assigned by the Division, it may make a written request to the Section Head for reconsideration. Results of this review will be made known to the firm in writing. If the firm still does not agree with its prequalification, it may appeal in writing to the Director whose decisions will then be final.

(e) It is the responsibility of each firm to update and keep current all prequalification forms. Major changes occurring in the firm’s status shall be brought to the attention of the Division in order that the prequalification record is current.

(f) Any firm seeking prequalification shall have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for prequalification.

(g) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their prequalification files which may be reviewed during the selection processes.

(h) The prequalification level assigned does not necessarily reflect the level on which a consultant has performed for other clients. The Division endeavors to assign a level which is justified by applicable overall experience, length of time in business, prior Division experience, staffing and management depth.

(i) Firms may increase their technical qualification for a specific project by joint-venturing with other firms. Each individual firm of the joint venture must be separately prequalified. One of the firms shall have been prequalified at the level stipulated for the project.

Amended by R.2000 d.76, effective February 22, 2000.
 See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).
 In (d), rewrote the first sentence.

17:19-5.5 Public notification

(a) The Division may publicly solicit the interest of pre-qualified firms to provide professional services by advertising in one or more of the following methods:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. In newspapers;
3. By written notice to New Jersey professional societies;
4. By use of direct mailings to prequalified firms; or
5. Electronic means.

(b) Public notification shall include instructions to specify any special information or experience that a firm must submit by the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

Amended by R.2000 d.76, effective February 22, 2000.
 See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).
 Inserted (a)5.

17:19-5.6 Set-aside program; minority-owned and female-owned businesses

The Division will conform to the provisions of N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14 in the award of contracts and subcontracts to eligible minority-owned and women-owned businesses.

17:19-5.7 Major project selection procedures

(a) The selection process shall be initiated upon the receipt by the Division of a request from a State client agency for consultant services. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimate (if applicable) of the proposed project for both design and the construction of the project.

(b) A selection committee shall be established to select a consultant for that specific project. The committee shall develop the selection schedule and evaluation criteria for the project. These evaluation criteria shall be part of the public notice. The selection criteria for each project shall generally include the following: firm's experience on projects of a similar size and nature; project team experience; project approach; understanding of project needs; project schedule; and/or other criteria as determined to be appropriate.

(c) The evaluation process may include submission of specific project questionnaire forms, technical proposals and interviews.

(d) Each individual member of the committee will evaluate all submissions based upon specific criteria. The selection coordinator shall compile and tabulate all individual scores and prepare a consolidated ranking. The chairperson shall call for a meeting of the committee to review the ranking and shortlist the appropriate number of firms for further consideration. Additional technical and/or organizational information may be requested from the firms before a final technical ranking is prepared.

(e) When all evaluations are completed, cost proposals shall be solicited from the top technically-ranked firms.

(f) Site visits, pre-interview conferences and pre-proposal conferences may be scheduled. Attendance shall be mandatory when so stipulated.

(g) Sealed cost proposals will be accepted on a predetermined date and time by the selection coordinator. The committee will meet to open and review the cost proposals. Upon completion of the review, the committee may begin negotiations with the highest technically-ranked firm or firms for a cost proposal that is fair and reasonable to the State. As required, the committee may request additional meetings, additional technical, organizational or cost data from any of the firms. If a satisfactory conclusion cannot be reached with the top technically ranked firm or firms, the committee may negotiate with the next highest technically ranked firm or firms.

(h) The committee shall have the responsibility to recommend to the Director the selection of the firm which is most technically qualified and whose cost proposal is fair and reasonable to the State.

(i) The technical scores, ranking, evaluations, negotiations and cost proposals of all firms, as well as all discussions and correspondence, relating to a consultant selection are confidential until the contract is awarded.

Amended by R.2000 d.76, effective February 22, 2000.
 See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (a), inserted a reference to consultant services at the end of the first sentence; and rewrote (b) and (g) through (i).

17:19-5.8 Term contracts

(a) Firms desiring to perform consultant services for the Division may submit proposals for term contracts. Term contracts shall be awarded by the Director to consultants who have complied with the terms and conditions of the term contract request for proposal.

(b) Term contracts shall be used to provide consultant services for client agencies by utilizing a more expeditious selection process, especially in cases of construction emergencies.

17:19-5.9 Term contract project selection procedures

(a) Term contract site specific projects are those with a fee and/or construction value threshold established by the terms and conditions of the term contract. The initiation of the selection process shall be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7(a).

(b) Firms are selected to submit technical and cost proposals for site specific projects by computer-generated random selections and/or by special client agency requests.

(c) Emergency projects may be directly awarded upon the Director's authorization.

(d) Pre-proposal conference, site visits and interviews may be scheduled.

(e) Technical proposals shall be evaluated and ranked in accordance with the specific technical criteria for the project.

(f) The selection process regarding the sealed cost proposals shall be in accordance with the major project selection procedures, N.J.A.C. 17:19-5.7 (g).

(g) The committee shall have the responsibility to recommend to the Director the selection of the firm which is most technically qualified and whose cost proposal is fair and reasonable to the State.

Amended by R.2000 d.76, effective February 22, 2000.
See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

In (f), changed N.J.A.C. reference; and rewrote (g).

17:19-5.10 Agency consultant program

(a) The agency consultant program provides a selection process for architectural, engineering or other consultant services to assist client agencies and the DPMC in the planning of construction projects, developing scopes of work, investigating construction-related problems, designing small projects and administering small construction projects.

(b) The Division may delegate to client agencies the authority to award projects for consultants to perform professional services for construction projects. The client agency shall evaluate and rank the technical submissions according to selection procedures established by Division policy.

(c) An agency consultant fee limit for each work order shall be established by the Division, including a fee limit threshold per year.

(d) The client agency shall monitor and manage all activities of the consultant. Financial data and project files shall be available to Division auditors.

Amended by R.2000 d.76, effective February 22, 2000.

See: 31 N.J.R. 4237(a), 32 N.J.R. 712(a).

Rewrote (a).

17:19-5.11 Client agency management of design/construction projects

(a) The Division may delegate authority to client agencies to manage design and/or construction phases of a project with a stipulated construction cost estimate.

(b) The selection of firms to submit technical and cost proposals shall be in accordance with the term contract selection procedures, N.J.A.C. 17:19-5.9(b) and as outlined in the terms and conditions of the term contract.