

CHAPTER 38A

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

Authority

N.J.S.A. 18A:7G-26; and Executive Order No. 24 (2002).

Source and Effective Date

R.2006 d.194, effective May 15, 2006.
See: 38 N.J.R. 473(a), 38 N.J.R. 2204(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 38A, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, expires on November 11, 2013. See: 45 N.J.R. 1597(a).

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: Source and Effective Date.

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).

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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 Construction Corporation (the Corporation), a subsidiary of the New Jersey Economic Development Authority, to implement Sections 26, 59, 60 and 61 of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (the Act) and N.J.S.A. 52:34-9.3. These rules shall apply to the procurement of contractors, consultants and their use of subcontractors and subconsultants on all school facilities projects and pre-development activities undertaken by the Corporation 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 Corporation. 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 Corporation. Any firm which, pursuant to these rules, is required to be prequalified by the Corporation 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 Corporation 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:

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, enacted on July 18, 2000.

“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 Corporation, which are mandatory and which must be made under oath or by certification on forms designated by the Corporation. 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 Corporation or OGI deems necessary from a specific applicant.

"Authority" or "NJEDA" means the New Jersey Economic Development Authority, created pursuant to P.L. 1974, c. 80 (N.J.S.A. 34:1B-1 et seq.).

"Bid," for Corporation-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 Corporation.

"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 Corporation 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.

"Corporation" means the New Jersey Schools Construction Corporation.

"Corporation-managed project" means a school facilities project or pre-development activity undertaken by the Corporation. 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 Corporation 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.

"Debarment" means an exclusion by the Corporation from bidding, proposing or contracting with the Corporation, 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 Corporation 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 Corporation 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 Corporation 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 Corporation 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 Corporation 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 Corporation 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.

“SCC” means the Corporation.

“School contract” means, with respect to the Corporation, a contract entered into between the Corporation 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 Corporation from bidding, proposing or contracting with the Corporation, 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.

SUBCHAPTER 2. GENERAL REQUIREMENTS

19:38A-2.1 Requirement to be prequalified

(a) For Corporation-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 Corporation pursuant to this chapter. A contractor must be SCC 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 SCC 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 Corporation-managed projects, all subcontractors required to be named in the bid, whether pursuant to N.J.S.A. 34:1B-5.7, the advertisement for the specific contract or the contract documents, are required to be SCC 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 SCC 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 Corporation-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 subcontracts valued at \$500,000 or more, whether required to be named in the bid or not, are required to be prequalified by the Corporation pursuant to this chapter. Such subcontractors must be SCC 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;
- vi. Demolition;
- vii. 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;
- xx. Asbestos Removal/Mechanical; and
- xxi. 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 Corporation pursuant to this chapter. Such subconsultants must be SCC 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 Corporation 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 Corporation-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 Corporation.

(f) Neither the Corporation 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 Corporation. 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 Corporation at the time specified in this chapter. Any failure to comply with this chapter shall entitle the Corporation 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 SCC prequalified in accordance with this chapter.

SUBCHAPTER 3. APPLICATION AND NOTICE OF PREQUALIFICATION DETERMINATION

19:38A-3.1 Prequalification application

(a) A firm seeking initial prequalification with the Corporation 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 Corporation. See N.J.S.A. 18A:7G-3.4.

(b) A firm seeking to renew an existing SCC prequalification must file a timely and complete renewal application. A renewal application will be considered timely if it is received by SCC no later than 10 business days after the expiration date of the existing SCC prequalification. A renewal applicant must apply to DPMC and obtain a contractor DPMC Classification or consultant DPMC Prequalification. Because the DPMC and SCC expiration dates generally coincide, a renewal applicant may submit its SCC 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 SCC 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 SCC within five business days of receiving it. If the firms's DPMC application is denied or otherwise closed without being granted, the firm must notify SCC 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 SCC to provide SCC 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 Corporation.

(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 Corporation or the OGI. The OGI shall submit its recommendation regarding prequalification of the firm to the Corporation.

19:38A-3.2 Notice of Prequalification determination

(a) Upon a determination by the Corporation that the firm should be prequalified, the Corporation shall send to the firm a Notice of Prequalification. The Corporation will post a listing of prequalified firms on the Corporation'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 Corporation, to explain why it should be granted prequalification. The firm shall submit the written information to the Corporation within 30 calendar days of receiving the notice of denial, unless a longer time is agreed to by the Corporation. The Corporation's decision on the protest shall be embodied in a written decision provided to the firm, which shall constitute final agency action by the Corporation.

(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 its prequalification, a firm shall notify the Corporation 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 Corporation 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.

SUBCHAPTER 4. REVOCATION, SUSPENSION AND DEBARMENT

19:38A-4.1 Grounds for revocation of prequalification or denial of a renewal application

(a) The Corporation 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 Corporation 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 Corporation 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 Corporation, 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 Corporation 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 firm's 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 Corporation 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 pre-development activity in any capacity as to which prequalification is required; provided, however, that in its sole discretion, the Corporation 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 Corporation 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 Corporation, 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 Corporation may suspend a firm, provided that at least 10 days before the effective date of the suspension, the Corporation 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 Corporation's position regarding the continuation of the suspension. Where the Corporation suspends a firm based on a suspension by any other agency of government, the Corporation 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 Corporation 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 Corporation 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 Corporation 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 Corporation, and from providing any goods or services on any school facilities project or pre-development activity managed or funded by the Corporation; provided, however, that in its sole discretion, the Corporation 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 Corporation 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 Corporation 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 Corporation's determination, must transmit a written request to the Corporation 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 Corporation may also impose a similar adverse action without affording an opportunity for a hearing, provided the Corporation 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 Corporation.

(f) Nothing contained in this chapter shall be construed to limit the authority of the Corporation to refrain from contracting within the discretion allowed by law.