

CHAPTER 38C**PROCUREMENT OF ARCHITECTURAL, ENGINEERING, LAND SURVEYING, AND RELATED PROFESSIONAL CONSULTANT SERVICES****Authority**

N.J.S.A. 18A:7G-1 through 13, 18A:7G-26(b) and 52:34-9.1 et seq.

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Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from February 7, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. See: 43 N.J.R. 3153(a).

Chapter Historical Note

Chapter 38C, Procurement of Architectural, Engineering, Land Surveying, and Related Professional Consultant Services, was adopted as R.2005 d.60, effective February 7, 2005. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**19:38C-1.1 Purpose and scope of rules**

This chapter is designed to implement provisions of P.L. 1997, c.399, N.J.S.A. 52:34-9.1 et seq., which govern procedures generally applicable to the Corporation's award of contracts for professional architectural, engineering and land surveying services, and is also intended to establish procedures for the Corporation's procurement of related services, in its implementation of the school construction program.

19:38C-1.2 Definitions

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

“Allowance” means a fee allowance established by the Corporation to address a specific design, construction administration, testing, or monitoring service when the exact cost of any such service cannot be known by the Corporation at the time of a request for proposals or by the consultant at the time of submission of proposals. The exact cost or fee will be determined during administration of the contract, and will draw upon the allowance previously established by the Corporation. The amount of allowances may be excluded from the total amount of compensation, in accordance with provisions of this chapter.

“Authority” means the New Jersey Economic Development Authority, as established pursuant to the New Jersey Economic Development Authority Act, P.L. 1974, c.80, as amended.

“Board” means the board of directors of the Corporation.

“Category one contract” means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-3.

“Category two contract” means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-4.

“Category three contract” means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-5.

“Category four contract” means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-6.

“Category five contract” means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-7.

“Client school district” means the school district in which services are provided.

“Compensation” means the estimated amount of fees to be paid to a professional services consultant in connection with a school facilities project or pre-development activity or an engagement for the school construction program, but may exclude allowances where so provided by this chapter.

“Corporation” means the New Jersey Schools Construction Corporation, which is the entity formed pursuant to N.J.S.A. 34:1B-159 as a subsidiary of the Authority for the purpose of implementing provisions of the Act. The Corporation is authorized to exercise all powers granted to the Authority under the Act, except the power to incur indebtedness.

“Department” means the New Jersey Department of Education.

“Early childhood education facilities project” means a school facilities project consisting of rehabilitation of or addition to existing facilities in which early childhood education programs are provided to three or four year old children under contract with an early childhood program aid district, as defined at N.J.A.C. 19:36-1.3, but which programs are owned and operated by a community provider, as defined at N.J.S.A. 18A:7G-3.

“Educational Facilities Construction and Financing Act” or the “Act” means P.L. 2000, c.72, which mandates the school construction program.

“Fee proposal” means the proposal submitted by the professional services consultant in response to the request for fee proposal.

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

“Pre-development activities” means the activities that must be undertaken prior to submitting a school facilities project application to the Department for approval and calculation of preliminary eligible costs, as defined at N.J.S.A. 18A:7G-3. Such activities may include:

1. Site analysis;
2. Acquisition of land;
3. Remediation;
4. Site development;
5. Feasibility studies including studies to determine the viability of new construction versus rehabilitation;
6. Design work;
7. Acquisition of and design work for temporary facilities; and
8. Such other activities as may be specified in N.J.A.C. 19:34-1.2 and 6A:26-1.2.

“Pre-development approval” means an approval issued by the Department specifying pre-development activities that may be undertaken with respect to a proposed school facilities project.

“Preliminary project report” means the document prepared by the Department transmitting to the Corporation a school facilities project to be undertaken by the Corporation. In the case of an engagement of a professional services consultant to perform program-wide activities relating to the school construction program, any references in this chapter to a preliminary project report shall refer to the memorandum prepared by Corporation staff setting forth the need for and description of the engagement.

“Preliminary proposal” means a short-form proposal in the format prescribed by the Corporation submitted in response to an advertisement soliciting such proposals as the first of two steps in the selection of a professional services consultant, as set forth in N.J.A.C. 19:38C-5.3.

“Pre-qualified” means pre-qualified by the Corporation in accordance with provisions set forth in rules adopted by the Corporation.

“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 pre-development 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.

“Project management firm” means a firm engaged by the Corporation, at its sole option, to provide overall construction management services, oversight, direction, coordination, and reporting in connection with the school construction program.

“Proposal” means the technical proposal or fee proposal, or both as the case may be, submitted by a consultant provider of goods or services in response to a request for proposals.

“Request for fee proposals” means the request for fee proposals issued by the Corporation in connection with the selection of a professional services consultant for a school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.

“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 for a school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.

“Request for qualifications” means the request for preliminary proposals (preceding the Corporation’s issuance of a request for proposals) issued by the Corporation in connection with the selection of a professional services consultant for a school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.

“Request for technical proposals” means the request for technical proposals issued by the Corporation in connection with the selection of a professional services consultant for a school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.

“School construction program” means the program of school facilities projects and related activity mandated by the Act, and undertaken by the Corporation.

“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 client school district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration.

“Scope of services” means the scope of the services required from a professional services consultant for a particular school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.

“Selection committee” means the body responsible for the review, evaluation and recommendation of a professional services consultant for a specific school facilities project, for a group of school facilities projects, pre-development activities or other type of engagement for the school construction program, as the case may be, when compensation exceeds \$25,000.

“Selection coordinator” means the administrator of the day-to-day operations and procedures of the selection process, whose activities shall include, but are not limited to, advertising, scheduling of meetings, preparing agendas, recording scores, preparing minutes of selection committee meetings and other similar administrative duties.

“Small business enterprise” or “SBE” means a firm that is registered as such with the New Jersey Commerce and Economic Growth Commission.

“Technical proposal” means the proposal submitted by a professional services consultant in response to the request for technical proposals.

“Term contract” means a contract whereby the Corporation may engage a professional services consultant for a defined period of time, as provided in this chapter.

“Waiver” means a waiver of advertising, as authorized pursuant to N.J.A.C. 19:38C-6.

SUBCHAPTER 2. GENERAL REQUIREMENTS

19:38C-2.1 Scope

This subchapter sets forth requirements applicable to all procurements of consultants providing professional architectural, engineering, land surveying and other related services, except as otherwise provided in this chapter.

19:38C-2.2 Pre-qualification requirement

Any professional services consultant that wishes to be engaged by the Corporation must be pre-qualified as of the time established in this chapter except that pre-qualification shall not be necessary for engagement pursuant to the category one contract procedures set forth in N.J.A.C. 19:38C-3.

19:38C-2.3 Selection procedures based on type of engagement

There may be different procedures for the selection of professional services consultants deciding whether the engagement is for a category one contract (N.J.A.C. 19:38C-3), category two contract (N.J.A.C. 19:38C-4), category three contract (N.J.A.C. 19:38C-5), category four contract (N.J.A.C. 19:38C-6), or category five contract (N.J.A.C. 19:38C-7).

19:38C-2.4 Contract term; term contracts

The Corporation may enter into an engagement with a professional services consultant for a term that may extend for such time as may be required for complete performance under the pertinent scope of services. In the alternative, where appropriate, the Corporation may enter into a term contract with any consultant engaged pursuant to provisions of this chapter for a contract term not to exceed three years, and for a contract value that shall not exceed a ceiling stated in the advertisement and request for proposals. In no event shall architectural services be procured by means of a term contract. At the end of any three-year term contract period, if the need for the pertinent services remains and the Corporation determines to procure them, the Corporation shall reinstitute the selection process applicable under this chapter.

19:38C-2.5 Evaluation

(a) The ranking of technical proposals shall be performed pursuant to evaluation criteria developed by Corporation staff for each particular engagement. In selecting the most highly qualified professional services consultants, the selection committee and Corporation staff shall consider the following criteria, where applicable:

1. The experience of the consultant and the key personnel on projects similar in scope, size and complexity;

2. The qualifications of the consultant and the key personnel to provide the required services for the school facilities project, pre-development activities or other type of engagement for the school construction program, as the case may be;

3. The approach set forth by the consultant to the school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be;

4. The proposed staffing, including, but not limited to, the extent to which the commitment of any proposed staffing under any other contract with the Corporation, or with any other public or private entity, may compromise the consultant's capacity to provide the services addressed in the technical proposal;

5. The consultant's performance on other work undertaken or funded by the Corporation;

6. The consultant's proximity to the site of the school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be; and/or

7. Such other criteria as the Corporation may determine to be appropriate to a specific procurement and which shall be set forth in the pertinent advertisement and request for proposals.

(b) Corporation staff shall establish weights for the evaluation criteria based on particular requirements of each school facilities project or pre-development activity, or the characteristics of the engagement required for the school construction program, as the case may be.

(c) The evaluation process may include submission of preliminary proposals, submissions of technical proposals, interviews, site visits, and pre-proposal conferences.

(d) To the extent required by law or by order of a court of competent jurisdiction, the Corporation shall abide by the provisions of N.J.S.A. 52:32-17 et seq., N.J.A.C. 12:10A, and all other applicable regulations, with respect to SBEs. Nothing in this chapter shall be construed to limit the Corporation's ability to obtain services pursuant to a SBE set-aside procurement under N.J.A.C. 19:32.

19:38C-2.6 Rejection of proposals

(a) Proposals received after the submission date and time prescribed in the advertisement and request for proposals shall be rejected, except where the Corporation, in its sole discretion, finds good cause.

(b) The Corporation may reject any proposal for lack of responsiveness or responsibility or when it is otherwise deemed to be in the public interest to do so. The Corporation may reject all proposals for excessive cost, insufficient competition, or any other reason that it deems to be in the public interest. The Corporation may cancel an award at any time before the execution of an agreement by all parties.

19:38C-2.7 Contract approval and execution

Except as may otherwise be specifically provided in this chapter, engagement shall be subject to approval by Corporation staff or the Board and executed by Corporation staff in accordance with the levels of internal operating authority established by the Board, which may be consulted at the Corporation website located at: www.njscc.com.

19:38C-2.8 Termination

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

19:38C-2.9 Records access and retention

(a) All applications and submissions received by the Corporation pursuant to this chapter shall constitute government records within the meaning of N.J.S.A. 47:1A-1 et seq., except as otherwise provided by N.J.A.C. 19:30-1.5.

(b) The Corporation and, pursuant to the express terms of any contract, any consultant, shall make any documents or records in any form, including electronic, relating to a school program procurement that is subject to this chapter available for inspection and copying at any time by the Office of Government Integrity, Unit of Fiscal Integrity created pursuant to N.J.S.A. 18A:7G-43.

(c) The Corporation and any consultant subject to this chapter shall retain all records relating to services provided under contract with the Corporation for a period of 10 years following expiration or termination of the contract, provided that if any litigation, claim or audit relating to the school program procurement and the provision of such services is commenced prior to contract expiration or termination, such records shall be retained until all litigation, claims, or audit findings, and related appeals, if any, have been resolved with finality.

19:38C-2.10 Appeals

(a) Appeals arising from decisions of the Corporation may be requested in writing, and an opportunity given for any informal hearing on the papers, in person or via telephone with Corporation staff. Such written request for an informal hearing must be made within 10 days of the receipt of the Corporation's decision.

(b) Every determination by the Corporation of a dispute or controversy arising under this chapter shall be embodied in a written decision, which shall constitute final agency action by the Corporation.

**SUBCHAPTER 3. SELECTION PROCEDURES—
CATEGORY ONE CONTRACTS**
19:38C-3.1 Scope

This subchapter sets forth the procedural requirements applicable to the procurement of category one contracts,

which are contracts with compensation not exceeding \$25,000.

19:38C-3.2 Solicitation

The Corporation shall not be required to advertise a category one procurement. Wherever practicable, a competitive selection process shall be used.

19:38C-3.3 Evaluation

Proposals shall be evaluated based on price and the evaluation criteria appropriate for the particular procurement. The Corporation may request clarifying technical and/or organizational information from any entity submitting a proposal prior to finalizing the evaluation.

19:38C-3.4 Selection

The Corporation shall select the proposal that is in the best interest of the Corporation and the school construction program, based on price and the evaluation criteria established for the selection.

**SUBCHAPTER 4. SELECTION PROCEDURES—
CATEGORY TWO CONTRACTS**
19:38C-4.1 Scope

This subchapter sets forth the procedures applicable to the Corporation's procurement of category two contracts, which are contracts where the compensation does not exceed \$2,000,000 and where, regardless of compensation, the school facilities project is an early childhood education facilities project, which the Corporation has determined to undertake pursuant to N.J.A.C. 19:36; unless Corporation staff determines the project should follow the procedures set forth in N.J.A.C. 19:38C-5.

19:38C-4.2 Initiation

(a) Following receipt of a pre-development approval or preliminary project report for a category two contract, Corporation staff shall:

1. Create the selection committee for the purpose of selecting a professional services consultant;
2. Develop the schedule governing the selection;
3. Identify how the consultant must be pre-qualified; and
4. Identify the number of firms to be randomly selected.

19:38C-4.3 Advertising

(a) The Corporation shall publicly advertise each category two contract prior to the solicitation of proposals for that

contract. The contract may be publicly advertised in newspapers and/or through electronic means.

(b) The advertisement shall state the date on which the Corporation will be randomly selecting, from an appropriate pool of its pre-qualified consultants, those firms from which proposals will be solicited. The advertisement shall specify how the consultant must be pre-qualified, and shall advise consultants that, if they want to be included in the random selection process, they must be pre-qualified by the Corporation at the time of the random selection. The advertisement shall also include a statement of the criteria the Corporation shall use in evaluating the technical qualifications of the proposals submitted in accordance with these category two contract procedures.

(c) Following the random selection process, the Corporation shall announce, in newspapers and/or through electronic means, the names of the firms from which proposals are being solicited.

19:38C-4.4 Random selection process

(a) From consultants appropriately pre-qualified, Corporation staff will perform a random selection of the number of firms from which to solicit proposals. Such random selection may be designed, pursuant to policies and procedures established by the Board, to foster the broad distribution of bidding opportunities among appropriately pre-qualified firms. A firm must be pre-qualified at the time of such selection in order to participate in such procurement.

(b) If applicable, any firm that prepared the educational specifications and programmatic for the school facilities project that is the subject of the solicitation shall be identified and, at the request of the client school district, the Corporation may add the firm to the randomly generated list of consultant firms. In determining whether to add such firm, the Corporation shall take under appropriate consideration the criteria set forth at N.J.A.C. 19:38C-2.5, and the extent to which such action would be in the best interests of the school facilities project, pre-development activity, or school construction program, as the case may be.

(c) The name of any professional services consultant whose contract with the Corporation for the provision of professional services has been terminated as a result of a determination to substantially revise the scope of the school facilities project that is the subject of the contract shall be added to the list of consultant firms from which proposals will be solicited pursuant to this section for the provision of professional services on the revised school facilities project when the following conditions have been met:

1. The Department approved the revision to the scope of the school facilities project after the award of the original contract to the professional services consultant; and

2. The type of professional services for which the new proposals will be solicited is substantially similar to the type of services required by the contract originally awarded to the professional services consultant.

19:38C-4.5 Request for proposals

The Corporation shall send to the short list of consultants determined pursuant to N.J.A.C. 19:38C-4.4 a request for proposals package, which shall consist of the request for technical proposals, the request for fee proposals, the scope of services and various other documents, and which will set forth the date, time and place for submission of proposals.

19:38C-4.6 Ranking of technical proposals

Each member shall review all technical proposals based upon the evaluation criteria established by Corporation staff. Clarifying technical and/or organizational information may be requested from the consultants and, at the sole discretion of the Corporation, interviews may be held prior to the determination of the final ranking. Each member shall evaluate the technical proposals, along with the interviews, if any, and assign a score. The selection coordinator shall compile and tabulate all scores and prepare a consolidated ranking of all of the consultants.

19:38C-4.7 Evaluation of fee proposals

(a) Fee proposals shall be opened and evaluated by Corporation staff. Using the fee proposals as a guide, Corporation staff shall negotiate a contract with the consultant ranked highest pursuant to N.J.A.C. 19:38C-4.6, at a fee determined by the Corporation staff to be fair and reasonable. Should Corporation staff be unable to negotiate a satisfactory fee with the highest-ranked consultant, Corporation staff shall terminate negotiations with the highest-ranked consultant, and may then undertake negotiations with the second highest-ranked consultant. Failing accord with the second highest-ranked consultant, Corporation staff shall terminate negotiations with the second highest-ranked consultant and may then undertake negotiations with the third highest-ranked consultant. In the event that Corporation staff is unable to agree to a satisfactory fee with any of the three highest-ranked firms, Corporation staff may select additional consultants in the order of their ranking and continue negotiations, until either an agreement is reached or the procurement is terminated.

(b) With the exception of contracts for early childhood education facilities projects, contracts entered into by the Corporation pursuant to the procedures set forth in this subchapter shall not include compensation in excess of \$2,000,000, exclusive of allowances, unless such contract was solicited pursuant to this subchapter with the good faith belief at the time of advertisement that it would not include compensation in excess of \$2,000,000 exclusive of allowances and nevertheless requires services that, for good cause, are only available at compensation negotiated in excess of \$2,000,000 exclusive of allowances.

19:38C-4.8 Recommendation

Based on the process set forth in this subchapter, a recommendation shall be made as to the most technically qualified consultant at final compensation determined to be fair and reasonable, and within the parameters established in N.J.A.C. 19:38C-4.7(b).

SUBCHAPTER 5. SELECTION PROCEDURES— CATEGORY THREE CONTRACTS

19:38C-5.1 Scope

This subchapter sets forth procurement procedures that may, at the option of the Corporation, apply to any engagement, but that shall apply to all category three contracts. A category three contract is an engagement with compensation exceeding \$2,000,000, exclusive of allowances.

19:38C-5.2 Initiation

Following receipt of a pre-development approval or preliminary project report for a category three contract, Corporation staff shall: create the selection committee for the purpose of selection of a professional services consultant, develop the schedule governing selection, and identify how the consultant must be pre-qualified. Corporation staff may decide to use a one-step process for soliciting requests for technical proposals or a two-step process as set forth in this subchapter, based upon a determination as to which process will be in the best interests of the school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.

19:38C-5.3 Two-step process; request for qualifications

(a) When Corporation staff elect to use a two-step process, the Corporation shall advertise a request for qualifications soliciting preliminary proposals, in accordance with N.J.A.C. 19:38C-5.4. A consultant must be appropriately pre-qualified at the time of submission of a preliminary proposal.

(b) Each member shall evaluate the preliminary proposals and assign a score based upon the evaluation criteria set forth below, or such other criteria as may be stated in the advertisement for preliminary proposals:

1. The firms experience in performing work similar in size, scope and complexity to the project;
2. The qualifications of the firm's key technical persons;
3. The experience of subconsultants (or in-house personnel, if applicable) in performing work similar in size and scope to the project;
4. The qualifications of the key technical persons of subconsultants (or in-house personnel, if applicable); and

5. Such other qualifications or criteria as the Corporation may determine to be appropriate to a specific procurement and which shall be set forth in the advertisement for preliminary proposals.

(c) The selection coordinator shall compile and tabulate all scores and prepare a consolidated ranking of all the consultants. The selection coordinator shall review the consolidated ranking and shall select a short list consisting of a minimum of three consultants considered most highly qualified to receive a request for technical proposals. In the event that fewer than three consultants submit preliminary proposals, the Corporation may, at its option, either include all consultants within the short list and proceed with the process, or reject all responses and advertise a second time.

19:38C-5.4 Advertising

(a) Advertising shall be performed in accordance with N.J.S.A. 52:34-12(a) and (b), in newspapers and/or by electronic means. In addition, such advertising may also be placed:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. By written notice to New Jersey professional societies; or
3. By use of direct mailings to appropriately pre-qualified firms.

(b) Any such advertisement shall be made in the form and in the time required to promote competitive bidding and shall describe any specific information that a consultant must submit by the date and time specified in the advertisement.

(c) The advertisement shall specify the evaluation criteria that shall apply to preliminary proposals or to proposals, as the case may be.

(d) When the Corporation has elected to follow a one-step procurement process, the advertisement and request for proposals shall provide that consultants must be appropriately pre-qualified at the time of submission of a technical proposal in order to be eligible for an award.

19:38C-5.5 Request for proposals

The Corporation shall send to the short list of consultants determined pursuant to N.J.A.C. 19:38C-5.3 or, in the event the Corporation elects to utilize the one-step procurement process, to those consultants that have requested one, a request for proposals package, which shall consist of the request for technical proposals, the request for fee proposals, the scope of services and various other documents, and which shall set forth the date, time and place for submission of proposals. In the event that there had been a request for qualifications, the selection coordinator shall provide notice by mail or electronically to those consultants who submitted

a preliminary proposal, but were not selected for the short list, advising them accordingly.

19:38C-5.6 Ranking of technical proposals

Each member shall review all technical proposals based upon the evaluation criteria established by Corporation staff. Clarifying technical and/or organizational information may be requested from the consultants and, at the sole discretion of the Corporation, interviews may be held prior to the determination of the final ranking. Each member shall evaluate the technical proposals, along with the interviews, if any, and assign a score. The selection coordinator shall compile and tabulate all individual scores and prepare a consolidated ranking of all of the consultants.

19:38C-5.7 Evaluation of fee proposals

Fee proposals shall be opened and evaluated by Corporation staff. Using the fee proposals as a guide, Corporation staff shall negotiate a contract with the consultant ranked highest pursuant to N.J.A.C. 19:38C-5.6, at a fee determined by Corporation staff to be fair and reasonable. Should Corporation staff be unable to negotiate a satisfactory fee with the highest-ranked consultant, Corporation staff shall terminate negotiations with the highest-ranked consultant, and may then undertake negotiations with the second-highest ranked consultant. Failing accord with the second highest-ranked consultant, Corporation staff shall terminate negotiations with the second highest-ranked consultant and may then undertake negotiations with the third highest-ranked consultant. In the event that Corporation staff is unable to agree to a satisfactory fee with any of the three highest-ranked firms, Corporation staff may select additional consultants in the order of their ranking and continue negotiations, until either an agreement is reached or the procurement is terminated.

19:38C-5.8 Recommendation

Based on the process set forth in this subchapter, a recommendation shall be made as to the most technically qualified consultant at final compensation determined to be fair and reasonable.

SUBCHAPTER 6. SELECTION PROCEDURES— CATEGORY FOUR CONTRACTS

19:38C-6.1 Scope

This subchapter shall govern the procurement of a contract through the Corporation's grant of a waiver of advertising. While the Corporation shall normally procure professional services consultants through a competitive selection process initiated by advertising, in those limited situations where it is not possible, feasible or prudent to advertise, this subchapter shall apply to the procurement of category four contracts.

19:38C-6.2 Categories; pre-qualification

(a) The Corporation may grant a waiver when the engagement to be awarded falls into one of the following categories:

1. The engagement to be made is with the Federal, or any State government or any agency or political subdivision thereof;
2. Public exigency; or
3. Only one source of supply is available.

(b) A professional services consultant procured pursuant to this subchapter must be pre-qualified prior to the Corporation's execution of the resulting contract, except that pre-qualification shall not be necessary for an engagement pursuant to public exigency under (a)2 above.

19:38C-6.3 Initiation of request

(a) A memorandum requesting a waiver shall be prepared and submitted to the appropriate level of Corporation staff, as determined by the Board. The waiver request shall include the following:

1. A summary of the nature and purpose of the waiver;
2. Attempts made to obtain competition;
3. The justification for the waiver; and
4. An outline of required services.

SUBCHAPTER 7. SELECTION PROCEDURES— CATEGORY FIVE CONTRACTS

19:38C-7.1 Scope

This subchapter establishes the procedures for the Corporation's assumption of a contract for architectural services, subject to this chapter, and for the Corporation's entry into the resulting category five contract.

19:38C-7.2 General requirements

Pursuant to N.J.S.A. 18A:7G-5r, in the event that a client school district has engaged a professional architectural services consultant to prepare the documents required for an approval by the Department of a school facilities project, the client school district shall, if not prohibited by the terms of its contract with such consultant, offer to assign such existing contract to the Corporation. The Corporation shall determine whether to assume such contract, in its sole judgment and discretion. In no event shall the Corporation assume an existing contract where doing so would not be in the best interests of the school facilities project.

19:38C-7.3 Initiation

(a) Upon receipt of a preliminary project report from the Department, the Corporation may inquire of a client school district whether it has engaged a professional services consultant for the school facilities project. If such is the case, in its response to the Corporation inquiry, the client school district shall submit to the Corporation the following:

1. All design documents provided to the client school district by the consultant pursuant to the existing contract;
2. A copy of the executed existing contract, together with all other contractual documents between the client school district and the consultant;
3. A detailed list of all payments made to date and all payments outstanding under the existing contract as of the date of the client school district's written request; and
4. Any other documentation requested by the Corporation.

19:38C-7.4 Limitations

(a) The Corporation shall undertake the assumption of an existing contract only if all of the following conditions are satisfied, in its sole judgment and discretion:

1. The scope of services to be performed by the consultant under the existing contract is sufficient and adequate to ensure the proper and complete design of the school facilities project;
2. The services performed by the consultant under the existing contract have proceeded to the production of drawings required to obtain educational specification approval by the Department;
3. The consultant is appropriately pre-qualified;
4. The terms and conditions of the existing contract are satisfactory to the Corporation;
5. The existing contract does not prohibit assignment by the client school district to the Corporation; and
6. The Corporation's assumption of the existing contract is in the best interests of the school facilities project.