

CHAPTER 38C

PROCUREMENT OF ARCHITECTS, ENGINEERS,  
LAND SURVEYORS, AND OTHER PROFESSIONAL  
SERVICES CONSULTANTS

Authority

P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238k) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.) (enabling statutes); and P.L. 1997, c. 399 (N.J.S.A. 52:34-9.1 et seq.) (related authority).

Source and Effective Date

R.2012 d.085, effective April 4, 2012.  
See: 43 N.J.R. 3153(a), 44 N.J.R. 1551(a).

Chapter Expiration Date

Chapter 38C, Procurement of Architects, Engineers, Land Surveyors, and Other Professional Services Consultants, expires on April 4, 2019.

Chapter Historical Note

Chapter 38C, Procurement of Architectural, Engineering, Land Surveying, and Related Professional Consultant Services, was adopted as R.2005 d.60, effective February 7, 2005. See: 36 N.J.R. 4087(a), 37 N.J.R. 516(b).

Chapter 38C, Procurement of Architectural, Engineering, Land Surveying, and Related Professional Consultant Services, was readopted as R.2012 d.085, effective April 4, 2012. As a part of R.2012 d.085, Chapter 38C was renamed Procurement of Architects, Engineers, Land Surveyors, and Other Professional Services Consultants; Subchapter 3, Selection Procedures—Category One Contracts, was renamed Selection Procedures—Agreements not Exceeding the State Bid Threshold Pursuant to N.J.S.A. 52-34-7b; Subchapter 4, Selection Procedures—Category Two Contracts, was repealed; Subchapter 5, Selection Procedures—Category Three Contracts, was renamed Selection Procedures—Agreements Exceeding the State Bid Threshold, as Adjusted, Pursuant to N.J.S.A. 52-34-7b; Subchapter 6, Selection Procedures—Category Four Contracts, was renamed Waiver of Advertising; Subchapter 7, Selection Procedures—Category Five Contracts, was renamed Selection Procedures—Term Agreements; and Subchapter 8, Engagement of Title Insurance Companies, Subchapter 9, Engagement of Appraisers, Subchapter 10, Engagement of Experts and Subchapter 11, Protests and Hearing Procedures, were adopted as new rules, effective May 7, 2012. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. GENERAL PROVISIONS

**19:38C-1.1 Purpose and scope of rules**

This chapter is designed to implement the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended, and P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., by establishing procedures for the procurement of professional consulting services, so that the Authority may carry out its broad statutory mandate to plan, design and construct school facilities projects and effectively administer the Authority's schools construction program. This chapter is also designed to implement the provisions of P.L. 1997, c. 399, N.J.S.A. 52:34-9.1 et seq., which govern procedures generally applicable to the Authority's award of contracts for professional architectural, engineering, and land surveying services.

Amended by R.2012 d.085, effective May 7, 2012.  
See: 43 N.J.R. 3153(a), 44 N.J.R. 1551(a).  
Rewrote the section.

**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:

"Act" means the "Educational Facilities Construction and Financing Act," P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended, which mandates the school construction program.

"Agreement" means the written agreement between the Authority and the architectural, engineering, land surveying, or other professional services consultant for the provision of services.

"Appraiser" means a firm that provides an unbiased analysis, opinion, or conclusion on the value of real property.

"Authority" or "SDA" means the New Jersey Schools Development Authority, an entity formed pursuant to P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., as successor to the New Jersey Schools Construction Corporation. The Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.

"Board" means the governing body of the Authority, consisting of the members of the Authority as outlined in N.J.S.A. 52:18A-237.

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

"Compensation" means the payment(s) due to the professional services consultant for services rendered.

"Corporation" or "SCC" means the New Jersey Schools Construction Corporation, the entity formed pursuant to

N.J.S.A. 34:1B-159 and the predecessor to the Authority, which was abolished by P.L. 2007, c. 137.

"Department" means the New Jersey Department of Education.

"Emergent project" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff, as defined by N.J.A.C. 6A:26-1.2.

"Expert" means an individual or firm with a high degree of skill or knowledge in a specific subject engaged or to be engaged by the Authority for purposes of litigation support, including, but not limited to, testimony as an expert witness.

"Fee proposal" means the proposal submitted by the professional services consultant in the form and manner provided for in the request for qualifications or request for proposals, which specifies the fees proposed for the provision of services.

"Key team member" means a principal, partner, or officer of the professional services consultant, project executive, senior principal, studio head, project manager, project architect, construction administrator, job captain, or any other title required in the request for qualifications or request for proposals, and represented in a proposal as having a responsible role in the successful completion of services required in the agreement.

"Moral integrity review" means an investigation, performed by the Authority or members of the New Jersey State Police or other investigative body on behalf of the Authority, of a firm that seeks to enter an agreement with the Authority.

"NJEDA" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c. 80, N.J.S.A. 34:1B-1 et seq., as amended, or any successor thereto.

"Notice of award" means a written notice issued to a professional services consultant by the Authority indicating that the professional services consultant has been selected to perform certain services pursuant to an Authority procurement process and that upon the Authority's receipt of certain required documentation, the Authority intends to enter an agreement with the professional services consultant for the performance of those services.

"Other facilities" means those facilities that are not school facilities projects as defined by the Act, namely, athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, facilities used for non-instructional or non-educational purposes, and any structure, building, or facility used solely for school administration.