

**CHAPTER 38D**

**PROCUREMENT OF GOODS AND SERVICES**

**Authority**

N.J.S.A 18A:7G-1 through 13 and 26(b).

**Source and Effective Date**

R.2005 d.61, effective February 7, 2005.  
See: 36 N.J.R. 4096(a) 37 N.J.R. 522(a).

**Chapter Expiration Date**

Chapter 38D, Procurement of Goods and Services, expires on February 7, 2010.

**Chapter Historical Note**

Chapter 38D, Procurement of Goods and Services, was adopted by R.2005 d.61, effective February 7, 2005. See: Source and Effective Date.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

- 19:38D-1.1 Purpose and scope of rules
- 19:38D-1.2 Definitions

**SUBCHAPTER 2. GENERAL REQUIREMENTS**

- 19:38D-2.1 Scope
- 19:38D-2.2 Seven categories of procurement procedures
- 19:38D-2.3 Contract term; term contracts
- 19:38D-2.4 General evaluation criteria for categories two, three and four
- 19:38D-2.5 Rejection of proposals
- 19:38D-2.6 Contract approval and execution
- 19:38D-2.7 Termination
- 19:38D-2.8 Records access and retention
- 19:38D-2.9 Appeals

**SUBCHAPTER 3. CATEGORY ONE SELECTION PROCEDURES**

- 19:38D-3.1 Scope
- 19:38D-3.2 Solicitation
- 19:38D-3.3 Evaluation
- 19:38D-3.4 Selection

**SUBCHAPTER 4. CATEGORY TWO SELECTION PROCEDURES**

- 19:38D-4.1 Scope
- 19:38D-4.2 Initiation
- 19:38D-4.3 Two-step process; request for qualifications
- 19:38D-4.4 Advertising
- 19:38D-4.5 Random selection process
- 19:38D-4.6 Request for proposals
- 19:38D-4.7 Evaluation

**SUBCHAPTER 5. CATEGORY THREE SELECTION PROCEDURES**

- 19:38D-5.1 Scope
- 19:38D-5.2 Initiation
- 19:38D-5.3 Two-step process; request for qualifications
- 19:38D-5.4 Advertising
- 19:38D-5.5 Request for proposals

19:38D-5.6 Evaluation

**SUBCHAPTER 6. CATEGORY FOUR SELECTION PROCEDURES**

- 19:38D-6.1 Scope
- 19:38D-6.2 Exemption types and requirements

**SUBCHAPTER 7. CATEGORY FIVE SELECTION PROCEDURES**

- 19:38D-7.1 Scope
- 19:38D-7.2 Master list
- 19:38D-7.3 Competitive bidding
- 19:38D-7.4 Term contracts

**SUBCHAPTER 8. CATEGORY SIX SELECTION PROCEDURES**

- 19:38D-8.1 Scope
- 19:38D-8.2 Master list
- 19:38D-8.3 Competitive bidding
- 19:38D-8.4 Term contracts

**SUBCHAPTER 9. CATEGORY SEVEN SELECTION PROCEDURES**

- 19:38D-9.1 Scope
- 19:38D-9.2 General requirements

**SUBCHAPTER 1. GENERAL PROVISIONS**

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

This chapter is designed to establish the procedures applicable to the award of contracts by the Corporation for goods and services, excluding services subject to P.L. 1997, c.399, and N.J.A.C. 19:38C, required for implementation of the school construction program.

**19:38D-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 good or 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 provider of the good or service 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.

“Appraiser” means a firm that provides an unbiased analysis, opinion or conclusions on the value of real property.

"Authority" means the New Jersey Economic Development Authority, established pursuant to the New Jersey Economic Development Authority Act, P.L. 1974, c.80, as amended. The Corporation is a subsidiary of the Authority.

"Board" means the members of the Board of Directors of the Corporation.

"Category one selection procedures" means the procedures applicable to procurement of a contract for goods or services where compensation, exclusive of allowances, does not exceed \$25,000, set forth at N.J.A.C. 19:38D-3.

"Category two selection procedures" means the procedures applicable to procurement of a contract for goods or services where compensation, exclusive of allowances, exceeds \$25,000, but is less than \$500,000, set forth at N.J.A.C. 19:38D-4.

"Category three selection procedures" means the procedures applicable to procurement of a contract for goods or services where the compensation, exclusive of allowances, equals or exceeds \$500,000, set forth at N.J.A.C. 19:38D-5.

"Category four selection procedures" means the procedures applicable to procurement of a contract for goods or services where the requirements of one of the exemptions set forth in N.J.A.C. 19:38D-6 have been met, regardless of the amount of compensation.

"Category five selection procedures" means the procedures applicable to procurement of a contract for title insurance, set forth at N.J.A.C. 19:38D-7.

"Category six selection procedures" means the procedures applicable to procurement of a contract for appraiser services, set forth at N.J.A.C. 19:38D-8.

"Category seven selection procedures" means the procedures applicable to procurement of a contract for expert services, set forth at N.J.A.C. 19:38D-9.

"Client school district" means the school district in which services are provided.

"Compensation" means the estimated amount of fees, 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.

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

"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 Corporation for purposes of litigation support, including, but not limited to, testimony as an expert witness.

"Goods" means fixtures, furnishings, equipment, and any other tangible items the procurement of which the Corporation deems necessary for pre-development activities, a school facilities project, or for purposes of any school program procurement. For purposes of this chapter, "goods" shall not include materials to be provided in connection with the provision of services pursuant to a contract entered into by the Corporation pursuant to N.J.A.C. 19:38C or N.J.S.A. 34:1B-5.7.

"Pre-development activities" means activities undertaken by the Corporation in connection with the development of a school facilities project and includes, but is not limited to, such activities as:

1. Site acquisition and development;
2. Preliminary design work;
3. Acquisition and installation of temporary facilities;
4. Undertaking feasibility studies to determine the viability of new construction versus rehabilitation;
5. Environmental analysis;
6. Appraisal and title work; and
7. Other activities required for the development of a school facilities project.

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

"Proposal" means the proposal submitted by a firm in response to a request for proposals.

"Request for proposals" means the solicitation issued by the Corporation in connection with the selection of a provider of goods or services.

"Request for qualifications" means the request for statements of qualifications (preceding the Corporation's issuance of a request for proposals) issued by the Corporation in connection with the selection of a provider of goods or services.

"Schedule of goods" or "school program" means the goods required to be provided by a provider of goods for a particular school program procurement.