

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.

Source and Effective Date

R.2004 d.60, effective February 7, 2005.
See: 36 N.J.R. 4087(a), 37 N.J.R. 516(b).

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.

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.

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS**

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

SUBCHAPTER 2. GENERAL REQUIREMENTS

- 19:38C-2.1 Scope
- 19:38C-2.2 Pre-qualification requirement
- 19:38C-2.3 Selection procedures based on type of engagement
- 19:38C-2.4 Contract term; term contracts
- 19:38C-2.5 Evaluation
- 19:38C-2.6 Rejection of proposals
- 19:38C-2.7 Contract approval and execution
- 19:38C-2.8 Termination
- 19:38C-2.9 Records access and retention
- 19:38C-2.10 Appeals

**SUBCHAPTER 3. SELECTION PROCEDURES—
CATEGORY ONE CONTRACTS**

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

**SUBCHAPTER 4. SELECTION PROCEDURES—
CATEGORY TWO CONTRACTS**

- 19:38C-4.1 Scope
- 19:38C-4.2 Initiation
- 19:38C-4.3 Advertising
- 19:38C-4.4 Random selection process
- 19:38C-4.5 Request for proposals
- 19:38C-4.6 Ranking of technical proposals
- 19:38C-4.7 Evaluation of fee proposals
- 19:38C-4.8 Recommendation

**SUBCHAPTER 5. SELECTION PROCEDURES—
CATEGORY THREE CONTRACTS**

- 19:38C-5.1 Scope
- 19:38C-5.2 Initiation
- 19:38C-5.3 Two-step process; request for qualifications
- 19:38C-5.4 Advertising
- 19:38C-5.5 Request for proposals
- 19:38C-5.6 Ranking of technical proposals
- 19:38C-5.7 Evaluation of fee proposals
- 19:38C-5.8 Recommendation

**SUBCHAPTER 6. SELECTION PROCEDURES—
CATEGORY FOUR CONTRACTS**

- 19:38C-6.1 Scope
- 19:38C-6.2 Categories; pre-qualification
- 19:38C-6.3 Initiation of request

**SUBCHAPTER 7. SELECTION PROCEDURES—
CATEGORY FIVE CONTRACTS**

- 19:38C-7.1 Scope
- 19:38C-7.2 General requirements
- 19:38C-7.3 Initiation
- 19:38C-7.4 Limitations

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.