

**CHAPTER 38B**

**PROCEDURES FOR PRICE AND OTHER FACTORS  
PROCUREMENT OF CONSTRUCTION CONTRACTS  
FOR NEW SCHOOL FACILITIES PROJECTS**

**Authority**

P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238k) (rulemaking authority); P.L. 2007, c. 137, § 36b (N.J.S.A. 18A:7G-26b) (special adoption authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); and P.L. 2007, c.137 (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

**Source and Effective Date**

R.2011 d.302, effective November 23, 2011.  
See: 43 N.J.R. 3462(a).

**Chapter Expiration Date**

Chapter 38B, Procedures for Price and Other Factors Procurement of Construction Contracts for New School Facilities Projects, expires on November 23, 2012.

**Chapter Historical Note**

Chapter 38B, Procedures for Price and Other Factors Procurement of Construction Contracts for New School Facilities Projects, was adopted as special new rules by R.2011 d.302, effective November 23, 2011. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**19:38B-1.1 Purpose and applicability of rules**

(a) 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.) (the "Act"), by establishing procedures for the procurement of contractors to permit the Authority to carry out its broad statutory mandate to plan, design and construct school facilities projects and effectively administer the Authority's schools construction program. Specifically, these rules are intended to implement the provisions of N.J.S.A. 52:18A-243, which authorizes the procurement of contractors through the consideration of "price and other factors."

(b) These rules provide for the Authority to award construction contracts based on the selection of a bidder whose bid proposal, conforming to the invitation to bids, is determined to be "most advantageous" to the SDA, based upon a combination of cost and qualitative factors, with consideration given to price at least equal to the consideration given to all other factors combined, pursuant to the Authority's originating statute at N.J.S.A. 52:18A-243. The rules provide for a selection process that includes:

1. The public advertisement of a request for proposals (RFP) that describes the school facilities project, outlines the scope of work for the project, outlines the criteria to be used for selection and the weight that will be given to each of these criteria in the evaluation process;
2. The submission of Project Rating Proposals and the issuance of a Project Rating by the Authority; and
3. The submission of responses to the RFP which include the price proposal and the technical submittal.

(c) These rules further provide for a selection committee, comprised of representatives of the Authority and the SDA school district, to provide technical review and evaluation services, including the evaluation and scoring of technical submittals submitted in response to an RFP.

(d) Notwithstanding any provision of N.J.A.C. 19:38 to the contrary, these rules are intended to apply to the Authority's procurement of school facilities construction contracts with a construction cost estimated to exceed \$5,000,000 and may be applied to other contracts at the option of the Authority. These rules are not required to be applied to the Authority's procurement of construction contracts for "emergent projects." Such "emergent projects" and addition and renovation contracts may continue to be procured pursuant to the Authority's procedures described in N.J.A.C. 19:38.

### 19:38B-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, and P.L. 2007, c. 137, which authorizes the school construction program.

"Aggregate rating" means the limit of the outstanding dollar value of all contracts, public and private, which a firm may perform at a given time as assigned by the New Jersey Schools Development Authority's Notice of Prequalification in effect at the time of the contractor's bid which shall be identical to that which is assigned by the New Jersey Department of the Treasury, Division of Property Management and Construction. Should the Division of Property Management and Construction modify a firm's aggregate rating after the Authority has issued a Notice of Prequalification, the aggregate rating issued by the Authority is considered modified to be identical to that of the Division of Property Management and Construction.

"Authority" or "SDA" means the New Jersey Schools Development Authority, an entity formed pursuant to P.L. 2007, c. 137, 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.

"Best value selection" means a selection process in which consideration is given to both a price proposal and a technical proposal, and the award of the contract is based upon a combination of price and qualitative considerations.

"Bid" means the technical proposal and the price proposal.

"Bidder" or "firm" means a contractor that submits a response to a request for proposals for a construction procurement under this chapter.

"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.

"Construction documents" means the plans, specifications and other documents which set forth in detail the design for, and other necessary requirements relating to, the construction of the school facilities project.

"Construction manager" or "CM" means the person or firm engaged by the Authority to act as the Authority's representative for the school facilities project and to provide construction management services, in connection with construction of the project.

"Contract" means the written, integrated agreement between the Authority and the contractor setting forth the obligations of the parties, including, but not limited to, the performance of work and the basis of payment. The contract includes the construction documents.

"Contract milestones" means the dates identified in the contract by which the contractor must complete certain critical activities to advance the project.

"DCA" means the New Jersey Department of Community Affairs.

"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 and staff, as defined by N.J.A.C. 6A:26-1.2.

"Key team member" means an individual identified by a bidder in the response to the RFP and made part of the contract as having a responsible role in the successful completion of the school facilities project.

"New Jersey Workers' Compensation Insurance Experience Modification Rate" or "EMR" means the adjustment factor calculated by the New Jersey Compensation Rating and Inspection Bureau (NJCRIB) for each individual employer based upon the record of payrolls expended and losses incurred during a three-year experience period. It provides a method of comparing the injury record of an individual employer with the standard performance of an average employer of the same size and industry type. The EMR is used by insurers for pricing of the employer's workers' compensation insurance and adjusts the premium so as to reward or penalize the employer for the relative success of his efforts to control the frequency and severity of work injuries.

"Notice of Award" means a notice from the Authority to the bidder issued prior to award, setting forth the Authority's intention to enter into a contract with the bidder.