

five business days after the public announcement of the award or assignment of the task order, or any protest that fails to provide the specific reasons for and arguments supporting the protest; or

8. Performance evaluation. A professional services consultant that is dissatisfied with its performance evaluation on an Authority project may request an informal hearing before the Authority by submitting to the Authority a written protest setting forth the specific grounds for such protest, within 15 calendar days after the date of receipt of written notification of the performance evaluation. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than 15 calendar days after the consultant's receipt of written notification of the performance evaluation, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

#### 19:38C-11.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold an informal hearing. Alternatively, the Authority may determine that sufficient information already exists in the record, so that a decision may be made without a hearing, and the Authority may issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within five business days of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be held, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written decision will issue prior to the opening of proposals. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed by addendum to all consultants eligible for the procurement at issue.

3. In an informal hearing, the Authority may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements provided in this subchapter. In these instances, the Authority shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his or her designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. Upon filing of the initial pleading in a contested case, the Board of the Authority may by resolution either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

## NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

### Procurement of Goods and Services

**Proposed Readoption with Amendments: N.J.A.C. 19:38D**

**Proposed Repeals and New Rules: N.J.A.C. 19:38D-2.2, 2.3, 2.6, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, 7.1, 7.2, and 7.3**

**Proposed Repeals: N.J.A.C. 19:38D-2.9, 5.3, 5.4, 5.5, 5.6, 7.4, 8, and 9**

**Proposed New Rules: N.J.A.C. 19:38D-4.8, 4.9 and 4.10**

**Proposed Recodification with Amendments: N.J.A.C. 19:38D-4.4 as 2.9**

Authorized By: New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.

Authority: P.L. 2007, c. 137, § 4k, N.J.S.A. 52:18A-238k; 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.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-251.

Submit written comments by February 3, 2012 to:

Cecelia Haney, Administrative Practice Officer  
New Jersey Schools Development Authority  
PO Box 991  
Trenton, NJ 08625-0991

The agency proposal follows:

#### Summary

The New Jersey Schools Development Authority ("Authority" or "SDA") proposes to readopt with amendments, new rules and repeals, N.J.A.C. 19:38D. The rules establish the requirements, standards, and procedures for the Authority's procurement of goods and services.

Chapter 38D was originally adopted on February 7, 2005 by the New Jersey Schools Construction Corporation (SCC). The SCC was created pursuant to the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq. The SCC was abolished in 2007 by P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., which simultaneously created the Authority to assume all of the functions, powers, and duties of the former SCC.

Chapter 38D was scheduled to expire on February 7, 2010, but was extended by action of Executive Order No. 1 (2010), which "froze" all existing regulations 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.

The Authority has reviewed Chapter 38D and has determined that it remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated, with the addition of the proposed amendments, new rules, repeals and recodification. The rules proposed for readoption with amendments, new rules, repeals and readoption:

(a) implement Executive Order No. 37 (2006), which sets guidelines for the procurement of goods and services by State Authorities; and

(b) provide assurance to vendors and other stakeholders that the SDA procurement process is fair, transparent, and results in the procurement of goods and services at competitive prices.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

A section-by-section description of the rules proposed for readoption with amendments, repeals, new rules, and recodification follows:

**Subchapter 1. General Provisions****N.J.A.C. 19:38D-1.1 Purpose and scope of rules**

This section has been proposed for readoption with a minor amendment. The reference to the "Corporation" has been changed to "Authority."

**N.J.A.C. 19:38D-1.2 Definitions**

This section sets forth the meaning of the words and terms used throughout this chapter. Amendments to the section include changes to previously defined terms, the addition of new terms, and the deletion of terms and definitions rendered obsolete by the proposed amendments, as set forth below.

New definitions include:

"Act," which refers to 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.

"Agreement," which is the title of the contractual document executed by and between the Authority and its vendors, and which replaces the term "contract" when used to denote reference to the contractual document, to comport with the Authority's current practices;

"Authority," which had previously referred to the New Jersey Economic Development Authority, but which has been replaced to refer to the New Jersey Schools Development Authority or "SDA." The definition reflects the creation of the SDA as a new governmental entity by P.L. 2007, c. 137, to be the successor to the New Jersey Schools Construction Corporation, which was simultaneously abolished in that same legislation. Accordingly, throughout N.J.A.C. 19:38D, references to "Corporation" and "SCC" have been replaced, where appropriate, with references to the "Authority" and "SDA";

"Board" has been replaced to refer to the members of the Authority, rather than referring to the board of directors of the now-abolished SCC;

"Emergent project" is proposed for amendment to be defined in accordance with the Department of Education's definition in N.J.A.C. 6A:26-1.2 to mean 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;

"Fee proposal," which means the proposal for fees and costs submitted by a vendor, in the form and manner provided in the request for qualifications or request for proposals;

"Key personnel," which means those persons named by a vendor in response to a requirement in an RFQ or RFP for specific identification of certain employees who are represented in the proposal as having a responsible role in the successful completion of the delivery of goods or services proposed by a vendor;

"Moral integrity review," which refers to the background investigation that each prospective vendor is subject to as a condition of participating in an Authority procurement;

"Notice of award," which refers to the written document indicating a vendor has been selected to enter an agreement with the Authority;

"Other facilities," a definition taken from the Act which refers to types of facilities excluded from the definition of "school facilities" under the Act;

"Pre-qualified," is replaced to reflect the codification of the Authority's rules governing the prequalification of firms at N.J.A.C. 19:38A;

"Protest," which means a challenge or objection to an Authority decision or action;

"Ranking," which describes one of the key responsibilities of the selection coordinator in the evaluation process for prospective vendors of goods and/or services;

"SDA school district," which definition corresponds with the School Funding Reform Act of 2008, P.L. 2007, c. 260, N.J.S.A. 18A:7G-3, as that legislation replaced the term "Abbott district" with the term "SDA school district";

"Selection committee," which is replaced to recognize that there may be one or more such committees involved in the evaluation of proposals

when compensation in the proposed agreement is in excess of the State bid threshold;

"Selection coordinator," which refers to the administrator responsible for the functioning of the selection process;

"Task order," which is the contractual document issued by the Authority to a vendor that defines and authorizes specified services and payment therefor, pursuant to a term agreement; and

"Vendor," which means an entity that provides goods and/or services.

The following definitions have been amended:

"Compensation," which is amended to clarify that compensation means payment to a vendor in accordance with the agreement and to eliminate reference to "allowances";

"Corporation," which is amended to reflect the abolition of the former New Jersey Schools Construction Corporation (NJSCC) and the Authority's status as a successor entity to the NJSCC;

"Goods," which has been amended to add "technology" to the list of items constituting "goods"; to delete the modifier "tangible" to refer to goods, in recognition of the focus on items, such as technology; to delete the references to "predevelopment activities" and "school program procurement" as those terms have been eliminated in favor of a more general reference to goods needed for the "school construction program"; and to and to specify that goods may be procured for program-wide purposes;

"Proposal," which has been amended to mean the submission of a vendor with respect to either an RFQ or RFP;

"Request for proposals," which is amended to include the acronym "RFP" and to reflect the definition of vendor;

"Request for qualifications," which is amended to include the acronym "RFQ," to describe the content of the document and to reflect the new definition of vendor;

"Schedule of goods," which has been amended to delete reference to the term "school program," to reflect the definition of "vendor," and to refer to the Agreement;

"School construction program," which is amended to delete the reference to a program "mandated by the act for the design, renovation, repair, and new construction of primary and secondary public schools throughout the State." The existing description failed to encompass the full scope of activities that constitute a "school facilities project," and has been replaced with a description of a "program of school facilities projects and related activities undertaken by the Authority," which relies on the statutory definition of "school facilities project" to define the program;

"School facilities project," which is amended in conformity with N.J.S.A. 52:18A-236 to include planning activities associated with a school facilities project, to clarify that maintenance activities that come within the definition are confined to capital maintenance projects, and to delete from the definition the "repair" of a school facility;

"School facility," which is amended to bring the term into conformity with its statutory definition pursuant to P.L. 2007, c. 137 (N.J.S.A. 18A:7G-3) by adding references to facilities that "support educational buildings and structures, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, and to include to the statutory distinction of "other facilities," which are defined as structures or improvements that do not constitute school facilities and which are elsewhere defined to include 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;

"Scope of services," which is amended to delete a circular reference and to include references to the vendor and the agreement;

"Services," which is amended to delete references to "pre-development activities" and "school program procurement" and to specify that the term means the duties and obligations of a vendor under the agreement; the term is further amended to delete a reference to "other services," as that is now a defined term with a specific meaning not intended as used within this definition; and to replace the statutory reference to the now-repealed N.J.S.A. 34:1B-5.7 with a reference to the Authority's construction procurements under N.J.S.A. 52:18A-243;

“Small business enterprise,” which is amended to reflect the change in the name of the governmental entity for small business registration and to refer to the recodified rules for registration; and

“Term contract” is amended to replace “contract,” with “agreement” as the contractual document governing the terms of engagement between the Authority and vendors.

The following terms are proposed for deletion:

“Allowance,” as the term was referenced in the former rules only to define an “allowance” as an exception to the contract value limits for the now-obsolete category one and two contracts. As the rules have now been revised to eliminate the system of numerical categories for contracts, defined by contract type or value, the reference to an “allowance” is no longer necessary;

“Appraiser,” as the procedures for procurement of appraisers, formerly known as category six contracts have been relocated to Chapter 38C and that term is now defined in Chapter 38C;

“Category one contract,” “category two contract,” “category three contract,” “category four contract,” “category five contract,” “category six contract,” and “category seven contract,” each of which classified certain types of procurement methods by numerical. In lieu of these numerical categories, the Authority has proposed rules categorizing agreements according to the type of procurements they entail, or whether the engagements referenced therein contemplate compensation above or below the State threshold pursuant to N.J.S.A. 52:34-7b;

“Client school district” is proposed for replacement with the term “SDA district” in conformance to the terminology used in the School Funding Reform Act of 2008, P.L. 2007, c. 260, N.J.S.A. 18A:7G-3;

The term “Educational Facilities Construction and Financing Act” has been subsumed within the definition of “Act” and the reference is amended to reflect that the statutory parameters for the schools construction program encompass 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.;

“Expert,” as the procedures for procurement of experts, formerly known as category seven contracts have been relocated to Chapter 38C, and that term is now defined and codified in Chapter 38C;

“Pre-development activities,” as that term is no longer used in Chapter 38D as a result of proposed amendments, and the concept behind the term, while still relevant to Chapter 38C, has been replaced in that chapter with “preconstruction activities”;

“School program procurement,” as it is superfluous and likely to be confused with the concept of “program-wide procurement,” used elsewhere in this chapter;

“Title insurance,” as the procedures for procurement of title insurance companies, formerly known as category five contracts have been relocated to Chapter 38C, and that term is now defined in Chapter 38C; and

“Title insurance company,” as the procedures for procurement of title insurance companies, formerly known as category five contracts have been relocated to Chapter 38C, and that term is now defined in Chapter 38C.

## Subchapter 2. General Requirements

### N.J.A.C. 19:38D-2.1 Scope

This section has been amended to define the scope of Subchapter 2, which specifies the requirements for procurements of goods or services by the Authority. The section has been amended to delete a reference to “consultants providing goods and services” in favor of specifying that the subchapter “sets forth requirements applicable to procurements of goods and services,” in recognition that, because elsewhere in proposed amendments, the provisions governing procurement of appraisers, title insurers, and experts have been proposed for removal from N.J.A.C. 19:38D and simultaneous inclusion in N.J.A.C. 19:38C, the procurement of “consultants” (specifically “professional services consultants”) is now governed by the companion rules at N.J.A.C. 19:38C. The original language of the section has been amended to make reference to the “Authority.”

### N.J.A.C. 19:38D-2.2 Pre-qualification and moral integrity review

Existing N.J.A.C. 19:38D-2.2, Seven categories of procurement procedures, has been proposed for repeal, as the Authority has eliminated the numerical categories that were previously outlined in this section. Instead, the Authority has proposed the new section, Prequalification and moral integrity review. This new section specifies that where vendors responding to a particular procurement are required to be prequalified pursuant to N.J.A.C. 19:38A, the responding vendors must be prequalified at the time of submission of responses to the RFQ or RFP, as indicated by the Authority. This section requires that all responding vendors that seek to enter an agreement with the Authority be subject to a moral integrity review, even where prequalification is not required, and further indicates that if the results of the moral integrity review are negative or unsatisfactory, in that they indicate any circumstance that would justify a revocation of prequalification under N.J.A.C. 19:38A-4.1, the vendor’s proposal shall be rejected.

### N.J.A.C. 19:38D-2.3 Selection procedures based on type of engagement

Existing N.J.A.C. 19:38D-2.3, Contract term; term contracts, has been proposed for repeal because new rules governing term agreements have been proposed as Subchapter 5. This new section replaces the former section and specifies that the procedures applicable to a particular procurement vary depending on the nature of the goods or services or the contract value of a particular vendor engagement.

### N.J.A.C. 19:38D-2.4 General evaluation criteria

This section, formerly headed “General evaluation criteria for categories two, three and four” has been proposed for re-adoption with amendments. The amendments include revision to the heading to delete references to the now-obsolete numerical categories for procurement. Subsection (a) has been amended to replace references to the “Corporation” with “Authority”; to recognize the defined terms “vendor,” “goods” and “services”; to specify that the selection committee will evaluate vendors using the criteria set forth in the RFP and/or RFQ; and to streamline the language regarding the commitment of staff to other projects, and the language regarding the proximity of the vendor to the school facility at issue. Subsection (b) has been amended to delete reference to expired rules at N.J.A.C. 12:10A and to recognize the recodification of the Authority’s rules governing small-business set-aside procurements from N.J.A.C. 19:32 to 19:39. The section has also been amended to eliminate references to the term “school program procurement.”

### N.J.A.C. 19:38D-2.5 Rejection of proposals; cancellation of procurement or award

In this amended section, the Authority makes provision for the rejection of individual proposals that are submitted late or that are deemed non-responsive, and provides that an award may be cancelled at any time before the execution of an agreement by all parties. The section is amended to streamline the process for rejection of proposals, providing that the Authority may reject all proposals for any reason when otherwise in the public interest to do so and may cancel a procurement.

### N.J.A.C. 19:38D-2.6 Approval and execution of agreement

Existing N.J.A.C. 19:38D-2.6, Contract approval, has been proposed for repeal and replacement with a new section, “approval and execution of agreement.” The existing section provided that engagements “shall be subject to approval by Corporation staff” and referred to the Corporation’s levels of internal operating authority. The new section specifies that a proposed agreement with the Authority is not valid or binding on the Authority until executed by the Authority.

### N.J.A.C. 19:38D-2.7 Termination

This section has been amended to delete reference to the “Corporation.”

### N.J.A.C. 19:38D-2.8 Disclosure and publicity; records retention

This section, formerly headed “Records access and retention,” has been amended to acknowledge that all submissions made in response to an RFQ or RFP are subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1-1 et seq., including the exceptions from disclosure as

provided within that act. New subsection (b) provides that vendors shall seek the permission of the SDA prior to their issuance of press releases concerning a school facilities project and that such releases shall acknowledge Authority financing and assistance in undertaking the project. Subsection (c) has been amended to eliminate the requirement that vendors retain documents for a period of 10 years; as the Authority has specific retention periods for procurement documents that vary with the type of procurements. The section now provides that vendors will be required by the agreement to retain documents for a specified period consistent with the Authority's retention schedules and that vendors will be required to produce documents to the Authority upon written demand.

#### **N.J.A.C. 19:38D-2.9 Advertising**

Existing N.J.A.C. 19:38D-2.9, Appeals, has been proposed for repeal, as the procedures for protests to, and appeal of, Authority procurement decisions have been outlined in detail in new Subchapter 7. Proposed new N.J.A.C. 19:38D-2.9, Advertising, has been recodified from N.J.A.C. 19:38D-4.4, with certain amendments. The only substantive amendment of the language of the section is a new requirement that advertising be performed in accordance with N.J.S.A. 52:18A-243(h), which includes electronic means and/or newspapers, as well as design and construction publications and trade journals covering the construction industry in New Jersey, written notice to New Jersey professional societies, and use of direct mailings. This section further requires that any such advertisement must promote competitive bidding and also describe any specific information that a consultant must submit, provide the date and time for the receipt of submissions, as well as the evaluation criteria that will be applied to proposals.

#### **Subchapter 3. Selection Procedures – Agreements Not Exceeding the State Bid Threshold Pursuant to N.J.S.A. 52:34-7b**

Subchapter 3 has been proposed for reoption, with amendments, to reflect the proposed deletion of the definition "category one contracts" and the replacement of "Corporation" by "Authority," as stated above. Accordingly, the reference to category one contracts in the heading of Subchapter 3 is deleted and replaced with a descriptive reference of the type of agreements addressed in Subchapter 3; namely, agreements that individually do not exceed the public bid threshold, as established by N.J.S.A. 52:34-7b.

#### **N.J.A.C. 19:38D-3.1 Scope**

This section has been amended to delete references to category one contracts and to provide that this subchapter applies to procurements not exceeding the public bid threshold, as established by N.J.S.A. 52:34-7b, although the Authority may opt to apply the provisions of Subchapter 4 to such a procurement. This section is further amended to indicate that the Authority may waive prequalification requirements for a procurement under this subchapter.

#### **N.J.A.C. 19:38D-3.2 Solicitation**

This section has been amended to delete reference to category one procurements and to clarify that procurements under this subchapter need not be advertised.

#### **N.J.A.C. 19:38D-3.3 Evaluation**

This section has been amended to replace the term "price" with "fees," to replace "Corporation" with "Authority" and to utilize the new term "vendor."

#### **N.J.A.C. 19:38D-3.4 Selection**

This section has been amended to replace the term "price" with "fees" and to replace "Corporation" with "Authority."

#### **Subchapter 4. Selection Procedures – Agreements Exceeding the State Bid Threshold, as Adjusted, Pursuant to N.J.S.A. 52:34-7b.**

Subchapter 4 has been proposed for repeal and replacement with new rules, with the exception of N.J.A.C. 19:38D-4.4, which is proposed for recodification with amendments as N.J.A.C. 19:38D-2.9, as discussed above. New Subchapter 4 is headed with a descriptive reference to agreements with compensation exceeding the State bid threshold (currently \$36,000, as adjusted by the State Treasurer), pursuant to N.J.S.A. 52:34-7b.

#### **N.J.A.C. 19:38D-4.1 Scope**

This section specifies that Subchapter 4 applies to agreements with compensation exceeding the State bid threshold, but also applies to other engagements at the option of the Authority.

#### **N.J.A.C. 19:38D-4.2 Initiation**

The existing section provided for the initiation of a procurement for specific goods or services after creation of a selection committee, development of a procurement schedule, and determining the need for prequalification and deciding between a one- or two-step procurement process. These multiple preliminary steps are either rendered obsolete (as in the one- or two-step process) or accounted for in other sections of Chapter 38D (as in the creation of a selection committee in N.J.A.C. 19:38D-4.3 and the treatment of prequalification in N.J.A.C. 19:38D-2.2), and thus the section has been streamlined. Proposed new N.J.A.C. 19:38D-4.2 specifies that a procurement of goods or services shall be initiated by public advertisement of an RFQ, RFP, or both, except in circumstances where public advertisement is not required in accordance with Subchapter 6. The section further requires that the RFQ or RFP shall include the schedule of goods or scope of services required, as well as the form of agreement and related documents.

#### **N.J.A.C. 19:38D-4.3 Selection committee**

This new section establishes the role and responsibilities of the selection committee(s) as including review, evaluation, and scoring of proposals submitted in response to RFQs and RFPs. This section requires that selection committee members have relevant experience necessary to evaluate proposals, execute a certification of no personal interest in the vendors under consideration, and that the names of selection committee members will be made public after award, pursuant to N.J.S.A. 52:34-10.3(c).

#### **N.J.A.C. 19:38D-4.4 Selection evaluation criteria**

This proposed new section provides that the selection criteria to be utilized for a particular procurement shall be established prior to advertisement, and requires that the criteria and weights assigned to such criteria be disclosed in the request for qualifications or request for proposals for the procurement. This section enumerates the types of selection criteria that may be considered, and references the general criteria listed in N.J.A.C. 19:38D-2.4. The section further indicates that a fee proposal may be considered as part of the evaluation criteria.

#### **N.J.A.C. 19:38D-4.5 Selection evaluation process**

Existing N.J.A.C. 19:38D-4.5, Random selection process, has been proposed for repeal, as the process described therein, a random selection from a group of appropriately prequalified vendors, has been rendered obsolete. The proposed new section sets out in detail the components and steps in the evaluation of vendors, including the responses to the RFQ and/or RFP, responses to requests for additional information, participation in interviews, and other components at the discretion of the Authority. The new section specifies that site visits, pre-proposal conferences, and interviews may be scheduled, and may be mandatory when so stipulated in the RFP or RFQ. The section describes the role of the selection committee members in evaluating and scoring vendors for a particular engagement, and the role of the selection committee coordinator in compiling the scores and preparing a ranking, as well as the procedures for preparing a short list, if one is specified in the RFQ or RFP for a given procurement, and indicates that additional information may be requested from interested vendors, and such information may be considered in the evaluation process.

#### **N.J.A.C. 19:38D-4.6 Submission of fee proposals**

The existing section described the procedure for issuance of a request for proposals. That process has been addressed in N.J.A.C. 19:38D-4.2, Initiation. The proposed new section addresses the procedure for submission of fee proposals.

#### **N.J.A.C. 19:38D-4.7 Consideration of fee proposals**

Existing N.J.A.C. 19:38D-4.7, Evaluation, has been proposed for repeal, as the matters addressed therein, namely the procedure for evaluation of proposals, has been addressed at length in proposed new

N.J.A.C. 19:38D-4.5, Selection evaluation process. The proposed new section describes the two methods for consideration of fee proposals, which vary depending on whether the fee proposal is considered one of the qualitative evaluation factors, and is therefore included in the numerical scoring of proposals, or is not a qualitative factor in evaluation, in which case the fee proposal is used as a basis for negotiation of an agreed fee with the prospective vendor.

#### **N.J.A.C. 19:38D-4.8 Recommendation**

This proposed new section provides that the selection coordinator shall recommend the most technically qualified vendor at a fair and reasonable compensation, and once the recommendation is approved, the Authority will issue a written notice of award to the successful vendor.

#### **N.J.A.C. 19:38D-4.9 Execution of agreement**

This proposed new section provides that upon acceptance by the SDA of any documents or materials submitted by the winning vendor as required in the notice of award, the Authority will execute the agreement and provide a fully-executed agreement to the winning vendor.

#### **N.J.A.C. 19:38D-4.10 Confidentiality**

This proposed new section provides that the selection evaluations, rankings, negotiations, and fee proposals of all proposed vendors, as well as all discussions and correspondence relating to a vendor selection, shall remain confidential and exempt from production under the Open Public Records Act, N.J.S.A. 47:1-1 et seq., until a notice of award has been issued.

#### **Subchapter 5. Term Agreements**

Existing Subchapter 5, Category Three Selection Procedures, has been proposed for repeal. It addressed the procedures for a now-obsolete category of procurement for contracts exceeding \$500,000. Because the Authority has streamlined its procurements into those exceeding the State bid advertisement threshold, currently \$36,000, and those that do not exceed the threshold, the former Category Three is rendered obsolete, and the procedures of former Subchapter 5 are no longer of use.

The Authority proposes to replace existing Subchapter 5 with a new subchapter headed "term agreements," which governs the circumstances and the process for the Authority's procurement of term agreements for goods and services and the issuance of purchase orders and task orders under such term agreements.

#### **N.J.A.C. 19:38D-5.1 Scope**

The proposed new section provides that the scope of the subchapter includes the circumstances for the use of term agreements and the process for their procurement, as well as the issuance of individual task orders.

#### **N.J.A.C. 19:38D-5.2 General requirements**

This proposed new section defines the nature of a term agreement and provides that term agreements may be used by the Authority to serve a variety of needs in fulfillment of its duties to administer the school construction program. More specifically, term agreements may be procured to expedite emergent projects or emergent project requirements; or when there exists a need to procure goods or services on an "on call" basis; or in order to address the program-wide requirements of the Authority. The section specifies that term agreements may be procured under the procedures of N.J.A.C. 19:38D-3 or 4, and may be based on hourly or daily rates. The proposed new section also provides that the SDA may enter into a term agreement with any vendor engaged pursuant to this subchapter for an initial term not to exceed three years, with an option to renew for one additional year, unless a longer term is authorized by law; or for a value that does not exceed a ceiling stated in the agreement; or both. These new provisions recognize that procurements for goods and services, particularly for furniture and fixtures, can be a labor-intensive process that justifies the option to renew for an additional year. Moreover, the provisions recognize that certain term agreements may appropriately be capped at a given contract value, whereas other agreements, such as those for basic office supplies based on individual item pricing, may not require a contract value limit, but rather may benefit from guaranteed pricing for a term of years. The proposed new section also describes the procedures for issuance of a task order or purchase order under a term agreement. Finally, this section provides that

work performed under a task order or goods provided under a purchase order may extend past the term agreement's expiration date, as long as the purchase order or task order was executed prior to the expiration date.

#### **Subchapter 6. Waiver of Advertising**

Subchapter 6 has been proposed for readoption, with amendments, to reflect the proposed deletion of the numerical category for unadvertised procurements: Category Four. Accordingly, the reference to Category Four Contracts in the heading of Subchapter 6 is deleted and replaced with a descriptive reference of the types of agreements addressed; namely, agreements procured through the Authority's grant of a waiver of advertising. Proposed amendments throughout Subchapter 6 include replacement of references to the "Corporation" with references to the "Authority" and recognition of the defined terms "goods" and "services."

#### **N.J.A.C. 19:38D-6.1 Scope**

This section sets forth the scope of the subchapter.

#### **N.J.A.C. 19:38D-6.2 Exemption types and requirements**

This section is proposed for readoption with minor amendments as described above. In addition, further amendments include amendment of the description of "sole source" in subsection (a); the deletion of subparagraph (a)4i, which required impracticality or impossibility of public bidding in the case of public exigency, as the language has now been merged with the health and safety language of former subparagraph (a)4ii, thereby extending the waiver of advertising to health and safety hazards that preclude an advertised procurement in order to remedy the dangerous condition as subparagraph (a)4i; the correction of the spelling of "sole source" in subparagraph (a)4iii; and the insertion of "schedule of goods" along with "scope of services" in subparagraph (a)4iii.

#### **Subchapter 7. Protests and Hearing Procedures**

#### **N.J.A.C. 19:38D-7.1 Scope and purpose**

Existing Subchapter 7, Category Five Selection Procedures, governed the procurement of title insurance companies and is proposed for repeal and replacement, as the procurement of title insurance companies has been recodified into N.J.A.C. 19:38C-8. Proposed new Subchapter 7 sets forth the procedures that govern challenges to the form of the RFQ or the RFP, the ranking of firms during the RFQ phases the scoring of proposals, the selection of vendors, and the issuance of a task order under a term agreement. This subchapter further provides that protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

#### **N.J.A.C. 19:38D-7.2 Protests, hearing procedures, time limitations**

This proposed new section outlines the procedures and requirements for challenging the actions of the Authority undertaken pursuant to this chapter, such as the RFQ process or documents; the RFP process or documents; the failure of a firm to be short listed, or the short listing of another firm; and the award of contracts, whether subject to public advertisement or not; and the award of a task order assignment.

#### **N.J.A.C. 19:38D-7.3 Hearing procedures**

This proposed new section outlines the procedures for requesting, and the time frames for undertaking, informal hearings conducted by the Authority. This section provides that the Authority may grant an informal hearing regarding a protest, which will result in a written decision. This section further provides that informal hearings will be held, where feasible, within 14 business days of the receipt of the request and will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The section further specifies that the hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless a greater time is required, due to the circumstances of the hearing.

#### **Existing Subchapters 8 and 9**

Existing Subchapter 8, Category Six Selection Procedures, and 9, Category Seven Selection Procedures, have been proposed for repeal.

#### **Social Impact**

The rules proposed for readoption with amendments, new rules, repeals, and recodification should establish confidence in the Authority's

ability to ensure that the public's interest in the Authority's procurement of goods and services is adequately protected and that the Authority fairly obtains the services of the most qualified vendors. The rules will affect all providers of goods and services that desire to bid on school facilities projects constructed under the Act, as amended, in that the rules specify the requirements of advertisement of proposals, selection procedures, proposal evaluation, and contract approval and execution.

#### Economic Impact

The economic impact of the rules proposed for readoption with amendments, new rules, repeals, and recodification is limited; the rules outline the process that will be used by the Authority in the selection of vendors for the provision of goods or services. This information should be beneficial to all private firms wishing to provide goods or services to the Authority. The rules establish a bidding process that entails certain incidental costs associated with the preparation and submission of bids. Such costs may include professional staff time associated with preliminary planning, as well as the costs associated with the production and reproduction of proposals. The goods and services procured are to be funded with the State share of the eligible costs of a school facilities project, which may be funded with State contract bonds issued by the NJEDA pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. Additional activity in the services sectors may directly result from the rules proposed for readoption with amendments, new rules, repeals, and recodification, providing obvious Statewide economic benefits in the short term; manufacturing activity may also be positively affected.

The Authority will incur direct and indirect costs for bid advertisements and the staff and administrative expense arising from the preparation of bid requests, the evaluation of the bids received, and the award of contracts and agreements. However, the rules proposed for readoption with amendments, new rules, repeals, and recodification contain amendments designed to streamline the Authority's procurement processes, which should permit some cost savings in staff time.

#### Federal Standards Statement

The rules proposed for readoption with amendments, new rules, repeals, and recodification implement a State statute, specifically P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq. There are no Federal standards or requirements applicable to the rules, therefore, a Federal standards analysis is not required.

#### Jobs Impact

The rules proposed for readoption with amendments, new rules, repeals, and recodification modify the Authority's process for procurement of goods and services, and thus to the extent the rules have an effect on jobs, it will be to create jobs in New Jersey, primarily in the service sector, rather than eliminate positions. Moreover, the rules are likely to support job growth to the extent that they may foster participation in the school construction program by a broader class of vendors.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments, new rules, repeals, and recodification will have no direct impact on the agriculture industry. However, implementation of the rules will be coordinated with the Farmland Preservation Program for the acquisition of sites for new schools.

#### Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, new rules, repeals, and recodification impose some compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but only for those small businesses that choose to seek to do business with the Authority. The rules outline the criteria and procedures the Authority will consider for the selection of vendors of goods and services.

The rules, at N.J.A.C. 19:38D-2.2, specify that vendors may be required to be prequalified by the Authority. As implemented by the Authority, all firms seeking prequalification will be required to submit audited financial statements, a cost which these firms might not otherwise need to incur. In the interests of financial probity, however, no exemption

for small businesses would be warranted. In addition, the rules eliminate the 10-year recordkeeping requirement imposed on winning bidders by the prior version of the rules, in favor of a more flexible recordkeeping requirement that varies according to the nature of the agreements and documents at issue, in compliance with the Authority's standard document retention policy.

#### Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, new rules, repeals, and recodification address the requirements and the process for the procurement of goods and services and, therefore, will not have an impact on affordable housing or evoke a change in the average costs of housing in the State of New Jersey.

#### Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, new rules, repeals, and recodification govern the process by which the Authority purchases goods and services, and thus the rules will have no impact on smart growth development because the scope of the rules is minimal, and because it is extremely unlikely that the rules would evoke a change in the average price or availability of housing in the State of New Jersey, and unlikely that the rules would in any way affect new construction in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:38D.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:38D-2.2, 2.3, 2.6, 2.9, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 5, 7, 8, and 9.

**Full text** of the proposed amendments, new rules, and recodification follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### 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] **Authority** for goods and services **required for implementation of the school construction program**, excluding services subject to P.L. 1997, [c.399] **c. 399, N.J.S.A. 52:34-9.1 et seq.**, 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 member 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.]

“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 vendor for the provision of goods and/or services.

“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 members of the Authority as outlined in N.J.S.A. 52:18A-237.

“Compensation” means the [estimated amount of fees, but may exclude allowances where so provided by this chapter] **payment due the vendor pursuant to the agreement.**

“Corporation” or “SCC” 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] **and the predecessor to the Authority, which was abolished by P.L. 2007, c. 137.**

[“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.]

“**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.

“**Fee proposal**” means the proposal submitted by a vendor, in the form and manner provided in the request for qualifications or request for proposals, which specifies the fees proposed for the provision of goods and/or services.

“Goods” means fixtures, furnishings, equipment, **technology** and any other [tangible] items the procurement of which the [Corporation] Authority deems necessary for [pre-development activities, a school facilities project, or for purposes of any school program procurement] **the school construction program.** For purposes of this chapter, “goods” shall not include materials to be provided in connection with the provision of services pursuant to [a contract] **an agreement** entered into by the [Corporation] Authority pursuant to N.J.A.C. 19:38C or N.J.S.A. [34:1B-5.7] **52:18A-243.**

[“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.]

“**Key personnel**” means those persons named by a vendor in response to a requirement in an RFQ or RFP for specific identification of employees or personnel having a responsible role in the successful delivery of goods or services proposed by a vendor.

“**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 vendor that seeks to enter an agreement with the Authority.

“**Notice of award**” means a written notice issued to a vendor by the Authority indicating that the vendor has been selected to provide certain goods or 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 vendor for the provision of those goods and/or 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.

“Pre-qualified” or “pre-qualification” means the approval of a vendor by the Authority pursuant to N.J.A.C. 19:38A.

“Proposal” means the [proposal] response submitted by a firm [in response to] with respect to a request for qualifications or a request for proposals.

“**Protest**” means a challenge to a decision, statement, action, or alleged inaction of the Authority.

“**Ranking**” means the process of listing responsive vendors in order of highest to lowest total scores, based upon selection criteria set forth in the RFQ and/or RFP.

“Request for proposals” or “**RFP**” means the solicitation issued by the [Corporation] Authority in connection with the selection of a [provider of goods or services] vendor.

“Request for qualifications” or “**RFQ**” means the request for statements of qualifications [(preceding the Corporation’s issuance of a request for proposals)] issued by the [Corporation] Authority seeking submissions from vendors including statements of qualifications, experience and/or organizational information, as well as any additional information deemed necessary by the Authority, in connection with the selection of a [provider of goods or services] vendor.

“Schedule of goods” [or “school program”] means the goods required to be provided by a [provider of goods for a particular school program procurement] **vendor under an agreement.**

“School construction program” means the [over-all] program [mandated by the act for the design, renovation, repair and new construction of primary and secondary public schools throughout the State, through the implementation] of school facilities projects **and related activities undertaken by the Authority.**

“School facilities project” means the **planning**, acquisition, demolition, construction, improvement, [repair,] alteration, modernization, renovation, reconstruction, or **capital** 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] **and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, but shall exclude other facilities, as elsewhere defined herein.**

[“School program procurement” means the procurement of goods or services pursuant to the policies and procedures established in this chapter in connection with the school construction program. A school program procurement may relate to one or more school projects or pre-development activities, or to the school construction program.]

“Scope of services” means the [scope of services] **extent of obligations** contractually required from a [provider of goods or services for a particular school program procurement] **vendor pursuant to an agreement.**

[“Selection committee” means the body established by the Corporation to review, evaluate and recommend proposals of providers of goods or services for specific school program procurements when compensation, exclusive of allowances, exceeds \$25,000.]

“SDA school district” means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39, N.J.S.A. 18A:7G-3.

“Selection committee” means the group(s) responsible for review and evaluation of vendors’ responses to RFQs and/or RFPs in connection with a procurement, when the compensation for the engagement is anticipated to exceed the State bid advertisement threshold pursuant to N.J.S.A. 52:34-7b.

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

“Services” means [such professional, technical, or other types of services as the Corporation may deem necessary for pre-development activities, a school facilities project, or for purposes of any school program procurement,] **the duties and responsibilities to be performed by the vendor pursuant to the agreement, including all other labor, materials and equipment provided or to be provided to fulfill such obligations**, except that, for purposes of these policies and procedures, “services” shall not include:

1. Any “architectural, engineering or land surveying services” within the meaning of N.J.S.A. 52:34-9.2;

2. [Other services subject to] **Services procured under the [procurement] procedures established at N.J.A.C. 19:38C; and**

3. Services subject to the procurement requirements established at N.J.S.A. [34:1B-5.7] **52:18A-243.**

[“Services” shall include all labor, materials, and equipment provided or to be provided in order to fulfill the services obligations of the provider of such services.]

“Small business enterprise” or “SBE” means a firm that is registered as [such] a “small business” with the New Jersey [Commerce and Economic Growth Commission] **Department of the Treasury, Division of Minority and Women Business Development pursuant to N.J.A.C. 17:14-3.1.**

“Task order” means a contractual document, containing a scope of work, negotiated costs, and schedule, which the Authority issues to a vendor, pursuant to a term agreement.

“Term [contract] agreement” means [a contract] **an agreement** whereby the [Corporation] **Authority** may engage a [provider of goods or services] **vendor** for a defined period of time, as provided in this chapter.

[“Title insurance” means a policy issued by a title insurance company insuring, guaranteeing or indemnifying owners of real property or others

interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title of the subject property and includes searches relating to the title of the subject property.

“Title insurance company” means a title insurance company duly authorized to transact the business of title insurance in the State of New Jersey.]

“Vendor” means a provider of goods and/or services.

## SUBCHAPTER 2. GENERAL REQUIREMENTS

### 19:38D-2.1 Scope

This subchapter sets forth requirements applicable to [all] procurements of [consultants providing] goods and/or services [to] for the [Corporation] **Authority.**

### 19:38D-2.2 Pre-qualification and moral integrity review

(a) **For all procurements requiring pre-qualification pursuant to N.J.A.C. 19:38A, vendors must be pre-qualified by the Authority at the time of submission of a response to an RFQ and/or an RFP, except if otherwise expressly provided in this chapter.**

(b) **All vendors seeking to enter into an agreement with the Authority are subject to a moral integrity review, even where Authority pre-qualification is not required. If the results of the moral integrity review are negative or unsatisfactory in that they indicate any circumstance that would justify a revocation of pre-qualification under N.J.A.C. 19:38A-4.1, the Authority shall reject the vendor’s proposal pursuant to N.J.A.C. 19:38D-2.6.**

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

The Authority may establish different procedures as set forth in this chapter, for the selection of vendors based on the contract type or value of the engagement.

### 19:38D-2.4 General evaluation criteria [for categories two, three and four]

(a) [Proposals] **The ranking of vendors** shall be [ranked] **performed** pursuant to evaluation criteria [developed] **established** by the [Corporation] **Authority** for each particular procurement [or engagement,] and by the weights established for such criteria. In [general, the Corporation shall consider price and other factors. More specifically, the] **selecting the most highly qualified vendor, the selection committee shall consider the criteria and relative weights of such criteria, as set forth in the RFP and/or RFQ. Such evaluation criteria may include:**

1. The experience of the [provider of the goods or services] **vendor**, and [of] its key personnel, on projects similar in scope, size, complexity;

2. The ability of the [provider of the goods or services,] **vendor** and [of] its key personnel, to provide the required goods or services;

3. The approach set forth by the [provider of] **vendor with respect to the provision** of the goods or services in its proposal;

4. The proposed staffing, including, but not limited to, the extent to which [any staff proposed is already committed to provide services under any other] **the ability of the vendor to fulfill the contract may be affected or compromised by the commitment of staff to another contract with the [Corporation, or] Authority, or to contracts** with any other public or private entity [may compromise the provider of goods or services capacity to provide the services addressed in the technical proposal];

5. Performance by the [provider] **vendor** of the goods or services on other work undertaken or funded by the [Corporation] **Authority;**

6. The proximity of the [provider] **vendor** of the goods or services [may have] to the site of the school [program procurement] **facility at issue;**

7. In the case of **the provision** of goods, **the durability, and/or construction of, and related warranty provisions affecting, the goods in question;** and/or

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

(b) To the extent required by law or by order of a court of competent jurisdiction, the [Corporation] **Authority** 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] **Authority's** ability to obtain goods or services pursuant to [a] **an SBE set-aside procurement [under] pursuant to N.J.A.C. [19:32] 19:39.**

**19:38D-2.5 Rejection of proposals; cancellation of procurement or award**

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

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

**19:38D-2.6 Approval and execution of agreement**

**No agreement is valid or binding on the Authority unless and until it is executed by the Authority.**

**19:38D-2.7 Termination**

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

**19:38D-2.8 [Records] Disclosure and publicity; 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 provider of goods and services, 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.]

(a) **Any and all submissions made in response to an RFP and/or an RFQ are subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., including the exceptions from disclosure provided therein.**

(b) **Vendors shall notify the Authority prior to the issuance of press releases and other public dissemination of information concerning a school facilities project and such shall acknowledge Authority financing and assistance in the undertaking of the school facilities project.**

(c) The [Corporation] **Authority** and any [provider of goods or services] **vendor** subject to this chapter shall retain all records relating to goods or services provided under [contract] **the agreement** with the [Corporation] **Authority** for a **specified** period [of 10 years] following expiration or termination of the [contract] **agreement, as indicated in the agreement and as specified in the Authority's document retention schedule. All such records shall be provided to the Authority upon written demand, at no cost to the Authority. In the event [provided] that [if] any litigation, claim, [or] audit or request pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., relating to the [school program] procurement and the provision of such services is commenced prior to [contract] expiration or termination of the agreement, such records shall be retained until all litigation, claims, [or] audit findings, document requests, and related appeals, if any, have been resolved with finality.**

**19:38D-[4.4]2.9 Advertising**

(a) The [Corporation] **Authority** shall [solicit statements of qualifications by] **advertise for all procurements in accordance with N.J.S.A. 52:18A-243(h). In addition, such advertising [as follows] may also be placed:**

[1. Advertising shall be done by Statewide advertising in newspapers and/or by electronic means. In addition, such advertising may also be placed:]

[i.] **1.** (No change in text.)

[ii.] **2.** By written notice to [pertinent] New Jersey professional societies or trade organizations; and/or

[iii.] **3.** (No change in text.)

[2.] **(b)** Any such advertisement shall be made in the form and in the time required to promote [competitive bidding] **competition** and shall [include] **describe** any specific information that [a provider of goods or services] **an interested vendor** must submit [by], **as well as** the date and time [specified in the advertisement] **of the deadline for submissions.**

(c) The advertisement shall [also] specify the evaluation criteria that shall apply to the [statement of qualifications] **proposals.**

**SUBCHAPTER 3. [CATEGORY ONE] SELECTION PROCEDURES—AGREEMENTS NOT EXCEEDING THE STATE BID THRESHOLD PURSUANT TO N.J.S.A. 52:34-7b**

**19:38D-3.1 Scope**

This subchapter [establishes category one selection procedures for] **sets forth the procedural requirements applicable to** the procurement of [contracts] **agreements** for goods and/or services **where such agreements specify compensation that does not exceed the State bid threshold of \$36,000, as adjusted, pursuant to N.J.S.A. 52:34-7b, except for those procurements in which the Authority, at its sole option, determines to apply the procedures of N.J.A.C. 19:38D-4. The Authority reserves the right to waive any pre-qualification requirement for a procurement pursuant to this subchapter.**

**19:38D-3.2 Solicitation**

[The Corporation] **In accordance with N.J.S.A. 52:34-7b, the Authority** shall not be required to advertise [a category one] **the** procurement[. Wherever practicable, a competitive selection process shall be used.] **of agreements for goods and/or services where such agreements provide for compensation below the State bid threshold.**

**19:38D-3.3 Evaluation**

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

**19:38D-3.4 Selection**

The [Corporation] **Authority** shall select the proposal that is in the best interest of the [Corporation] **Authority** and the school construction program, based on [price] **fees and/or** the evaluation criteria established for the selection.

(Agency Note: The text of N.J.A.C. 19:38D-4.4 is proposed for recodification with amendments as N.J.A.C. 19:38D-2.9.)

**SUBCHAPTER 4. SELECTION PROCEDURES—AGREEMENTS EXCEEDING THE STATE BID THRESHOLD, AS ADJUSTED, PURSUANT TO N.J.S.A. 52:34-7b**

**19:38D-4.1 Scope**

This subchapter sets forth procedures that shall apply to the procurement of agreements for goods and/or services where such agreements specify compensation exceeding the amount set forth in N.J.S.A. 52:34-7b. **At the option of the Authority, the procedures specified in this subchapter may apply to an engagement with compensation below the amount set forth in N.J.S.A. 52:34-7b.**

**19:38D-4.2 Initiation**

A procurement for the provision of goods and/or services under this chapter shall be initiated by the public advertisement of an RFQ, RFP, or both, except in circumstances where a waiver of advertising is permitted under N.J.A.C. 19:38D-6. The RFQ or RFP shall include the schedule of goods or the scope of services sought under the

procurement, as well as the form of agreement and other related documents.

#### 19:38D-4.3 Selection committee

(a) Prior to the receipt of vendor proposals, the Authority shall establish a selection committee or committees to review and evaluate the proposals. Each member of the selection committee shall have the relevant experience necessary to evaluate the proposals. Each member of a selection committee shall be responsible for independently evaluating and scoring the proposals.

(b) Once the responses are received and the identity of the vendors is ascertained and communicated to the members of the selection committee, each member of the selection committee, prior to the evaluation of any proposal, shall execute a certification that he or she has no personal interest, financial or familial, in any of the vendors to be evaluated, or the principals, subsidiaries or parent companies thereof. Furthermore, should any of the selection committee members indicate that a conflict or personal interest exists once the identity of the vendors is revealed, that member shall not serve on the selection committee and may be replaced.

(c) The names of the members of the selection committee shall be made public once the contract is awarded, pursuant to N.J.S.A. 52:34-10.3(c).

#### 19:38D-4.4 Selection evaluation criteria

(a) The selection evaluation criteria may include the criteria listed in N.J.A.C. 19:38D-2.4, as well as past project performance, understanding of project needs and project schedule, and budget and cost estimating. Selection evaluation criteria may also include any other criteria determined to be appropriate in the sole discretion of the Authority.

(b) The selection evaluation criteria and the specific weight assigned to each criterion for each procurement of goods and/or services under this chapter shall be established by the Authority prior to advertisement, and the criteria and weights shall be incorporated into the RFQ and/or RFP for the procurement.

(c) The Authority may consider the fee proposal as a qualitative factor upon which firms will be evaluated.

#### 19:38D-4.5 Selection evaluation process

(a) The members of the selection committee will evaluate the submissions and other information comprising the evaluation process, and shall assign scores based upon the evaluation criteria set forth in the RFQ and/or RFP.

(b) In addition to the review of responses to an RFQ and/or RFP, the evaluation process may include:

1. Review of a vendor's responses to requests for additional or clarifying information;
2. Participation in interviews; and
3. Any other components determined, in the sole discretion of the Authority, to be appropriate.

(c) Site visits, pre-proposal conferences, and interviews may be scheduled. Attendance shall be mandatory when so stipulated in the RFP or RFQ.

(d) The selection coordinator shall compile the evaluation scores of the committee members, as well as any points assigned in the consideration of a fee proposal in accordance with N.J.A.C. 19:38D-4.7(a), if applicable, and shall prepare a ranking in accordance with the procedures specified in the RFQ and/or RFP, which shall be deemed a final ranking if no shortlisting process, as set forth in this section, is called for in the RFQ.

(e) If a shortlisting process is specified by the selection procedures described in the RFQ, the selection coordinator shall review the ranking and shall identify the short list of vendors.

1. Once the short list is determined in accordance with subsection (e) above, the Authority shall publish the short list on the Authority's website and/or provide written notification to all firms that supplied responses to the RFQ of the names of the firms selected for the short list.

2. If additional information is required, the Authority shall request such information from all of the shortlisted firms prior to the

final ranking. The members of the selection committee shall review and evaluate the additional information provided by the shortlisted firms, in accordance with the procedures specified in the RFQ and/or RFP, and shall assign scores based upon the evaluation criteria stated in the RFQ and/or RFP. At the sole discretion of the Authority, interviews may be held with the shortlisted firms prior to the determination of the final ranking. The members of the selection committee shall evaluate the additional information, and interviews, if any, and shall assign scores to each. The selection coordinator shall combine all evaluation scores in accordance with the procedures outlined in the RFQ and/or RFP, and prepare a final ranking.

#### 19:38D-4.6 Submission of fee proposals

A fee proposal shall be submitted in accordance with the process set forth in either an RFQ or RFP. A fee proposal shall be submitted in a separate sealed envelope. The envelope shall indicate clearly that it is the fee proposal and shall identify the vendor's name, the project or procurement number and any other information required by the RFQ and/or RFP. The fee proposals shall remain sealed until such time as provided in N.J.A.C. 19:38D-4.7(a) or (b) below.

#### 19:38D-4.7 Consideration of fee proposals

(a) In the event the fee proposal is one of the qualitative factors for the evaluation of the proposals, the Authority shall open the sealed fee proposals and assign the maximum points to the lowest total fee proposal. All other proposals shall be scored based upon the percentage that each proposal exceeds the lowest proposal. The scores of the fee proposals shall then be utilized to finalize the ranking undertaken by the selection committee, pursuant to N.J.A.C. 19:38D-4.5(d).

(b) In the event the fee proposal is not a qualitative factor for the evaluation of the proposal, the Authority shall open the sealed fee proposals at a predetermined date and time after the final ranking has been prepared. Using the fee proposals as a guide, the Authority shall negotiate an agreement with the highest-ranked vendor at a fee determined by the Authority to be fair and reasonable. Should the Authority be unable to negotiate a satisfactory fee with the highest-ranked vendor, the Authority shall terminate negotiations with the highest-ranked vendor, and may then terminate the procurement or may undertake negotiations with the second-highest ranked vendor. Failing accord with the second highest-ranked vendor, the Authority shall terminate negotiations with the second highest-ranked vendor and may then terminate the procurement or may undertake negotiations with the third highest-ranked vendor. In the event that the Authority is unable to agree to a satisfactory fee with any of the three highest-ranked firms, the Authority may select additional vendors in the order of their ranking and continue negotiations, until either an agreement is reached or the procurement is canceled or terminated.

#### 19:38D-4.8 Recommendation

Based on the process set forth in this subchapter, the selection coordinator shall recommend the most technically qualified vendor at final compensation determined to be fair and reasonable. If the recommendation is approved, the Authority will issue a written notice of award to the successful vendor.

#### 19:38D-4.9 Execution of agreement

Upon the successful vendor's submission of any required documentation or materials as specified in the notice of award, and the Authority's acceptance of such documents, the Authority will execute the agreement and provide the successful vendor with a fully-executed agreement.

#### 19:38D-4.10 Confidentiality

The selection evaluations, rankings, negotiations and fee proposals of all firms, as well as all discussions and correspondence, relating to the selection of a vendor shall remain confidential and exempt from production under the Open Public Records Act, N.J.S.A. 47:1-1 et seq., until a notice of award has issued.

## SUBCHAPTER 5. TERM AGREEMENTS

## 19:38D-5.1 Scope

This subchapter provides for the use of term agreements by the Authority to serve a variety of needs in accordance with its statutory responsibilities to administer the school construction program. This subchapter further provides for issuance of purchase orders, or issuance of task orders in accordance with a term agreement.

## 19:38D-5.2 General requirements

(a) A term agreement is an agreement whereby the Authority may engage a vendor for a defined period of time, rather than for a defined project or projects.

(b) Term agreements may be used by the Authority to procure goods and/or services when there is a need to:

1. Expedite emergent projects or emergent project requirements;
2. Procure goods or services for a school facilities project on an "on call" basis; or
3. Address the program-wide requirements of the Authority.

(c) Procurement of a term agreement shall be in accordance with the selection procedures pursuant to N.J.A.C. 19:38D-3 or 4, depending on whether the value of the term agreement exceeds the statutory threshold of N.J.S.A. 52:34-7b, except that fee proposals submitted under those procedures may be based upon hourly or daily rates and/or other methods of determining costs over a specific time period.

(d) Term agreements shall be for a specific time period, or maximum contract value, or both, which limitations shall be set forth in the term agreement. The Authority shall set forth a budget and schedule for each proposed purchase order or task order under a term agreement, prior to its issuance or assignment to a vendor. The time in which goods are to be supplied or services are to be performed under a purchase order or task order may extend past the expiration date of a term agreement, as long as the purchase order or task order was issued or executed prior to the expiration date.

(e) Under this subchapter, the Authority may enter into a term agreement with any vendor engaged pursuant to the provisions of this chapter for:

1. A value that shall not exceed a ceiling stated in the agreement; or
2. An initial term not to exceed three years, with an option to renew for one additional year, unless a longer time period is expressly authorized by law; or
3. A combination of both a stated value and a stated time period.

## SUBCHAPTER 6. [CATEGORY FOUR SELECTION PROCEDURES] WAIVER OF ADVERTISING

## 19:38D-6.1 Scope

This subchapter shall apply when the [Corporation] Authority determines to procure goods and/or services by means of an exemption from advertising pursuant to N.J.S.A. 52:34-10, having found that the requirements of one of the exemption types in N.J.A.C. 19:38D-6.2 have been satisfied, and when the [Corporation] Authority has established that such exemption is in the best interest of the [Corporation] Authority and the school construction program.

## 19:38D-6.2 Exemption types and requirements

(a) The circumstances providing a basis for an exemption are as follows:

1. Sole source: when [the provider] only one vendor is [the only] capable of or available [source of] to provide the goods or services[, and is shown to be such despite the availability of seemingly comparable goods or services from another provider] at the time they are required.
2. Continuity: when, as a result of the [provider] vendor's previous satisfactory engagement by the [Corporation] Authority, a significant need arises to maintain continuity through updated or additional goods or services from the same source.
3. Governmental agreement: when the goods or services required are available from the Federal or any [State] state government or any agency or political subdivision thereof.

4. Public exigency: when public exigency requires the immediate delivery of the goods or services. Public exigency may be found if:

- [i. Competitive bidding is impractical or impossible;]
- [ii.] i. A health or safety hazard exists, which precludes the lead time for advertisement of a procurement for goods and/or services to rectify such condition, or renders the competitive bidding for such a procurement impractical or impossible;
- [iii.] ii. A critical agency mandate, statutory or operational requirement can only be fulfilled by the [soul] sole source; or
- [iv.] iii. A health or safety emergency precludes the lead time required to develop a competitive [scope] schedule of [services] goods or scope of services.

5. Existing contract: when the goods or services required are available through participation in an existing contract between a vendor and any department, division, office, agency, bureau or section of the United States, or any authority or instrumentality created or chartered thereby and any department, division, office, agency, bureau or section of New Jersey or any state of the United States other than New Jersey, or any political subdivision thereof including, but not limited to, municipalities, or any other authority or instrumentality created or chartered thereby, provided that:

- i. (No change.)
- ii. The terms of the existing contract permit such [Corporation] Authority participation;
- [iii. The Attorney General's office approves the terms applicable to the Corporation's participation in the existing contract;]
- [iv.] iii. (No change in text.)
- [v.] iv. The [Corporation] Authority receives the benefit of any price reductions mandated by the original governmental unit party during the term of the existing contract and is protected from price increases during that time; and
- [vi.] v. (No change in text.)

## SUBCHAPTER 7. PROTESTS AND HEARING PROCEDURES

## 19:38D-7.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern protests regarding the Authority's procurements of goods and services, including protests challenging:

1. The form of advertisements for procurement;
2. The form of the RFQ or the RFP for a given procurement;
3. The scoring of proposals or the ranking of firms;
4. The selection of vendors for unadvertised procurements under N.J.A.C. 19:38D-3 or 6; and
5. The issuance of a task order under a term agreement under N.J.A.C. 19:38D-5.4.

(b) For purposes of this subchapter, protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

## 19:38D-7.2 Subject matter, hearing procedures, time limitations

(a) A protest shall be made as follows:

1. RFQ process or documents. A vendor that has submitted or intends to submit a proposal in response to an RFQ may request an informal hearing before the Authority to protest the RFQ process or documents, by submitting a written protest to the Authority, at least five business days prior to the date and time scheduled for receipt of proposals, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for, and arguments supporting, the protest;

2. RFP process or documents. A vendor that has submitted or intends to submit proposals in response to an RFP may request an informal hearing before the Authority to protest the RFP process or documents, by submitting a written protest to the Authority, setting forth in detail the grounds for such protest, at least five business days prior to the date and time scheduled for receipt of the proposals. The

protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for, and arguments supporting, the protest;

3. **Short list.** A vendor protesting its failure to be included in a short list, or protesting the inclusion of another vendor on a short list, may request an informal hearing before the Authority to protest the selection of the short list by submitting to the Authority, a written protest setting forth the specific grounds for challenging the short list, within five business days of the public announcement of the short list. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the short list, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest;

4. **Award of contract.** A vendor that has submitted a proposal in response to an RFQ or RFP, may request an informal hearing before the Authority to protest the award of a contract to another vendor, by submitting to the Authority a written protest, setting forth the specific grounds for challenging such award, within five business days of the public announcement of the award. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest;

5. **Unadvertised contracts.** A vendor may request an informal hearing before the Authority to protest the award of an unadvertised contract to another vendor, by submitting to the Authority, a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award of the contract. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest; or

6. **Task order assignment.** A vendor that has received an award under a term agreement procurement may request an informal hearing before the Authority to protest the award or assignment of a task order to another vendor, by submitting to the Authority, a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award or assignment of the task order. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and a statement as to whether the protestor

requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award or assignment of the task order, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest.

#### 19:38D-7.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the Authority. Alternatively, the Authority may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the Authority may issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written final agency decision will be issued by the Authority within five business days of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final agency decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written final agency decision will issue prior to the opening of proposals. If a decision based upon a protest results in a modification of the aforesaid process or documents, the modifications relating to such decision shall be conveyed by addendum to all vendors eligible for the procurement at issue.

3. In an informal hearing, the Authority may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements provided in this subchapter. In these instances, the Authority shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his or her designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. Upon filing of the initial pleading in a contested case, the Board of the Authority may, by resolution, either retain the matter for hearing directly, or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.