

NEW JERSEY ADMINISTRATIVE CODE
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*** New Jersey Register, Vol. 47 No. 4, February 17, 2015 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 38. PROCEDURES FOR LOW-BID PROCUREMENT OF CONSTRUCTION CONTRACTS FOR
SCHOOL FACILITIES PROJECTS

N.J.A.C. 19:38 (2015)

Title 19, Chapter 38 -- Chapter Notes

CHAPTER AUTHORITY:

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

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2014 d.001, effective November 8, 2013.

See: *45 N.J.R. 1592(a)*; *46 N.J.R. 131(a)*.

CHAPTER EXPIRATION DATE:

Chapter 38, Procedures for Low-Bid Procurement of Construction Contracts for School Facilities Projects, expires on November 8, 2020.

CHAPTER HISTORICAL NOTE:

Chapter 38, Procedures for Bidding for the New Jersey Schools Construction Corporation's School Facilities Projects for the Schools Construction Program, was adopted as new rules by R.2006 d.193, effective May 15, 2006. See: *37 N.J.R. 3801(a)*, *37 N.J.R. 4207(a)*, *38 N.J.R. 2199(a)*.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 38, Procedures for Bidding for the New Jersey Schools Construction Corporation's School Facilities Projects for the Schools Construction Program, was scheduled to expire on May 15, 2013. See: *43 N.J.R. 1203(a)*.

Chapter 38, Procedures for Bidding for the New Jersey Schools Construction Corporation's School Facilities Projects for the Schools Construction Program, was readopted as R.2014 d.001, effective November 8, 2013. As part of R.2014 d.001, Chapter 38 was renamed Procedures for Low-Bid Procurement of Construction Contracts for School Facilities Projects, effective January 6, 2014. See: Source and Effective Date. See, also, section annotations.

§ 19:38-1.1 Applicability

This chapter applies to all construction contracts with the New Jersey Schools Development Authority, except for design-build contracts. "Design-build contract" means a written contract, entered into between a contractor and the Au-

thority, which provides both for construction services and for the performance of architectural services by an architect retained by the contractor pursuant to a separate written contract.

§ 19:38-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" or "EFCFA" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (*N.J.S.A. 18A:7G-1 et seq.*), as amended, and P.L. 2007, c. 137.

"Agency of government" means any Federal, state, regional, county, or local government agency, in this or any other state, including any department, division, commission, authority, office, branch, section, political subdivision or other governmental or quasi-governmental entity.

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

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

"Bid" means the Project Rating Proposal and the Price Proposal.

"Bid advertisement" means the advertisement by the New Jersey Schools Development Authority setting forth the information as required by *N.J.S.A. 52:18A-243.h* and shall be part of the contract documents.

"Bid documents" means the bid advertisement, the project manual, general conditions, supplemental conditions, plans, specifications, scopes of work, Instructions to Bidders, addenda, form of Project Rating Proposal, form of Price Proposal, and any other documents provided to the bidder by the Authority prior to the submission of the Price Proposal.

"Contract" means the entire and integrated agreement between the firm and the New Jersey Schools Development Authority encompassing all of the contract documents.

"Contract documents" means the bid advertisement, the executed form of contract, project manual, general conditions, supplemental conditions, plans, specifications, scopes of work, Instruction to Bidders, addenda, Project Rating Proposal, Price Proposal, executed change orders, other amendments, and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials.

"DPMC" means the Division of Property Management and Construction in the New Jersey Department of the Treasury.

"DPMC 27" means the request for classification form to be submitted to the DPMC by a firm seeking classification with the DPMC in accordance with the DPMC rules at *N.J.A.C. 17:19*.

"DPMC Classification" means the process and product of assigning specific construction categories or trades and the maximum Aggregate Rating which define the eligibility of firms to engage in public work as determined by the DPMC in accordance with the DPMC rules at *N.J.A.C. 17:19-1*.

"EFCFA" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72.

"Firm" means any association, company, contractor, corporation, joint stock company, limited liability company, partnership, sole proprietorship, or other business entity, including their assignees, lessees, receivers or trustees.

"Grant funded district" means a district which receives funding for a school facilities project from the Authority pursuant to section 15 of EFCFA, *N.J.S.A. 18A:7G-15*.

"Instructions to Bidders" means that portion of the bid and contract documents setting forth the requirements and procedures for bidding on an Authority project.

"Irregular bid" means a Project Rating Proposal or a Price Proposal that does not conform to the bid and contract documents for the schools facilities package.

"Notice of DPMC Classification" means the document(s) from the DPMC notifying the Firm of the specific construction categories or trades and of the maximum Aggregate Rating for which the firm may perform work, in accordance with the DPMC rules at *N.J.A.C. 17:19*.

"Notice of Prequalification" means the letter from the Authority issuing the firm its prequalification.

"Prequalification" means the process and product of being approved by the Authority to perform work in a given trade and within a given aggregate limit on school facilities packages and grant funded projects.

"Price Proposal" means that part of the bid to be submitted by the firm setting forth the firm's bid price, including any and all information and documents required by the Instructions to Bidders, the bid advertisement or addenda.

"Project management firm" or "PMF" means the firm engaged by the Authority to provide overall construction management services, oversight, direction, coordination, and reporting in connection with school facilities projects.

"Project Rating" means the maximum amount a firm may bid on any school facilities package based upon the information contained in a firm's Project Rating Proposal.

"Project Rating Proposal" means that part of the bid to be submitted by the firm for issuance by the Authority of the Project Rating.

"Schools Construction Program" or "School 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.

"School facilities package" or "package" means any and all of the school facilities projects that are identified in the Bid Documents.

"School facilities project" or "project" means the demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or capital maintenance, in accordance with the Department of Education's rules at *N.J.A.C. 6A:26*, of all or any part of a school facility or of any personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment. Each school facilities project that is part of the firm's work is identified in the contract documents.

"School facility" means and includes any structure, building or facility used wholly or in part by a school district for academic purposes.

"State" means the State of New Jersey, or any of the departments or agencies in the Executive Branch of government.

"Work" means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies and other incidentals to be furnished, provided or performed by the firm, as required by the contract documents, including all efforts necessary or appropriate to achieve final acceptance and completion.

§ 19:38-2.1 Necessity for Prequalification

(a) Only those firms holding a valid Notice of Prequalification issued by the Authority in accordance with the procedures in *N.J.A.C. 19:38A* shall be eligible to bid for work on a school facilities package. A firm's prequalification must be valid on the due date for the submission of the Project Rating Proposal and on the due date for the submission of the Price Proposal.

(b) The Authority may establish appropriate and special prequalification requirements as may be necessary in order to ensure competitive bidding on any and all school facilities projects or as may be dictated by the unique or specialized nature of the work to be performed.

§ 19:38-3.1 Contents of the bid

(a) A bid consists of two separate proposals:

1. The first proposal is the Project Rating Proposal, which consists of information regarding the "other factors" as defined in the Act which will be evaluated by the Authority. The Authority will determine a firm's Project Rating based on this Proposal. A firm may not submit a Project Rating Proposal prior to the effective date of the firm's prequalification. If, in the prior 24-month period, a firm has been assigned a Project Rating, the firm may so indicate on the signed Project Rating Proposal submitted for each project and may request that the Authority apply the prior Project Rating to the current bid, provided that the firm certifies that there has been no change regarding safety, prevailing wage record, or its Authority Project Evaluation Record, since the prior Project Rating was assigned.

2. The second proposal is the Price Proposal which shall contain the price the firm bids for the work as well as other information and documents, as required by the contract documents. A firm may not submit a Price Proposal if it has not been assigned a Project Rating.

§ 19:38-3.2 Fraudulent statements

Any firm or individual who makes, or causes to be made, a false, deceptive or fraudulent statement in its bid or in the course of any hearing under this chapter may be disqualified from bidding, suspended and/or debarred and may be subject to prosecution pursuant to applicable law.

§ 19:38-3.3 Submission of Project Rating Proposal

(a) The Project Rating Proposal shall be delivered by the firm to the Authority at the hour, date, and place specified in the bid advertisement as may be modified by addendum. Project Rating Proposals will be accepted only from firms currently prequalified with the Authority in accordance with *N.J.A.C. 19:38A*.

(b) An irregular bid may be rejected for failure to comply with the bid and contract documents.

(c) The Authority shall examine the Project Rating Proposal and all documents required to be submitted with the Project Rating Proposal for completeness and conformity with bidding requirements. If the Authority determines that a Project Rating Proposal received for a school facility package must be rejected as being non-responsive, it shall notify the firm in writing of the rejection of its Project Rating Proposal and the reason for the rejection within 10 business days of the receipt of the Project Rating Proposal unless there are circumstances that require additional time.

§ 19:38-3.4 Calculation of the Project Rating

(a) Firms shall supply the information required for the calculation of a Project Rating in the trade for which the firm is seeking a Project Rating. The Project Rating shall be based on the following factors:

1. A check of references supplied by the firm on projects completed by the firm in the past seven years. This includes information regarding the firm's performance on other school facilities projects;
2. Information regarding the firm's safety record;
3. Information regarding the firm's prevailing wage record;
4. The firm's Authority project evaluation record; and
5. Other information deemed relevant by the Authority.

§ 19:38-3.5 Determination of Project Rating

(a) A firm's Project Rating for the trade shall be determined by the following:

A [times] (100% + B + C + D) [times] E

where:

A = the firm's largest completed project in a specific trade listed in the Project Rating Proposal

B = the sum of the Reference Adjustment calculated pursuant to this chapter

C = the Safety Adjustment calculated pursuant this chapter

D = the Prevailing Wage Adjustment calculated pursuant to this chapter

E = the average of the firm's Project Evaluations

A firm's Project Rating for a trade cannot exceed the firm's Aggregate Rating and cannot exceed 170 percent of the firm's largest listed completed project.

(b) Reference Adjustment Calculation: A firm will be required to list in its Project Rating Proposal a minimum of two projects completed within the past seven years. The firm shall also provide project contacts for those projects. The Authority shall select, at its discretion, two projects to be confirmed and shall contact the owner's contact identified by the firm. If the Authority cannot contact an owner's contact, the Authority will contact the firm for another owner's contact for that project. If the firm is unable to provide an additional owner's contact, or if the Authority is unable to contact the additional owner's contact provided by the firm, the Authority will not use that project in the determination of the firm's Project Rating. The Authority will confirm the firm's performance on the job and assign a percentage value to the responses received. Project contacts will be asked if the performance in each of the following seven categories "exceeded expectations," "met expectations," or fell "below expectations" and the Authority will assign to the response the percentage adjustment listed below:

\$ JExceeded, Met, Below

	Expectations	Expectations	Expectations
\$ Safety	+5 percent	+3 percent	-5 percent
Quality of the construction.	+5 percent	+2 percent	-5 percent
Timeliness of the work performed.	+2 percent	+1 percent	-2 percent
Efficiency of the firm's contract administration.	+2 percent	+1 percent	-2 percent
Supervision of subcontractors.	+2 percent	+1 percent	-2 percent
Firm's level of cooperation during construction.	+2 percent	+1 percent	-2 percent
Timeliness and efficiency of punch list work corrections.	+2 percent	+1 percent	-2 percent

1. If an owner's contact rates a firm "below expectations" in either safety or quality of construction, or if the project reference adjustment is -5 or lower, the Authority will not use that project in the determination of the firm's Project Rating.

2. The Authority will total the project reference adjustments together and the sum shall be the Reference Adjustment. This Reference Adjustment shall be used as "B" in the calculation of the firm's Project Rating in (a) above.

(c) Bidders shall provide mandatory safety information as follows:

1. The firm will be required to list its most recent New Jersey Workers Compensation Insurance Experience Modification Rate (NJEMR) on its Project Rating Proposal. For any firm that has not performed work in New Jersey prior to the submission of this Project Rating Proposal, or for which the NJEMR has not been calculated, the firm will be required to submit its most recent Experience Modification Rate (EMR) for all other States for which it has performed

work. The Authority will then calculate the average of the other states' EMRs. Where appropriate, the firm's NJEMR or its average EMR as calculated by the Authority will be assigned a percentage value as listed below:

EMR is less than or equal to .80	+30 percent
EMR is greater than .80 but less than or equal to .90	+20 percent
EMR is greater than .90 but less than or equal to 1.00	+10 percent
EMR is greater than 1.00 but less than or equal to 1.10	-10 percent
EMR is greater than 1.10 but less than or equal to 1.20	-20 percent
EMR is greater than 1.20	-40 percent

2. The firm shall be required to list safety information in its Project Rating Proposal. The safety information supplied will be assigned a percentage value as listed below:

Employee of the firm completed an OSHA 500 or OSHA 502 course in last 4 years.	+2 percent	0 percent
Employee of the firm completed Council on Certification of Health, Environmental and Safety Technologists (CCHST) "Safety Trained Supervisor in Construction" course.	+2 percent	0 percent
Employee of the firm completed Associated General Contractors of America (AGCA) "Safety Management Training Course."	+2 percent	0 percent

The percentage value for the EMR and the percentage value for the Safety Information shall be added together and this total shall be the Safety Adjustment. The Safety Adjustment shall be used as "C" in the calculation of the firm's Project Rating in (a) above.

(d) Prevailing Wage: The firm will be required to list its prevailing wage record with the New Jersey Department of Labor and Workforce Development on its Project Rating Proposal. The Authority will assign a prevailing wage percentage value as listed below:

The firm has been adjudicated as having committed the following prevailing wage rate violations during the past five years:

None	0 percent
One	-10 percent
More than one	-20 percent

This percentage value shall be the Prevailing Wage Adjustment. The Prevailing Wage Adjustment shall be used as "D" in the calculation of the firm's Project Rating in (a) above.

(e) Project Evaluations: Every construction project managed by the Authority will be evaluated by two evaluators for the following: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; subcontractors; small business goals; and close-out.

1. Evaluation rating values are:

i. Outstanding (O) or 100 percent - far exceeds the contract requirements by consistently exhibiting excellent performance. Typically meets and regularly exceeds the contract requirements;

ii. Very Good (VG) or 90 percent - often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;

iii. Satisfactory (S) or 80 percent - provides an acceptable level of performance consistently meeting the contract requirements;

iv. Marginal (M) or 70 percent for scheduling, management, cost control and change orders, subcontractors, close out and 40 percent for quality of work, safety and industrial hygiene, and small business goals - performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and

v. Unsatisfactory (U) or 60 percent for scheduling, management, cost control and change orders, subcontractors, close out and 20 percent for quality of work, safety and industrial hygiene, and small business goals - fails to meet important contract requirements, resulting in a negative impact on the entire project.

2. The contractor's Performance Evaluation Summary Rating shall be the mathematical average of the two evaluators' ratings. In the event that there are multiple Performance Evaluation Summary Ratings for a contractor, the contractor's Performance Evaluation Summary Rating shall be the mathematical average of all Performance Evaluation Summary Ratings.

3. The Authority will assign a Project Evaluation Performance Multiplier as listed below:

Performance Evaluation Summary Rating	Performance multiplier
80 points or higher	1.00
70 points to 79.9 points	.50
69.9 points or lower	.25

This Performance Multiplier shall be used as "E" in the calculation of the firm's Project Rating. In the event that a contractor does not have a Performance Evaluation Summary Rating, the Authority will disregard the Performance Multiplier in the calculation of the firm's Project Rating in (a) above.

§ 19:38-3.6 Submission of Price Proposal

(a) Price Proposals will be received at the time, date, and place specified in the bid advertisement as may be modified by addendum. Price Proposals will be accepted only from firms currently prequalified with the Authority and which have submitted a Project Rating Proposal in accordance with the Instructions to Bidders and this chapter.

(b) An officer or employee of the Authority will open each bid session as near to the time specified in the advertisement as is practical. The Authority representative will announce the school facilities packages on which bids are being received during that bid session. The Authority representative will then declare the bidding closed. No bids will be accepted after the bidding has been closed.

(c) The Price Proposals will be opened and total lump sum base bid prices as well as prices for any and all alternates, if applicable, will be read.

(d) Unless otherwise directed by the Authority, each Price Proposal shall be accompanied by a bid proposal bond in an amount equal to or greater than 10 percent of the bid price. Each bid bond shall reference the package to which it applies.

1. Bid bonds shall comply with the requirements of this chapter and relevant State statutes. Bid bonds covering Authority packages shall be issued only in accordance with *N.J.S.A. 2A:44-143* through 147 to the contractor and shall indicate aggregate bonding limits; by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

2. Bid bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

3. Two or more companies may underwrite the bid bond on a package if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the bid bond. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligation shall be executed by the principal and sureties jointly and severally.

(e) The Authority shall examine all the Price Proposals and all documents required to be submitted with the Price Proposals for completeness, conformity with requirements and mathematical accuracy. Adjustments will be made by the

Authority where necessary to establish the correct total bid amount. If the Authority determines that a Price Proposal received for a school facility package must be rejected as being non-responsive, it shall notify the firm in writing of the rejection of its Price Proposal as being non-responsive and the reason for the rejection within 10 business days of the receipt of Price Proposals, unless there are circumstances that require additional time.

(f) The submission of a Price Proposal is conclusive evidence that the firm has completely reviewed the bid and contract documents and fully understands and agrees to all of the requirements, terms and conditions set forth therein.

§ 19:38-3.7 Special Project Rating and Price Proposal requirements

With respect to *N.J.A.C. 19:38-3.5* and *3.6*, the Authority may establish appropriate and special requirements and/or waive requirements as may be necessary in order to ensure competitive bidding on any and all school facilities projects or as may be dictated by the unique and specialized nature of the work to be performed.

§ 19:38-3.8 Requirements to bid within a firm's Aggregate Rating and Project Rating

(a) A firm shall not submit a Price Proposal that exceeds its Project Rating in the trade classification required to bid the package.

(b) A firm shall not submit a Price Proposal which causes the total outstanding amount of all of its existing contracts, as defined in the Authority backlog form, both public and private, to exceed its Aggregate Rating.

(c) A firm shall include with its Price Proposal a completed Authority backlog form, which is a statement of the current value and status of its backlog of uncompleted construction work as of the Price Proposal due date and certification that the award of the subject schools facilities package will not cause the firm to exceed its Aggregate Rating.

(d) If a question arises as to whether an amount bid for a schools facilities package is within a firm's existing Project Rating or the firm's Aggregate Rating, the Price Proposal shall be opened and if the Price Proposal exceeds the firm's Project Rating or Aggregate Rating, the bid shall be rejected.

(e) A firm shall not be awarded a school facilities project that exceeds its Project Rating.

(f) A firm shall not be awarded a school facilities package which, when added to the backlog of uncompleted construction work as defined in and shown on the completed Authority's backlog form, would exceed the firm's Aggregate Rating. The backlog of uncompleted construction work shall be the total contract value of unbilled work, as evidenced by the most recent approved invoice (or other similar documentation) received by the firm before the date of the Price Proposal.

(g) If a firm successfully bids for two or more school facilities packages, which, either in combination with each other or in combination with the backlog of uncompleted construction work on other currently held contracts would exceed the firm's Aggregate Rating, the firm shall be awarded only those school facilities packages which in combination fall within the firm's Aggregate Rating as set forth in *N.J.A.C. 19:38-3.9*.

§ 19:38-3.9 Multiple bids

(a) A firm may submit multiple bids when the sum of the bids exceeds the firm's aggregate rating; however, a firm may not enter into any contracts in excess of its Aggregate Rating as set forth on the Authority's backlog form submitted with the Price Proposal. Upon receipt of multiple bids, the Authority, at its sole discretion, shall determine which contract or contracts are to be awarded to such firm within the firm's aggregate rating.

(b) If a bidder submits bids on two or more packages at the same bid session, that bidder must have a current Aggregate Rating greater than or equal to the combined amount of its bids, unless a reservation has been placed in each bid limiting the maximum gross amount of awards acceptable to the bidder at that particular bid letting. If such reservations are placed in the bids, the Authority will select which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved.

§ 19:38-3.10 Withdrawal or substitution of bid prior to bid opening

A firm may withdraw a bid or substitute a bid with another by submitting a letter to the Authority prior to the bid opening. The withdrawal or substitution shall include the name of the firm, the date and time of the original Project Rating Proposal and Price Proposal, the name of a principal of the firm responsible for the action, and the action to be taken.

§ 19:38-3.11 Irregular bids

(a) Bids will be considered irregular and may be rejected for failure to comply with the bid and contract documents for reasons that may include, but are not limited to, the following:

1. If the bid is on a form other than that furnished by the Authority or if the form is altered or any part thereof is detached or incomplete;
2. If the bid is not properly signed or sealed;
3. If the bid is not typed or completed in ink;
4. If there are unauthorized additions, conditions or alternate bids, or irregularities of any kind that may tend to make the bid incomplete, indefinite, or ambiguous as to its meaning;
5. If the bid contains any provisions reserving the right to accept or reject an award, or in any way submits a contingent bid to enter into a contract pursuant to any award. The prohibition does not include a reservation limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting. However, the Authority will make the selection of which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved;
6. If the bid contains any alterations to any prices or amounts that have been established by the Authority in the bid and contract documents;
7. If the Price Proposal fails to contain a price for an alternate or allowance required by the bid and contract documents;
8. If the Price Proposal is not accompanied by a bid bond as required by the bid and contract documents;
9. If the firm fails to acknowledge addenda, letters, and other notices required to be acknowledged that have been sent by the Authority or the PMF;
10. If the firm fails to name in the bid proposal identify subcontractors required to be named by the bid and contract documents;
11. If the firm submits a bid that exceeds the firm's Project Rating or its Aggregate Rating;
12. If the bidder submits a bid which exceeds its Project Rating in the trade classification to bid the package or its aggregate limit; or
13. If the Authority deems it advisable to do so in the interest of the State or the public interest.

§ 19:38-4.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern challenges to an action of the Authority in the issuance of a Project Rating, in the issuance of a bid advertisement or an issuance of proposed contract documents, or to the acceptance of a Price Proposal for school facilities packages.

(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.

§ 19:38-4.2 Bid protests, hearing procedures, time limitations

(a) A challenge to the following actions of the Authority shall be made as follows:

1. Project Rating: If a firm is dissatisfied with its Project Rating, the firm must submit a written protest to the Managing Director of Procurement, setting forth all arguments, materials, or other documents that may support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing.

i. If the Project Rating Proposal is received by the Authority more than 10 days prior to the date for submission of the Price Proposal, the written request must be received by the Authority within five calendar days after the date of the notification of the firm's Project Rating.

ii. If the Project Rating Proposal is received by the Authority less than 10 days prior to the date for the submission of the Price Proposal, but not on the same day as the submission of the Price Proposal, the written request must be received by the Authority at least three business days prior to the date for submission of the Price Proposal.

iii. If the Project Rating Proposal is received by the Authority on the same day as the Price Proposal, the written request must be received by the Authority within five days of the receipt of both the Project Rating Proposal and the Price Proposal.

2. Bid and Contract Documents: A firm intending to submit a Price Proposal for a school facilities project and objecting to a requirement of the bid and/or contract documents must submit a written protest to the Managing Director of Procurement at least three business days prior to the opening of the Price Proposals, setting forth in detail the grounds for such protest. The protest must contain all arguments, materials, or other documents that may support the protestor's position. The Authority may disregard any protest of bid and contract documents, which is filed less than three business days prior to the scheduled Price Proposal opening or which fails to provide the specific reasons for and arguments supporting the protest.

3. Price Proposal: A firm protesting the rejection of its Price Proposal or the submission of a Price Proposal by another firm must submit a written protest to the Managing Director of Procurement setting forth the specific grounds for challenging the acceptance or rejection of the Price Proposal. The protest must contain all arguments, materials or other documents that may support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing. A firm protesting the rejection of its own Price Proposal must submit a written protest within five days of receipt of its rejection. A firm protesting the rejection of the submission of a Price Proposal by another firm must submit a written protest within five calendar days after the opening of the Price Proposals.

§ 19:38-4.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant the opportunity for an informal hearing regarding a bid protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to requesting or requiring a 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 waive the hearing and 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 48 hours of receipt of all documents related to said protest.

2. Informal hearings will be held, where feasible, within five calendar days of the receipt of the request. Hearings will be heard, where practicable, by an impartial hearing officer designated by the Managing Director of Procurement. The hearing officer shall issue a final written decision within 10 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 a Project Rating, the written decision will issue prior to the opening of Price Proposals for the school facilities package, which is the subject of the protest. If the decision, which is based upon a protest of the bid and contract documents, results in a modification of the bid and contract documents, such decision shall be conveyed to all potential firms by addendum.

3. In an informal hearing, the Managing Director of Procurement 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 section. In these instances, the Managing Director of Procurement shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

§ 19:38-5.1 Contracts

(a) The Authority will send the successful firm a Notice of Award letter. The Notice of Award letter shall contain a list of the additional documents required to be submitted by the contractor with the executed contract. The Authority will specify the time within which the executed contract and required documents must be returned.

(b) Each payment and each performance bond must be in an amount at least equal to the total contract price.

1. All bonds shall comply with the requirements of this chapter and relevant State statutes. All bonds submitted by the contractor shall be issued only in accordance with *N.J.S.A. 2A:44-143* through 147 to the contractor and shall indicate aggregate bonding limits.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

3. Two or more companies may underwrite the payment and performance bonds on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the bonds. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligations must be executed by the principal and sureties jointly and severally.

(c) If the contractor fails to return the executed contract and bonds and other required documents within the time specified by the Authority, the Authority may take whatever action is appropriate and authorized by law and by the contract documents, including, but not limited to, proceeding to recover under the bid bond.

(d) After execution by the Authority, a copy of the signed contract will be sent to the contractor.