

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL BOARD MEETING
FRIDAY, MAY 10, 2013 AT 9:00 A.M.
ONE WEST STATE STREET, ONE WEST BOARD ROOM

AGENDA

1. NOTICE OF PUBLIC MEETING
2. ROLL CALL
3. OFFICE OF CORPORATE GOVERNANCE & OPERATIONS
 - a. Rule Re-adoptions
 - i. Proposed Re-adoption with Amendments: N.J.A.C. 19:38 --Procedures for Low-Bid Procurement of Construction Contracts for School Facilities Projects
 - ii. Proposed Re-adoption with Amendments: N.J.A.C. --19:38A Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program
4. PUBLIC COMMENT(S)
5. ADJOURNMENT

OFFICE OF CORPORATE GOVERNANCE & OPERATIONS

RULE READOPTIONS

**PROPOSED RE-ADOPTION WITH AMENDMENTS: N.J.A.C. 19:38 --PROCEDURES FOR LOW-BID
PROCUREMENT OF CONSTRUCTION CONTRACTS FOR SCHOOL FACILITIES PROJECTS**



1 WEST STATE STREET
P.O. BOX 991
TRENTON, NJ 08625-0991
609-943-5955

MEMORANDUM

TO: Members of the Authority

FROM: Jane Kelly, Vice President
Division of Corporate Governance and Operations

DATE: May 10, 2013

RE: Proposed Readoption With Technical Amendments:
Procedures for Low-Bid Procurement of Construction Contracts For School Facilities
Projects, N.J.A.C. 19:38

Management of the New Jersey Schools Development Authority (“Authority” or “SDA”) is seeking the approval of the Board for the Readoption of the Authority’s Rules for Procedures for Low-Bid Procurement of Construction Contracts For School Facilities Projects (originally captioned “Procedures for Bidding For The New Jersey Schools Construction Corporation’s School Facilities Projects For the Schools Construction Program”), N.J.A.C. 19:38.

Prior Regulatory History

Chapter 38 was originally adopted by the NJSCC on May 15, 2006, and is scheduled to expire on May 15, 2013.

The Rules establish requirements, standards and procedures for the Authority’s procurement of construction contracts on a “low-bid” basis for the Authority’s capital program contracts, and are intended to apply mainly to smaller scale construction projects that do not involve complete construction of a new school facility. Accordingly the Rules are intended to complement, not supplant, the Authority’s other procurement paradigms of “price and other factors” construction procurement, under N.J.A.C. 19:38B; and design-build procurement processes pursuant to design-build procurement rules under N.J.A.C. 19:36.

Basis for Readoption with Amendments

The Rules are proposed for readoption with technical amendments. The proposed changes to the current regulation are intended to recognize the transition from the SCC to SDA and to reflect applicable statutory and regulatory updates.

The amendments are technical in nature, making changes throughout the Rules to reflect the abolition of the New Jersey Schools Construction Corporation (“Corporation” or “NJSCC”) and the creation of the New Jersey Schools Development Authority (“Authority” or “SDA”) by P.L. 2007, c. 137, § 13 (N.J.S.A. 52:18A-247), which transferred all functions, powers and duties of the former NJSCC to the Authority, and decreed that statutory and regulatory references to the NJSCC shall mean and refer to the Authority.

Additionally, the Authority has proposed to change the name of the chapter from “Procedures For Bidding For The New Jersey Schools Construction Corporation’s School Facilities Projects For The Schools Construction Program” to “Procedures for Low-Bid Procurement of Construction Contracts For School Facilities Projects” to reflect the abolition of the NJSCC and to reflect that the procedures for “low-bid” procurement through award to the “lowest responsible bidder” are in addition to other procurement procedures for “design-build” and “price and other factors” procurement of construction contracts for School Facilities Projects, pursuant to rules codified at N.J.A.C 19:36 and N.J.A.C. 19:38B.

Requested Board Action

The Members of the Authority are requested to approve the proposed readoption of the Authority’s “low-bid” procurement Rules, as well as the issuance of the attached Notice of Readoption, and the filing of the Notice with the Office of Administrative Law.

/s/ Jane F. Kelly

Jane F. Kelly, Vice President
Corporate Governance & Operations

Prepared by Cecelia Haney, Senior Counsel

JFK/ceh

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

**Procedures For Bidding For The New Jersey Schools Construction Corporation's School
Facilities Projects For The Schools Construction Program**

Proposed Readoption with Amendments: N.J.A.C. 19:38 1.1 through 5.1.

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

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

Proposal Number: PRN 2013-

Submit written comments by _____ 2013 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 proposes to readopt N.J.A.C. 19:38 (the “Rules”) with technical amendments to reflect the abolition of the New Jersey Schools

Construction Corporation (“Corporation” or “NJSCC”) and the creation of the New Jersey Schools Development Authority (“Authority” or “SDA”) by P.L. 2007, c. 137, § 13 (N.J.S.A. 52:18A-247), which transferred all functions, powers and duties of the former NJSCC to the Authority, and decreed that statutory and regulatory references to the NJSCC shall mean and refer to the Authority.

Chapter 38 was originally adopted by the NJSCC on May 15, 2006, and is scheduled to expire on May 15, 2013. The Rules govern the Authority’s procedures for the procurement of construction contracts through a low-bid procedure, and is intended to apply mainly to smaller scale construction projects that do not involve complete construction of a new school facility. Accordingly the Rules are intended to complement, not supplant, the Authority’s other procurement paradigms of “price and other factors” construction procurement, under Authority rules formerly codified at N.J.A.C. 19:38B and currently proposed for adoptions as new rules (see 45 N.J.R. 112(a)); and design-build procurement processes pursuant to design-build procurement rules codified N.J.A.C. 19:36.

The Authority has reviewed Chapter 38 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.

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 proposed amendments to the chapter follows.

Chapter Title

The Authority has proposed to change the name of the chapter from “Procedures For Bidding For The New Jersey Schools Construction Corporation's School Facilities Projects For The Schools Construction Program” to “Procedures for Low-Bid Procurement of Construction Contracts For School Facilities Projects” to reflect the abolition of the NJSCC and to reflect that the procedures for “low-bid” procurement through award to the “lowest responsible bidder” are in addition to other procurement procedures for “design-build” and “price and other factors” procurement of construction contracts for School Facilities Projects, pursuant to rules currently codified at N.J.A.C 19:36 and proposed rules currently pending as N.J.A.C. 19:38B.

19:38-1.1 Applicability

This section, regarding the applicability of this chapter, has been proposed for re adoption with amendments to replace references to “Corporation” with references to “Authority.”

19:38-1.2 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,” or EFCFA, 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.);

“Authority” or “SDA,” which reflects the creation of a new governmental entity by P.L. 2007, c. 137 as the successor to the New Jersey Schools Construction Corporation, which was simultaneously abolished in that same legislation. Accordingly, throughout N.J.A.C. 19:38, references to “Corporation” and “SCC” have been replaced, where appropriate, with references to the “Authority” and “SDA”;

The following definitions have been amended:

“Aggregate rating,” which is amended to replace references to the now-abolished New Jersey Schools Construction Corporation with references to its successor entity, the New Jersey Schools Development Authority;

“Bid advertisement,” which is amended to replace references to the repealed statutes authorizing the NJSCC’s procurement of construction contracts, with references to N.J.S.A. 52:7G-243h, which governs the Authority’s procurement of construction contracts;

“Bid documents,” which is amended to replace the reference to “Corporation” with “Authority”;

“Contract,” which is amended to replace the reference to “Corporation” with “Authority”;

“Grant funded district,” which is amended to replace the reference to “Corporation” with “Authority”;

“Instructions to Bidders,” which is amended to replace the reference to “Corporation” with “Authority”;

“Notice of Prequalification,” which is amended to replace the reference to “Corporation” with “Authority”;

“Prequalification,” which is amended to replace the reference to “Corporation” with “Authority”;

“Project Rating Proposal,” which is amended to replace the reference to “Corporation” with “Authority”;

Deleted definition:

“Corporation,” which referred to the now-defunct New Jersey Schools Construction Corporation;

19:38-2.1 Necessity for Prequalification

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-3.1 Contents of the bid

This section is amended to replace a reference to EFCFA with “the Act,” and to replace references to “Corporation” with references to “Authority.”

19:38-3.2 Fraudulent statements

This section is proposed for readoption without change.

19:38-3.3 Submission of Project Rating Proposal

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-3.4 Calculation of the Project Rating

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-3.5 Determination of Project Rating

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-3.6 Submission of Price Proposal

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-3.7 Special project rating and price proposal requirements

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-3.9 Multiple bids

This section is amended to replace references to “Corporation” with references to “Authority.”

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

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-3.11 Irregular bids

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-4.1 Scope and purpose

This section is amended to replace references to “Corporation” with references to “Authority.”

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

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-4.3 Hearing procedures

This section is amended to replace references to “Corporation” with references to “Authority.”

19:38-5.1 Contracts

This section is amended to replace references to “Corporation” with references to “Authority.”

Social Impact

The Rules proposed for readoption establish the standards and procedures for the Authority's “low bid” procurement of contracts for the construction of school facilities projects. The Rules should establish public confidence that all contractors bidding on schools facilities projects are bidding in conformity with fixed, published procedures to ensure quality and integrity in the bidding process and to provide clear methods for contractors to resolve any objections or disputes regarding the bidding process, with fairness and expediency.

Upon readoption, the Rules will continue to affect those construction companies that would bid on contracts for the construction of new school facilities projects. There is no change in the

social impact in that social conditions affected by the Rules have not changed since the original promulgation of the Rules.

Economic Impact

The economic impact of the Rules proposed for readoption has not changed since original promulgation of the Rules. The Authority has no current way of estimating the costs of the Rules proposed for readoption, though the economic impact of the Rules is expected to be limited to those firms that choose to participate in the Authority's future school facility construction procurements, as the Rules outline the bidding process for construction contracts awarded on a "responsible low bidder" basis. If the Rules were not readopted, the Authority would be unable to procure construction contracts on a traditional low-bid basis pursuant to valid Rules. The Rules establish a bidding process which entails certain incidental costs associated with the preparation and submission of price proposals. Such costs may include professional staff time associated with preliminary planning, as well as the costs associated with the production and reproduction of plans and specifications in preparation of price proposals. The construction activities to be 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 New Jersey Economic Development Authority pursuant to section 25 of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, the payment of which is conditioned on appropriations being made by the Legislature. Additional activity in the construction, planning, architecture and engineering professions may directly result from these Rules, providing State-wide economic benefits in the short term. This economic information should be beneficial to all private firms wishing to provide services to the Authority in the construction of new school facilities.

The Authority will incur direct and indirect costs for advertisement of procurements, and will incur staff and administrative expense arising from the preparation of bid documents for such procurements, the evaluation of the submittals received, and the award of contracts and agreements.

Federal Standards Statement

The proposed Rules implement a State statute, specifically P.L. 2007, c.137 (NJ.S.A. 52:18A-235 et seq.). There are no Federal standards or requirements applicable to these Rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The Rules proposed for readoption establish the Authority's process for “low bid” procurement of construction services. Thus to the extent the Rules have an effect on jobs, it will be to create jobs in New Jersey, primarily in the construction, consulting and service sectors, rather than eliminate positions.

Agriculture Industry Impact

The Rules will have no direct impact on the agriculture industry. However, implementation of the Rules with respect to the Authority's activities in selection and acquisition of proposed school facility sites will be coordinated with the Farmland Preservation Program.

Regulatory Flexibility Analysis

The Rules proposed for re-adoption with technical amendments 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 proposed for re-adoption outline the criteria and procedures the Authority will apply to the bidding process for construction contracts. The Rules proposed for re-adoption specify that bidders of construction services be prequalified by the Authority, a requirement that is imposed by public contracting provisions set forth in N.J.S.A. 52:18A-235 et seq. 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.

Housing Affordability Impact

The Rules address the requirements and the process for the procurement of construction contracts for school facilities projects 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

The Rules govern the process by which the Authority procures construction contracts, and thus the proposed adoption will have no impact on Smart Growth Development because the scope of the regulation is minimal, and because it is extremely unlikely that the adoption of the rules would evoke a change in the average price or availability of housing in the State of New Jersey, and unlikely that the proposed adoption 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. 19:38.

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

SUBCHAPTER 1. GENERAL PROVISIONS

19:38-1.1 Applicability

This chapter applies to all construction contracts with the New Jersey Schools [Construction Corporation] **Development Authority**, except for design-build contracts. “Design-build contract” means a written contract, entered into between a contractor and the [Corporation] **Authority**, 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 [New Jersey Schools Construction Corporation's] **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 [Corporation] **Authority** has issued a Notice of Prequalification, the Aggregate Rating issued by the [Corporation] **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 [Construction Corporation] **Development Authority** setting forth the information as required by N.J.S.A. [34:1B-5.7] **52:7G-243h** 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 [Corporation] **Authority** prior to the submission of the Price Proposal.

“Contract” means the entire and integrated agreement between the firm and the New Jersey Schools [Construction Corporation] **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.

[“Corporation” means the New Jersey Schools Construction Corporation.]

“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.

“Grant funded district” means a district which receives funding for a school facilities project from the [Corporation] **Authority** pursuant to section 15 of EFCFA, N.J.S.A. 18A:7[6]G-13.

“Instructions to Bidders” means that portion of the bid and contract documents setting forth the requirements and procedures for bidding on [a Corporation] **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 [Corporation] **Authority** issuing the firm its prequalification.

“Prequalification” means the process and product of being approved by the [Corporation] **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 [Corporation] **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 [Corporation] **Authority** of the Project Rating.

“Schools Construction Program” or “School Program” means the over-all program mandated by the [EFCFA] **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.

SUBCHAPTER 2. NECESSITY FOR PREQUALIFICATION

19:38-2.1 Necessity for Prequalification

- a) Only those firms holding a valid Notice of Prequalification issued by the [Corporation] **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 [Corporation] **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.

SUBCHAPTER 3. REQUIREMENTS FOR BIDDING

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 [EFCFA] **Act** which will be evaluated by the [Corporation] **Authority**. The [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **Authority** determines that a Project Rating Proposal received for a school facility package must be rejected as being nonresponsive, 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 [corporation] **Authority** project evaluation record; and
 5. Other information deemed relevant by the [Corporation] **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 [Corporation] **Authority** shall select, at its discretion, two projects to be confirmed and shall contact the owner's contact identified by the firm. If the [Corporation] **Authority** cannot contact an owner's contact, the [Corporation] **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 [Corporation] **Authority** is unable to contact the additional owner's contact provided by the firm, the [Corporation] **Authority** will not use that project in the determination of the firm's Project Rating. The [Corporation] **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 [Corporation] **Authority** will assign to the response the percentage adjustment listed below:

EXPECTATIONS	Exceeded Expectations	Met Expectations	Below 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 [Corporation] **Authority** will not use that project in the determination of the firm’s Project Rating.

2. The [Corporation] **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 [Corporation] **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 [Corporation] **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:

	Yes	No
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 (CHEST) "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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **Authority** will open each bid session as near to the time specified in the advertisement as is practical. The [Corporation] **Authority** representative will announce the school facilities packages on which bids are being received during that bid session. The [Corporation] **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 [Corporation] **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 [corporation] **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 [Corporation] **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 [Corporation] **Authority** where necessary to establish the correct total bid amount. If the [Corporation] **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 [Corporation] **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 [Corporation] **Authority** backlog form, both public and private, to exceed its Aggregate Rating.

(c) A firm shall include with its Price Proposal a completed [Corporation] **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] **contractor** 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 [Corporation] **Authority** 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 [Corporation] **Authority** backlog form submitted with the Price Proposal. Upon

receipt of multiple bids, the [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **Authority** deems it advisable to do so in the interest of the State or the public interest.

SUBCHAPTER 4. HEARING PROCEDURES PROTEST

19:38-4.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern challenges to an action of the [Corporation] **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 [Corporation] **Authority** shall be made as follows:

1. Project Rating: If a firm is dissatisfied with its Project Rating, the firm **contractor** 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 [Corporation] **Authority** more than 10 days prior to the date for submission of the Price Proposal, the written request must be received by the [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **Authority** on the same day as the Price Proposal, the written request must be received by the [Corporation] **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 [Corporation] **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 [Corporation] **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 [Corporation] **Authority** and the [Corporation] **Authority** shall have the sole discretion as to requesting or requiring a hearing. Alternatively, the [Corporation] **Authority** may determine that sufficient information already exists in the record so that a decision may be made without a hearing and the [Corporation] **Authority** may waive the hearing and issue a final agency decision accordingly. In the event that the [Corporation] **Authority** determines that a hearing is not necessary, a written decision will be issued by the [Corporation] **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.

SUBCHAPTER 5. AWARD OF CONTRACTS

19:38-5.1 Contracts

(a) The [Corporation] **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 [Corporation] **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 or 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 [Corporation] **Authority**, the [Corporation] **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 [Corporation] **Authority**, a copy of the signed contract will be sent to the contractor.

Resolution—3ai.

Proposed Re-adoption With Amendments
Procedures for Low-Bid Procurement of Construction Contracts for School Facilities Projects,
N.J.A.C. 19:38

Resolution

WHEREAS, NJSA 52:18A-238 (4)(k) requires that the New Jersey Schools Development Authority (SDA) shall adopt, amend and repeal regulations to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L. 2007, c. 137 (C. 52:18A-235 et al.); and

WHEREAS, N.J.A.C. 19:38 establishes requirements, standards and procedures for the SDA's procurement of construction contracts on a "low-bid" basis for the Authority's capital program ("Chapter 38" or "the Rules"); and

WHEREAS, the Rules are scheduled to expire on May 15, 2013 and are being proposed for re-adoption with amendments; and

WHEREAS, the proposed amendments to the Rules are technical in nature and are fully described in the materials presented to the Board on this date and incorporated herein; and

WHEREAS, after internal review, executive management and associated program staff have determined that the Rules, as technically amended, are adequate, efficient and responsive for the purposes for which they were originally adopted; and

WHEREAS, SDA management recommends that the Members of the Authority approve the proposed re-adoption of the Authority's "low-bid" procurement Rules, N.J.A.C. 19:38, consistent with the memorandum presented to the Board on this date, as well as the issuance of the attached Notice of Re-adoption and the filing of same with the Office of Administrative Law.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve the proposed re-adoption with amendments of the Rules for Procedures for Low-Bid Procurement of Construction Contracts for School Facilities Projects, N.J.A.C. 19:38, consistent with the memorandum and materials presented to the Board on this date and incorporated herein.

BE IT FURTHER RESOLVED, that the Members of the Authority hereby authorize the issuance of the attached Notice of Re-adoption of the Rules, and the filing of the Notice with the New Jersey State Office of Administrative Law.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Proposed Re-adoption With Amendments: Procedures for Low-Bid Procurement of Construction Contracts for School Facilities Projects, N.J.A.C. 19:38, dated May 10, 2013

Dated: May 10, 2013

**PROPOSED RE-ADOPTION WITH AMENDMENTS: N.J.A.C. --19:38A PROCEDURES FOR
PREQUALIFICATION OF CONTRACTORS AND PROFESSIONAL SERVICES CONSULTANTS FOR THE
NEW JERSEY SCHOOLS CONSTRUCTION PROGRAM**



1 WEST STATE STREET
P.O. BOX 991
TRENTON, NJ 08625-0991
609-943-5955

MEMORANDUM

TO: Members of the Authority

FROM: Jane Kelly, Vice President
Division of Corporate Governance and Operations

DATE: May 10, 2013

RE: Proposed Readoption With Amendments:
Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, N.J.A.C. 19:38A

Management of the New Jersey Schools Development Authority (“Authority” or “SDA”) is seeking the approval of the Board for the Readoption of the Authority’s Rules for Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, N.J.A.C. 19:38A.

Prior Regulatory History

Chapter 38A was originally adopted by the NJSCC on May 15, 2006, and is scheduled to expire on May 15, 2013.

The Rules proposed for readoption with amendments address the procedures for prequalification of contractors, subcontractors, professional services consultants and subconsultants seeking to participate in school facilities projects, and further set forth the requirements and standards for prequalification, grounds for denial or revocation of prequalification, and protest and appeal procedures for the prequalification process. The Rules are intended to insure that only qualified contractors and professional services consultants possessing the requisite moral integrity are permitted to engage in providing construction, professional services, and other goods and services for school facilities projects.

Basis for Readoption with Amendments

The proposed changes to the current regulation are intended to recognize the transition from the SCC to SDA, and to incorporate applicable statutory and regulatory updates.

The amendments are technical in nature, making changes throughout the Rules to reflect the abolition of the New Jersey Schools Construction Corporation (“Corporation” or “NJSCC”) and the creation of the New Jersey Schools Development Authority (“Authority” or “SDA”) by P.L. 2007, c. 137, § 13 (N.J.S.A. 52:18A-247), which transferred all functions, powers and duties of the former NJSCC to the Authority, and decreed that statutory and regulatory references to the NJSCC shall mean and refer to the Authority.

Additionally, other amendments update references to the statutory authority for contractor and consultant prequalification, N.J.S.A. 18A:7G-26, 18A:7G -33 through -35, (regarding contractor prequalification), and N.J.S.A. 52:34-9.3 (regarding consultant prequalification).

Requested Board Action

The Members of the Authority are requested to approve the proposed readoption of the Authority's Prequalification Rules, as well as the issuance of the attached Notice of Readoption, and the filing of the Notice with the Office of Administrative Law.

/s/ Jane F. Kelly

Jane F. Kelly, Vice President
Corporate Governance & Operations

Prepared by Cecelia Haney, Senior Counsel

JFK/ceh

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program

Proposed Readoption with Amendments: N.J.A.C. 19:38A 1.1 through 4.9

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) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); P.L. 2007, c.137, (N.J.S.A. 52:18A-235 et seq.); N.J.S.A. 52:34-9.3 (enabling statutes)

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

Proposal Number: PRN 2013-

Submit written comments by _____ 2013 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 proposes to readopt N.J.A.C. 19:38A (the “Rules”) with technical amendments. The amendments to the Rules consist of changes to

eliminate references to repealed statutes and supply updated statutory references, and changes to reflect the abolition of the New Jersey Schools Construction Corporation (“Corporation” or “NJSCC”) and the creation of the New Jersey Schools Development Authority (“Authority” or “SDA”) by P.L. 2007, c. 137, §§ 3, 13 (N.J.S.A. 52:18A-237, 52:18A -247), which transferred all functions, powers and duties of the former NJSCC to the Authority, and decreed that statutory and regulatory references to the NJSCC shall mean and refer to the Authority.

Chapter 38A was originally adopted by the NJSCC on May 15, 2006, and is scheduled to expire on May 15, 2013. The Rules proposed for readoption with technical amendments address the procedures for prequalification of contractors, subcontractors, professional services consultants and subconsultants seeking to participate in school facilities projects, and further set forth the requirements and standards for prequalification, grounds for denial or revocation of prequalification, and protest and appeal procedures for the prequalification process. The Rules proposed for readoption with technical amendments are intended to insure that only qualified contractors and professional services consultants possessing the requisite moral integrity are permitted to engage in providing construction, professional services, and other goods and services for school facilities projects.

The Authority has reviewed Chapter 38 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.

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 proposed modifications to the chapter follows.

CHAPTER 38A

PROCEDURES FOR PREQUALIFICATION OF CONTRACTORS AND PROFESSIONAL SERVICES CONSULTANTS FOR THE NEW JERSEY SCHOOLS CONSTRUCTION PROGRAM

19:38A-1.1 Purpose, scope and applicability

This section is proposed for readoption with amendments to describe the creation of the of the New Jersey Schools Development Authority, and to delete references to the New Jersey Schools Construction Corporation, in favor of references to the SDA. This section is further amended to clarify references to the statutory authority for contractor and consultant prequalification, N.J.S.A. 18A:7G-26, 18A:7G -33 through -35, (regarding contractor prequalification), and N.J.S.A. 52:34-9.3 (regarding consultant prequalification).

19:38A-1.2 Construction of rules

This section is amended to replace the reference to “Corporation” with a reference to the “Authority.”

19:38A-1.3 Definitions

This section sets forth the meaning of the words and terms used throughout this chapter. Amendments are proposed to replace references to the “Schools Construction Corporation” with references to the “Schools Development Authority,” and to correct and update statutory references.

The following definitions have been amended:

“Act,” is amended to include reference to the codified statutes for the Educational Facilities Construction and Financing Act, (N.J.S.A. 18A:7G-1 et seq.;

“Application” which means the forms, certifications and accompanying documents filed in connection with a firm's request for prequalification, is amended to replace references to the “Corporation,” with “Authority”;

“Authority,” which is amended to refer to the SDA as successor to the New Jersey Schools Construction Corporation, and not the New Jersey Economic Development Authority, as previously indicated;

“Bid,” which is amended to replace the reference to “Corporation-managed projects” with “Authority-managed projects”;

“CEO,” which is amended to refer to the Chief Executive Officer of SDA, not the NJEDA;

“Corporation-managed project,” which is amended to replace references to the “Corporation,” with “Authority”;

“Contractor,” which is amended to replace a reference to “Corporation” with a reference to the “Authority”;

“Debarment,” which means an exclusion from bidding or contracting, is amended to replace references to “Corporation” with “Authority”;

Material testing laboratory,” which means a laboratory engaged in the testing of samples and other materials, is amended to replace references to “Corporation” with “Authority”;

“Notice of Prequalification,” which refers to the SDA-issued prequalification notice letter, is amended to replace references to “Corporation” with “Authority”;

“Project Rating Proposal,” which refers to the application to the Authority for a project rating limit, is amended to replace a reference to “Corporation” with “Authority”;

“School contract,” is amended to replace references to “Corporation” with “Authority”; and
“Suspension,” which means a temporary exclusion from bidding, proposing or contracting with the Authority, is amended to replace references to “Corporation” with “Authority.”

Deleted definitions include:

“Corporation,” which referred to the now-defunct New Jersey Schools Construction Corporation;
and
“SCC,” which referred to the New Jersey Schools Construction Corporation.

19:38A-2.1 Requirement to be prequalified

This section defines when prequalification is required for contractors or consultants who wish to perform work or services on a school facilities project, either through an engagement by the Authority, through a subcontractor or subconsultant relationship with an entity engaged by the Authority, or through an engagement by a school district with a school facilities project funded by SDA. This section is amended to replace references to “Corporation” or “SCC” with “Authority” and “SDA.” The section is further amended to update statutory references to the bidding process and subcontractor identification requirement for Authority procurements.

19:38A-3.1 Prequalification application

This section, which describes the process for applying for prequalification to the Authority, is amended throughout to replace references to “Corporation” or “SCC” with “Authority” and “SDA.” The section is also amended to correct a statutory reference to N.J.S.A. 18A:7G-34, governing prequalification.

19:38A-3.2 Notice of Prequalification determination

This section, which describes the notification process for prequalification by the Authority, is amended throughout to replace references to “Corporation” or “SCC” with “Authority” and “SDA.”

19:38A-4.1 Grounds for revocation of prequalification or denial of a renewal application.

This section is amended throughout to replace references to “Corporation” or “SCC” with “Authority” and “SDA.”

19:38A-4.2 Effect of revocation of prequalification or denial of a renewal application.

This section is amended to replace references to “Corporation” with “Authority.”

19:38A-4.3 Grounds for suspension

This section, indicating that the grounds for suspension are identical to those for debarment or revocation of prequalification, is amended to replace a reference to “Corporation” with “Authority.”

19:38A-4.4 Conditions for suspension

This section, regarding the conditions for suspension, is amended to replace references to “Corporation” with “Authority.”

19:38A-4.5 Procedures, period of suspension and scope of suspension

This section, regarding the procedures for suspension is amended to replace references to “Corporation” with “Authority.”

19:38A-4.6 Grounds for debarment

This section, regarding the grounds for debarment, is amended to replace references to “Corporation” with “Authority.”

19:38A-4.7 Effect of debarment or suspension

This section, regarding the effect of debarment, is amended to replace references to “Corporation” with “Authority.”

19:38A-4.8 Notice of adverse action

This section is amended to replace “Corporation” with “Authority.”

19:38A-4.9 Appeal process

The text of this section is amended to replace “Corporation” with “Authority.”

Social Impact

The Rules proposed for readoption with technical amendments establish the standards and procedures for prequalification of contractors, subcontractors, professional services consultants and subconsultants seeking to participate in school facilities projects, and further set forth the requirements and standards for prequalification, grounds for denial or revocation of prequalification, and protest and appeal procedures for the prequalification process. The Rules

proposed for readoption with technical amendments are intended to insure that only qualified contractors and professional services consultants possessing the requisite moral integrity are permitted to engage in providing construction, professional services, and other goods and services for school facilities projects. The Rules should establish public confidence in the Authority's ability to ensure that the public's interest in the Authority's selection of contractors and consultants for school facilities projects is adequately protected and that the Authority fairly obtains the services of contractors, subcontractors or consultants of the requisite quality, honesty and integrity to qualify for public contracts. Upon readoption, the Rules will continue to affect those construction contractors, consultant firms and subcontractors that would bid on or participate in contracts with the Authority. There is no change in the social impact in that social conditions affected by the Rules have not changed since the initial promulgation of the Rules.

Economic Impact

The economic impact of the Rules proposed for readoption with amendments has not changed since original promulgation of the Rules. The Authority has no current way of estimating the costs of the Rules proposed for readoption, though the economic impact of the Rules is expected to be limited to those firms that choose to participate in the Authority's future procurements, as the Rules outline the process that is used to prequalify firms to do business with the Authority. The Rules establish a prequalification process which entails certain incidental costs associated with the preparation and submission of applications for prequalification, as well as costs associated with responding to any follow up inquiries raised by the application submission. Additionally, 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. This economic information should be beneficial to all private firms wishing to perform work for, or provide services to, the Authority.

The Authority will incur direct and indirect costs for staff time spent reviewing and responding to applications for prequalification, and will incur direct costs for the “moral integrity” review component of the prequalification process. These costs have not been passed down to the applicants, in efforts to prevent burdening small business entities’ participation in the Authority’s procurements.

Federal Standards Statement

The Rules proposed for readoption implement State statutes, specifically, N.J.S.A. 18A:7G-33 to -35; N.J.S.A. 52:34-9.3 and and P.L. 2007, c.137, (N.J.S.A. 52:18A-235 et seq.). There are no Federal standards or requirements applicable to these Rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The Rules proposed for readoption establish the Authority's process for prequalification of contractors, subcontractors and professional services consultants, consistent with the Authority's enabling statutes and state procurement law. Thus to the extent the Rules have an effect on jobs, it will be to create jobs in New Jersey, primarily in the construction, consulting and service sectors, rather than eliminate positions.

Agriculture Industry Impact

The Rules will have no direct impact on the agriculture industry.

Regulatory Flexibility Analysis

The Rules proposed for re-adoption with technical amendments 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 proposed for re-adoption outline the standards and procedures for prequalification of contractors, subcontractors and consultants, a requirement that is imposed by public contracting provisions set forth in N.J.S.A. 52:18A-235 et seq.. 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.

Housing Affordability Impact

The Rules address the requirements and the process for the procurement of construction contracts for school facilities projects 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

The Rules govern the process by which the Authority procures construction contracts, and thus the proposed adoption will have no impact on Smart Growth Development because the scope of the regulation is minimal, and because it is extremely unlikely that the adoption of the rules

would evoke a change in the average price or availability of housing in the State of New Jersey, and unlikely that the proposed adoption 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. 19:38A.

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

CHAPTER 38A

PROCEDURES FOR PREQUALIFICATION OF CONTRACTORS AND PROFESSIONAL SERVICES CONSULTANTS FOR THE NEW JERSEY SCHOOLS CONSTRUCTION PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

19:38A-1.1 Purpose, scope and applicability

These rules are promulgated by the New Jersey Schools [Construction Corporation, (the Corporation)] **Development Authority (the Authority)**, [a subsidiary of the New Jersey Economic 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 rules are promulgated** to implement Sections 26, 59, 60 and 61 of the [Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (the Act)] **Act (N.J.S.A. 18A:7G-26, 18A:7G - 33 through -35)**, and N.J.S.A. 52:34-9.3. These rules shall apply to the procurement of

contractors, consultants and their use of subcontractors and subconsultants on all school facilities projects and pre-development activities undertaken by the [Corporation] **Authority** and to certain categories of such firms who are engaged to provide goods and/or services to school districts which undertake their own school facilities projects and receive funding from the [Corporation] **Authority**. These rules are adopted in order to provide the mechanism whereby firms wishing to work on school facilities projects and pre-development activities may be prequalified by the [Corporation] **Authority**. Any firm which, pursuant to these rules, is required to be prequalified by the [Corporation] **Authority** in order to provide goods and/or services for school facilities projects and pre-development activities, shall, at a minimum, comply with the requirements of this chapter, as applicable.

19:38A-1.2 Construction of rules

This chapter shall be liberally construed to permit the [Corporation] **Authority** to discharge its statutory functions under the Act.

19:38A-1.3 Definitions

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

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, [enacted on July 18, 2000] (**N.J.S.A. 18A:7G-1 et seq.**), as amended, and **P.L. 2007, c. 137**.

“Adverse action” means a debarment, a revocation of a current, valid prequalification, or the denial of a timely and complete application to renew a current, valid prequalification.

“Affiliates”: Firms or persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, a common license holder, or common use of employees. It is also an indication of control if a firm is organized, activated or applies for prequalification following the debarment, suspension, or proposed debarment of another firm with the same or similar management, ownership, or key persons.

“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.

“Application” means the forms, certifications and accompanying documents filed in connection with a firm's request for prequalification, including such documents as are required by or are expressly relied upon by the [Corporation] **Authority**, which are mandatory and which must be made under oath or by certification on forms designated by the [Corporation] **Authority**. The submission shall include;

1. A list of the names and titles of all individuals who own 10 percent or more of any class of stock in the corporation, or are a 10 percent or more partner or participant in the firm;
2. Disclosure of any judgments, convictions or criminal indictments for any conduct constituting a crime under local, state or Federal law;

3. Disclosure of any judgments, injunctions or liens obtained by an agency of government including, but not limited to, judgments based on taxes owed and fines and penalties assessed by an agency of government;
4. Disclosure of any civil or administrative proceedings alleging violations of federal, state or local laws, rules or regulations, including health laws, unemployment insurance or workers' compensation coverage or claim requirements, wage and hour laws, labor laws, the Employee Retirement Income Security Act of 1974 (Pub.L. 93-406, 29 U.S.C. §§1001 et. seq.), securities laws, environmental laws, safety laws, licensing laws, tax laws and antitrust laws;
5. Disclosure of any Federal, state or local debarment, disqualification, revocation, suspension, non-responsibility finding or denial of prequalification;
6. Any other information or documents that the [Corporation] **Authority** or OGI deems necessary from a specific applicant.

“Authority” or [“NJEDA”] “**SDA**” means the New Jersey [Economic] **Schools** Development Authority, [created] **an entity formed** pursuant to P.L. [1974] **2007**, c. [80] **137** (N.J.S.A. [34:1B-1] **52:18A-235** et seq.), as **successor to the New Jersey Schools Construction Corporation, which is statutorily charged with undertaking and funding school facilities pursuant to the Act.**

“Bid,” for [Corporation-managed] **Authority-managed** projects, means the Project Rating Proposal and the Price Proposal.

“Burden of proof” means the obligation to meet the requirements of this chapter that a fact be proved either by a preponderance of the evidence or by clear and convincing evidence, as the case may be.

“CEO” means the Chief Executive Officer of the [Corporation] **Authority**.

“Clear and convincing evidence” means evidence or information sufficient to produce a firm belief as to the truth of the matter sought to be established.

“Contractor” means those persons or firms engaged by the school district or the [Corporation] **Authority** to undertake the construction or the acquisition and installation of the school facilities project. There may be either a single “general” contractor who has overall contractual responsibility for delivering all of the services needed to complete the school facilities project or there may be multiple contractors who have responsibility for delivering particular aspects of the school facilities project.

["Corporation" means the New Jersey Schools Construction Corporation.]

"[Corporation-managed] **Authority-managed** project" means a school facilities project or pre-development activity undertaken by the [Corporation] **Authority**. It includes projects in the Abbott districts, districts with a district aid percentage of 55 percent or more, level II districts and those districts with a district aid percentage less than of 55 percent which elect to have the [Corporation] **Authority** undertake their school facilities projects. As used in this definition,

"Abbott district" means as defined in N.J.S.A. 18A:7F-3 and "level II district" means a school district which is directed by the commissioner of education to enter Level II monitoring pursuant to the provisions of N.J.S.A. 18A:7A-14.

"Debarment" means an exclusion by the [Corporation] **Authority** from bidding, proposing or contracting with the [Corporation] **Authority**, or with any school district for a school facilities project or predevelopment activity, or from providing goods or services on any school facilities project or predevelopment activity, for a definite period of time.

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

"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.

"DPMC Prequalification" means the process and product of assigning specific professional disciplines and the maximum prequalification level which define the eligibility of firms to provide professional consultant services as determined by the DPMC in accordance with the DPMC rules at N.J.A.C. 17:19-5.

"Discipline" means the technical expertise of professionals in the firm applying for

prequalification.

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

“Initial application” means any application for prequalification other than a timely application to renew a current, valid prequalification.

“Key person” means any individual employed by the firm in a supervisory capacity or empowered to make discretionary decisions with respect to fees and/or contracts within the State.

“Key person” also means any person who owns a beneficial interest of 10 percent or more in the firm, the managing members of limited liability companies and corporate officers and directors, and individuals able to bind the firm to New Jersey bids and/or contracts of \$ 50,000 or more and/or authorized to sign checks to make payments of \$ 50,000 or more in connection with New Jersey contracts.

“Material testing laboratory” means a laboratory engaged in the testing of samples and other materials that is engaged by the [Corporation] **Authority** or its contractor or professional services consultant for a school facilities project or pre-development activity.

“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 DPMC Prequalification” means the document(s) from the DPMC notifying the Firm of the specific professional disciplines and of the maximum prequalification level for which the firm may provide professional consultant services, in accordance with the DPMC rules at N.J.A.C.17:19-5.

“Notice of Prequalification” means the letter from the [Corporation] **Authority** issuing the firm its Prequalification.

“Office” or “OGI” means the Office of Government Integrity in the Department of Law and Public Safety.

“Pre-development activities” means the activities that must be undertaken prior to submitting a school facilities project application to the Department of Education for approval and calculation of preliminary eligible costs, as defined at N.J.S.A. 18A:7G-3. Such activities may also include:

1. Site analysis;
2. Acquisition of land;
3. Environmental remediation;
4. Site development;

5. Feasibility studies, including studies to determine the viability of new Construction versus rehabilitation;
6. Design work;
7. Acquisition of, and design work for, temporary facilities; and
8. Such other activities as may be specified in N.J.A.C. 19:34-1.2 and 6A:26-1.2.

“Preponderance of the evidence” means evidence or information sufficient to establish that the matter sought to be proved is more probable than not. If the evidence or information is in equipoise, the burden has not been met.

“Prequalification” means the approval of a firm by the [Corporation] **Authority** enabling the firm to submit a bid for, and be awarded a contract or to work as a subcontractor on any school facilities project or pre-development activity, or to enable a professional to submit a proposal for, and to be awarded a professional consultant services contract or to serve as a subconsultant on any school facilities project or pre-development activity.

“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.

“Professional services consultants” or “consultants” means consultants, providing professional services associated with research, development, design and construction administration, alteration, or renovation in connection with school facilities projects or predevelopment activities

or the school construction program, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. Notwithstanding anything to the contrary, "professional services consultants" for the purposes of this chapter shall mean those consultants who provide "professional architectural, engineering or land surveying services" within the meaning of N.J.S.A. 52:34-9.2, and shall also include project management firms, which are firms engaged by the [Corporation] **Authority** to provide overall construction management services, oversight, direction, coordination, and reporting in connection with school facilities projects].

"Project Rating Proposal" means that part of the bid to be submitted by the firm for issuance by the [Corporation] **Authority** of the project rating.

"Proposal" means the technical proposal, or fee proposal, or both, as the case may be, submitted by a consultant in response to a request for proposals.

"Request for Proposals" or "RFP" means the request for technical proposals and/or fee proposals issued by the [Corporation] **Authority** in connection with the selection of a professional services consultant or contractor for a school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.

[“SCC” means the Corporation.]

“School contract” means, with respect to the [Corporation] **Authority**, a contract entered into between the [Corporation] **Authority** and a contractor or professional services consultant; and with respect to a school district, a contract entered into between the school district and a contractor or professional services consultant.

“School facilities project” means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or 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 school district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration.

“Subconsultant” means a consultant to whom the firm that is contractually engaged by a consultant subcontracts part of the work for which the consultant is responsible.

“Subcontractor” means the contractor to whom a contractor subcontracts part of the work for which the contractor is responsible.

“Suspension” means an exclusion by the [Corporation] **Authority** from bidding, proposing or contracting with the [Corporation] **Authority**, or with any school district for a school facilities project or predevelopment activity, or from providing goods or services on any school facilities project or predevelopment activity, for a period of time, pending the completion of an investigation, legal proceedings or administrative proceedings.

SUBCHAPTER 2. GENERAL REQUIREMENTS

19:38A-2.1 Requirement to be prequalified

(a) For [Corporation] **Authority**-managed projects, a contractor or professional services consultant that desires to submit bids or proposals for school contracts is required to be prequalified by the [Corporation] **Authority** pursuant to this chapter. A contractor must be [SCC] **SDA** prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Classification as of the due date for the submission of the Project Rating Proposal. A professional services consultant must be [SCC] **SDA** prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Prequalification, by the time specified in N.J.A.C. 19:38C for the appropriate category of contract.

(b) For [Corporation] **Authority**-managed projects, all subcontractors required to be named in the bid, whether pursuant to N.J.S.A. [34:1B-5.7,] **52:18A-243**, the advertisement for the specific

contract or the contract documents, are required to be [SCC] **SDA** prequalified pursuant to these regulations, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC classification, prior to the submission of the Price Proposal. All subconsultants required to be named in the proposal are required to be [SCC] **SDA** prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC prequalification, by the time specified in the request for proposals.

(c) For [Corporation] **Authority**-managed projects, in addition to the requirements of (a) and (b) above:

1. All subcontractors of any tier in the trades listed in this paragraph, engaged in subcontracts valued at \$ 500,000 or more, whether required to be named in the bid or not, are required to be prequalified by the [Corporation] **Authority** pursuant to this chapter. Such subcontractors must be [SCC] **SDA** prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Classification, prior to performing the work.

These subcontractor trades are:

- i. Construction Manager as Constructor;
- ii. Design Build;
- iii. General Construction;
- iv. General Construction/Alterations and Additions;
- v. Concrete/Foundation/Footings/Masonry work;
- vi. Demolition;
- vii. Structural Steel and Ornamental Iron;
- viii. Plumbing;

- ix. Heating, Ventilation and Air Conditioning;
- x. Sprinkler Systems;
- xi. Electrical;
- xii. Roofing-Membrane EPDM;
- xiii. Roofing-Membrane PVC/CPE/CSPE;
- xiv. Roofing-Membrane Modified Bitumen;
- xv. Roofing-Urethane;
- xvi. Roofing-Built Up;
- xvii. Roofing-Metal;
- xviii. Roofing-Tile/Slate/Shingles;
- xix. Asbestos Removal/Treatment;
- xx. Asbestos Removal/Mechanical; and
- xxi. Lead Paint Abatement.

2. All subconsultants of any tier in the disciplines listed in this paragraph, engaged in subcontracts valued at \$ 500,000 or more, whether required to be named in the proposal or not, are required to be prequalified by the [Corporation] **Authority** pursuant to this chapter. Such subconsultants must be [SCC] **SDA** prequalified, including having complied with N.J.A.C. 19:38A-3.1 regarding obtaining a DPMC Prequalification, prior to performing the work. These subconsultant disciplines are:

- i. Architecture;
- ii. Engineering (electrical, HVAC, plumbing, civil, structural and environmental);
- iii. Land Surveying;

- iv. Asbestos Safety Control Monitoring;
- v. Materials Testing Laboratories; and
- vi. Construction Management.

(d) For school facilities projects undertaken by a school district and funded under N.J.S.A. 18A:7G-15, a contractor or construction management firm that wishes to be able to submit bids or proposals for school contracts above the bid threshold specified in N.J.S.A. 18A:18A-3 is required to be prequalified by the [Corporation] **Authority** pursuant to this chapter. A contractor or construction management firm must be prequalified prior to the submission of its bid or proposal. Subcontractors in the trades specified in N.J.S.A. 18A:18A-18 must be prequalified prior to entering into the subcontract.

(e) For the following types of projects, the prequalification requirements shall be the same as for [Corporation] **Authority**-managed projects:

1. Community early childhood educational projects undertaken by the community provider pursuant to an agreement under N.J.S.A. 18A:7G-5s;
2. Demonstration projects undertaken pursuant to N.J.S.A. 18A:7G-6;
3. School facilities projects undertaken by a school district pursuant to an agreement under N.J.S.A. 18A:7G-13a and
4. Projects to acquire, construct or renovate temporary facilities undertaken pursuant to a funding agreement with the [Corporation] **Authority**.

(f) Neither the [Corporation] **Authority** nor any school district receiving funds pursuant to the Act shall contract for school facilities projects or pre-development activities with any contractor, professional services consultant or construction management firm required to be prequalified by this chapter, unless that firm has been prequalified by the [Corporation] **Authority**. No contractor, professional services consultant or construction management firm contracted for a schools facilities project or pre-development activity shall use on the project any subcontractor or subconsultant required to be prequalified by this chapter, unless that firm has been prequalified by the [Corporation] **Authority** at the time specified in this chapter. Any failure to comply with this chapter shall entitle the [Corporation] **Authority** to terminate or suspend its contract with the contractor, professional services consultant or construction management firm or to terminate its payment of contract-related funds to the school district.

(g) If two or more firms which are individually DPMC classified or prequalified propose to form a joint venture for a school contract, each firm comprising the joint venture must be individually [SCC] **SDA** prequalified in accordance with this chapter.

SUBCHAPTER 3. APPLICATION AND NOTICE OF PREQUALIFICATION DETERMINATION

19:38A-3.1 Prequalification application

(a) A firm seeking initial prequalification with the [Corporation] **Authority** must apply to DPMC and obtain a contractor DPMC Classification or consultant DPMC Prequalification. Upon securing a DPMC Classification or Prequalification, the firm shall submit an application to the [Corporation] **Authority**. See N.J.S.A. 18A:7G-[3.4] **34**.

(b) A firm seeking to renew an existing [SCC] **SDA** prequalification must file a timely and complete renewal application. A renewal application will be considered timely if it is received by [SCC] **SDA** no later than (10) business days after the expiration date of the existing [SCC] **SDA** prequalification. A renewal applicant must apply to DPMC and obtain a contractor DPMC Classification or consultant DPMC Prequalification. Because the DPMC and [SCC] **SDA** expiration dates generally coincide, a renewal applicant may submit its [SCC] **SDA** renewal application including either:

1. A copy of its renewed Notice of DPMC Classification or Prequalification, if available; or if not available,
2. A certification on a form developed by [SCC] **the Authority**, that the applicant firm has filed with DPMC to renew its DPMC Classification or Prequalification. A firm which files a renewal application before receiving its Notice of DPMC Classification or Prequalification must provide a copy of the DPMC Notice to [SCC] **SDA**, within five business days of receiving it. If the firm's DPMC application is denied or otherwise closed without being granted, the firm must notify [SCC] **SDA** within five business days of its being advised of DPMC's action. A renewal applicant will have a maximum of 60 days from the date its renewal application is received by [SCC] **SDA** to provide [SCC] **SDA** with a copy of its renewed Notice of DPMC Classification or Prequalification. If the renewal applicant does not file a copy of its renewed Notice of DPMC Classification or Prequalification within that time, the renewal application may be administratively closed.

- (c) An application will be reviewed initially to determine if the application is complete. Incomplete applications may be administratively closed with no further action by the [Corporation] **Authority**.
- (d) The OGI shall review each complete application for the purpose of determining the responsibility of the firm, including the character, honesty and integrity of any key person, any person required to be listed in the application or otherwise shown to have a beneficial interest in the firm.
- (e) The OGI as part of its review may request additional information from the firm. A failure by the firm to provide the information within the time specified by the OGI may result in the application being deemed incomplete and administratively closed with no further action.
- (f) Upon an initial application, the firm has the burden of demonstrating a satisfactory record of responsibility by a preponderance of the evidence. The determination shall be made based on the firm's completed application and any other information requested or obtained by the [Corporation] **Authority** or the OGI. The OGI shall submit its recommendation regarding prequalification of the firm to the [Corporation] **Authority**.

19:38A-3.2 Notice of Prequalification determination

- (a) Upon a determination by the [Corporation] **Authority** that the firm should be prequalified, the [Corporation] **Authority** shall send to the firm a Notice of Prequalification. The [Corporation] **Authority** will post a listing of prequalified firms on the [Corporation's] **Authority's** website.
- (b) A firm will be notified in writing if its application is administratively closed.

(c) If prequalification is denied, the firm will be notified in writing of the reasons for the denial.

Any firm protesting the denial of an initial application for prequalification shall provide information in writing to the [Corporation] **Authority**, to explain why it should be granted prequalification. The firm shall submit written information to the Corporation within (30) calendar days of receiving the notice of denial, unless a longer time is agreed to by the [Corporation] **Authority**. The [Corporation's] **Authority's** decision on the protest shall be embodied in a written decision provided to the firm, which shall constitute final agency action by the [Corporation] **Authority**.

(d) A firm whose initial prequalification application has been denied may not participate in a school facilities project or pre-development activity in any capacity as to which prequalification is required. The firm may reapply for prequalification upon curing the deficiency which led to the denial of prequalification.

(e) Prequalification approval for any firm is non-transferable and shall be valid only for a fixed length of time, which shall coincide with the firm's DPMC Classification or Prequalification, but may not exceed two years.

(f) Throughout the term of its prequalification, a firm shall notify the [Corporation] **Authority** and the OGI in writing of any material change in the information on its application, within 10 business days of when such change occurs.

(g) Any prequalification approved by the [Corporation] **Authority** under interim procedures in place prior to May 15, 2006 shall remain valid until the expiration date assigned at the time that prequalification was approved.

SUBCHAPTER 4. REVOCATION, SUSPENSION AND DEBARMENT

19:38A-4.1 Grounds for revocation of prequalification or denial of a renewal application.

- (a) The [Corporation] **Authority** has the burden of proof in revoking a current, valid prequalification, and in denying a timely, complete application to renew a current, valid prequalification.
- (b) Any prequalification may be revoked or a renewal may be denied by the [Corporation] **Authority** for any of the following causes:
1. Fraud, deceit or misrepresentation in securing prequalification, failure to supply information, or the supplying of information which is untrue or misleading, as to a material fact pertaining to the responsibility of the firm, any key person or any person required to be listed in the application;
 2. Lack of responsibility, integrity, reliability, expertise, competency, or lack of any required license or permit, to engage in contracting or professional consultant services by the firm or any key person; or any person required to be listed in the application;
 3. Conviction of the firm, any key person, or any person required to be listed in the application, of any of the following crimes under the laws of New Jersey or the equivalent thereof under the laws of any other jurisdiction;
 - i. Murder, kidnapping, robbery, criminal usury, arson, burglary, any crime of the third degree or above specified in Chapters 14, 20 or 21 of Title 2C of the New Jersey Statutes, any offense specified in Chapters 27, 28 or 30 of Title 2C of the New Jersey Statutes, racketeering, violation of the criminal provisions of the New Jersey Antitrust Act, P.L. 1970, c. 73 (N.J.S.A. 56:9-1

et seq.), any purposeful or knowing violation of the criminal provisions of any environmental protection law, any criminal violation or disorderly persons offense under the Act, any offense showing lack of business integrity or honesty, or an attempt or conspiracy to commit any of the violations listed above; or

- ii. Any other offense, attempt or conspiracy to commit any offense under any state or Federal law which indicates that prequalification of the firm would be inimical to the policy of the Act, the integrity of school facilities projects, or the public interest.
 - iii. The provisions of this paragraph shall not apply with regard to any Conviction which occurred more than 10 years before the application, or to any conviction which has been addressed by a judicial order of expungement or a pardon; however, the [Corporation] **Authority** may consider the conduct underlying the criminal conviction;
4. The commission by the firm, key person or any person who is required to be listed in the application of any act or acts which would constitute any offense enumerated in (b)3 above, even if such conduct has not been or may not be prosecuted under the criminal laws of this State or any other jurisdiction or has been prosecuted under the criminal laws of this State or any other jurisdiction and such prosecution has been terminated in a manner other than with a conviction;
 5. Identification of the firm, any key person, any person required to be listed in the application, or any other person shown to have a beneficial interest in the business of the firm, as a career offender or a member of a career offender cartel or an associate

of a career offender or career offender cartel, where such identification, membership or association creates a reasonable belief that the participation of that person in any activity financed under the Act would be inimical to the policies of the Act or the public interest. For the purposes of this paragraph, “career offender” means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State; and a “career offender cartel” means any group of persons who operate together as career offenders;

6. Failure of the firm, key person or any person who is required to be listed on the application to cooperate or comply with orders issued by any legislative investigatory body or other official investigatory body of any state or its subdivisions or of the United States when such body is engaged in the investigation of crimes or misconduct relating to public works contracting, official corruption, corrupt practices or organized crime activity;
7. Violations of any of the laws governing the conduct of elections of the State of New Jersey or of its political subdivisions;
8. Violations of the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.,) or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the “Act prohibiting discrimination by industries engaged in defense work in the employment of persons therein” (N.J.S.A. 10:1-10 et seq.);
9. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

10. Violations of any laws governing the licensing or conduct of occupations or professions or regulated industries, or violation of contractual or statutory provisions regulating contingent fees;
 11. Willful failure to perform in accordance with contract specifications or within contractual time limits;
 12. Failure to perform or less than satisfactory performance in accordance with the terms of one or more contracts, provided that such failure or less than satisfactory performance has occurred within a reasonable time preceding the application;
 13. Debarment, disqualification, revocation or suspension of the firm's right to bid or contract by an agency of government, if based on a cause equivalent to one set forth in this subchapter;
 14. Offering, conferring or agreeing to confer any benefit to induce the [Corporation] **Authority**, a school district, or any person either to perform or violate an official duty, or to violate the provisions of these regulations or of any law related to or implicating integrity or any rule or regulation adopted pursuant thereto; or
 15. Any other cause of such serious and compelling nature that the granting of prequalification would be inconsistent with the policies of the Act or the public interest.
- (c) The rendering of a final judgment, including by a guilty plea or plea of *nolo contendere*, by a court of competent jurisdiction or by an administrative agency empowered to render such judgment, shall be sufficient but not required to establish the existence of the criteria set forth in (b) 7, 8, 9, and 10 above.

(d) If a firm, key person or person required to be listed in the application has been convicted of a crime which may be grounds for denial of a renewal application or revocation of prequalification, the [Corporation] **Authority** may consider any of the following actions taken or proposed by the firm in determining whether to deny renewal of, or revoke, prequalification:

1. Changes in the firm's organizational structure to reduce the opportunity and motivation of individual employees to engage in illegal activity, including procedures for informing employees of the requirements of relevant state and Federal law;
2. Changes in the firm's long and short term planning to ensure that the firm implements procedures and policies to prevent future violations of the law;
3. Changes in the firm's legal, accounting, or other internal or external control and monitoring procedures to discourage or prevent future violations of state or Federal law;
4. Changes in the firm's ownership, control, personnel, and personnel selection practices and the implementation of a reward or disincentive system in order to encourage employees to comply with relevant state and Federal law;
5. Agreement by the firm to permit monitoring by or on behalf of the [Corporation] **Authority** for a specific length of time of any changes in the firm's policy, procedure, or structure to insure the continued responsibility and integrity of the firm, the cost of such monitoring to be borne by the firm; or
6. Any other actions taken by the firm which demonstrate the firm's current responsibility and integrity.

19:38A-4.2 Effect of revocation of prequalification or denial of a renewal application

A firm whose renewal prequalification application has been denied, or whose prequalification has been revoked, may not participate in a school facilities project or predevelopment activity in any capacity as to which prequalification is required; provided, however, that in its sole discretion, the [Corporation] **Authority** or school district, as appropriate, may permit the firm to complete some or all of its existing school contracts when doing so is in the public interest. The firm may reapply for prequalification upon curing the deficiency which led to the denial or revocation of prequalification.

19:38A-4.3 Grounds for suspension

In the public interest, the [Corporation] **Authority** may suspend a firm for any cause specified in N.J.A.C. 19:38A-4.1, or upon reasonable suspicion that such cause exists.

19:38A-4.4 Conditions for suspension

(a) The conditions for the suspension of a firm shall include the following:

1. Suspension shall be imposed only upon approval of the CEO and the Attorney General, except as otherwise provided by law.
2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the CEO and the Attorney General and shall be rendered in the best interest of the State.
3. Suspension shall not be based upon unsupported accusation, but upon reasonable suspicion that cause exists.

4. In assessing whether reasonable suspicion exists, consideration shall be given to: the credible information provided to or obtained by the Office, to the existence or absence of corroboration as to important allegations, and to inferences that may properly be drawn from the existence or absence of affirmative facts.
5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 19:38A-4.1 (b) may be established by the rendering of a final judgment or judgment of conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment or by other information that such causes did in fact occur.
6. A suspension invoked by another agency of government for a cause equivalent to one described in N.J.A.C. 19:38A-4.1(b) may be the basis for the imposition of a concurrent suspension by the [Corporation] **Authority**, which may impose such suspension when found to be in the best interest of the State.
7. Suspension may include all known affiliates of a firm, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

19:38A-4.5 Procedures, period of suspension and scope of suspension

(a) The [Corporation] **Authority** may suspend a firm, provided that at least 10 days before the effective date of the suspension, the [Corporation] **Authority** provides such firm with a written notice:

1. Stating that a suspension has been imposed and stating its effective date;
2. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;

3. Stating that the suspension is for a temporary period pending the completion of an investigation and any legal proceedings that may ensue; and

4. Indicating that, if such legal proceedings are not commenced, or the suspension removed within 60 days of the date of such notice, the firm or the individual will be given either a statement of the reasons for the suspension and an opportunity for a hearing, or a statement declining to give such reasons which sets forth the [Corporation's] **Authority's** position regarding the continuation of the suspension. Where the [Corporation] **Authority** suspends a firm based on a suspension by any other agency of government, the [Corporation] **Authority** shall identify same as a reason for the suspension.

(b) A suspension shall not continue beyond 18 months from its effective date, unless civil or criminal action regarding the alleged violation has been initiated within that period, or unless debarment action has been commenced. When prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

19:38A-4.6 Grounds for debarment

- (a) A firm or person may be debarred for any of the causes listed in N.J.A.C. 19:38A-4.1.
- (b) The [Corporation] **Authority** shall have the burden of proof by clear and convincing evidence in any debarment action. The rendering of a final judgment, including by a guilty plea or plea of *nolo contendere*, by a court of competent jurisdiction or by an administrative agency empowered to render such judgment, shall be sufficient but not required to establish the existence of the causes set forth in N.J.A.C. 19:38A-4.1[(b)] (c) 7, 8, 9, and 10.

- (c) The existence of any of the causes listed in N.J.A.C. 19:38A-4.1 shall not necessarily require that a firm or person be debarred. In each instance, the decision to debar shall be made within the discretion of the [Corporation] **Authority** unless otherwise required by law and shall be rendered in the best interests of the State.
- (d) All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance, and in deciding whether to debar.
- (e) If a firm, key person or person required to be listed in the application has been convicted of a crime which may be grounds for debarment, the [Corporation] **Authority** may consider any of the actions listed in N.J.A.C. 19:38A-4.1(d), which are taken or proposed by the firm, in determining whether to debar.

19:38A-4.7 Effect of debarment or suspension

- (a) Any firm which has been debarred or suspended is precluded during the period of debarment or suspension from bidding on, proposing on or entering any contract or subcontract for a school facilities project or pre-development activity managed or funded by the [Corporation] **Authority**, and from providing any goods or services on any school facilities project or pre-development activity managed or funded by the [Corporation] **Authority**; provided, however, that in its sole discretion, the [Corporation] **Authority** or school district, as appropriate, may permit the firm to complete some or all of its existing school contracts when doing so is in the public interest.
- (b) Debarment shall be for a reasonable, definitely stated period of time, which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the firm is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed.

(c) Debarment may include all known affiliates of a firm, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances.

(d) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced at the discretion of the [Corporation] **Authority** upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence; reversal of a conviction or judgment; actual change of ownership, management, or control; or the elimination of the causes for which the debarment was imposed.

19:38A-4.8 Notice of adverse action

When the [Corporation] **Authority** determines to deny a timely and complete renewal application, revoke prequalification or debar, it shall serve written notice upon the subjects of the adverse action, clearly stating the causes for the adverse action.

19:38A-4.9 Appeal process

- (a) Any firm or person which is the subject of an adverse action, and which desires to appeal the [Corporation's] **Authority's** determination, must transmit a written request to the [Corporation] **Authority** within seven calendar days of receipt of the notice of adverse action.
- (b) If the adverse action is based upon an agency of government's prior similar action, the [Corporation] **Authority** may also impose a similar adverse action without affording an opportunity for a hearing, provided the [Corporation] **Authority** furnishes notice of the

- proposed similar adverse action to that party, and affords that party an opportunity to present information in its behalf to explain why the proposed similar adverse action should not be imposed in whole or in part.
- (c) If the adverse action determination is based upon a criminal, civil or administrative judgment, the criminal, civil, or administrative judgment shall be proof of any fact essential to sustain it. The validity of the judgment may not be challenged on appeal.
- (d) Upon timely appeal, a hearing shall be afforded in the following circumstances:
1. When a firm or person is proposed for debarment;
 2. When a current, valid prequalification is revoked; or
 3. When a timely and complete application to renew a current, valid prequalification is denied.
- (e) Hearings under (d) above shall be conducted by the Office of Administrative Law in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. A final decision in such matters shall be made by the Board of Directors of the [Corporation] **Authority**.
- (f) Nothing contained in this chapter shall be construed to limit the authority of the [Corporation] **Authority** to refrain from contracting within the discretion allowed by law.

Resolution—3a.ii.

Proposed Re-adoption With Amendments
Procedures for Prequalification of Contractors and Professional Services Consultants for the
New Jersey Schools Construction Program, N.J.A.C. 19:38A

Resolution

WHEREAS, NJSA 52:18A-238 (4)(k) requires that the New Jersey Schools Development Authority (SDA) shall adopt, amend and repeal regulations to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L. 2007, c. 137 (C. 52:18A-235 et seq.); and

WHEREAS, N.J.A.C. 19:38A governs the procedures for prequalification of contractors, sub-contractors, professional services consultants and sub-consultants seeking to participate in school facilities projects, and the requirements and standards for prequalification, grounds for denial or revocation of prequalification, and protest and appeal procedures for the prequalification process (“Chapter 38A” or “the Rules”); and

WHEREAS, the Rules are intended to insure that only those qualified contractors and professional services consultants who possess the requisite moral integrity are permitted to provide construction services, professional services, and other goods and services for school facilities projects; and

WHEREAS, the Rules are scheduled to expire on May 15, 2013 and are thus proposed for re-adoption with amendments; and

WHEREAS, SDA executive management and associated program staff have determined that the Rules, with certain amendments, are adequate, efficient and responsive for the purposes for which they were originally adopted; and

WHEREAS, the details of the amendments to the Rules, which are wholly technical in nature, are set forth in detail in the memorandum presented to the Board on this date and incorporated herein; and

WHEREAS, SDA executive management recommends that the Members of the Authority approve the proposed re-adoption of the Authority’s prequalification procedures Rules, N.J.A.C. 19:38A, as presented in the memorandum presented to the Board on this date and incorporated herein as well as the issuance of the attached Notice of Re-adoption and authorize the filing of this Notice with the Office of Administrative Law.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve the proposed re-adoption with amendments of the Rules for Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, N.J.A.C. 19:38A, with amendments consistent with the memorandum and materials presented to the Board on this date and incorporated herein.

BE IT FURTHER RESOLVED, that the Members of the Authority hereby authorize the issuance of the attached Notice of Re-adoption of the Rules, and the filing of such Notice with the New Jersey State Office of Administrative Law.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Proposed Re-adoption With Amendments: Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Program, N.J.A.C. 19:38A, dated May 10, 2013

Dated: May 10, 2013

PUBLIC COMMENT STATEMENT

We will now begin the Public Comment Portion of the Meeting consistent with the New Jersey Open Public Meetings Act.

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We would ask that any member of the public who wishes to address the Board limit their comments to 3 minutes. If there are multiple individuals from the same organization or district who wish to address the Board on the same matter, we would ask that you come up together to offer your remarks.

Please keep in mind that public comment is to afford citizens the opportunity to comment on matters pertinent to the Authority's business. Should you seek answers to questions on any topic, please contact the Authority at 609-943-4585 at your convenience.