

### **N.J.A.C. 17:19-1.1 Definitions**

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

"Affiliates" or "related parties" means firms and/or persons having an overt or covert relationship such that any one of them directly or indirectly controls or has power to control another.

"Agency consultant" means a firm that provides technical and professional services to State agencies in support of construction projects or programs through limited task order assignments.

"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 and political subdivision or other governmental or quasi-governmental entity.

"Aggregate rating" means the limit of the dollar value of all contracts, public and private, that a firm may perform at any given time.

"Chairperson" means the principal member of the DPMC's consultant selection committee who is responsible for the management of the selection process.

"Classification" means the process and product of assigning specific construction categories or trades and the aggregate ratings that define the eligibility of firms to engage in public work as determined by the DPMC in accordance with this chapter.

"Client agency" means any State entity for which the DPMC provides professional and construction contracting services.

"Construction cost estimate (CCE)" means the estimated construction cost of a specific project.

"Consultant" means an architect, engineer, construction manager, or other professional service firm providing technical and professional services in support of a design or construction project.

"Cost proposal" means a specific fee proposal covering compensation for services as specified.

"Debarment" means an exclusion from public work contracting for a definite period of time.

"Deputy Director" means a Deputy Director of the DPMC or a Deputy Director's duly authorized representative.

"Director" means the Director of the DPMC or the Director's duly authorized representative.

"Disqualification" means exclusion from public work contracting until specific conditions or requirements are satisfied or denial or revocation of the opportunity to bid on or engage in a particular public work contract.

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

"DPMC-27" means the request for classification form to be submitted by a firm seeking classification as a contractor.

"DPMC-48A" means the Professional Services Prequalification application submitted by a firm seeking prequalification as a consultant.

"DPMC-48T" means the Material Testing Laboratory prequalification application submitted by a firm seeking prequalification as a material testing laboratory.

"Final Project Performance Evaluation" (FPPE) means the mathematical average of all interim performance reviews for a contractor or a consultant on a completed project.

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

"Major project" means a project with an anticipated cost for services greater than that allowed by the routine contract procedure or a project of a complex or specialized nature, which includes technical work requiring special licenses or certifications, new building technologies or processes, historical renovations, the potential for unforeseeable conditions, which may increase the project cost significantly, the need for increased competition, and/or the need to combine several smaller components or projects to ensure effective coordination and completion of the project(s) as determined by the Director.

"Member" means an individual appointed to serve on a selection committee.

"Prequalification" means a process of reviewing information and experience data to determine the prequalification level and professional disciplines of consultants and the result thereof.

"Prequalification level" means the maximum construction cost estimate dollar level for which a consultant is prequalified. Prequalification levels are established and periodically adjusted by the Director, in accordance with this chapter.

"Public work" means any public building or other public betterment or improvement constructed, repaired or improved wholly or in part at the expense of any agency of government required or permitted to use the DPMC's classification of contractors and/or prequalification of design consultants.

"Ranking" means the process of combining the selection evaluations of all individual members of the selection committee and ordering the firms from highest to lowest total scores.

"Routine project" means a project with an anticipated cost for services less than that allowed in a major project as set forth in the DPMC's policy.

"Selection committee" means the body responsible for selecting consultant firms for State projects.

"Selection coordinator" means the administrator of the day-to-day committee operations and procedures, including advertising of projects, scheduling of meetings, preparing agendas, recording scores, preparing minutes of committee meetings and similar administrative responsibilities.

"Selection evaluation" means the numerical scoring of the consultant's submission by an individual member of the selection committee.

"Significant project" means a project equal to or greater than the average dollar value of completed projects for the previous three years. These projects may be public projects, private projects, or a combination of the two.

"State" means the State of New Jersey, or any of the departments or agencies in the executive branch of government with the lawful authority to engage in contracting.

"Suspension" means an exclusion from public work contracting for a period of time, pending the completion of an investigation, legal proceedings or administrative proceedings.

"Term contract" means a contract awarded to a consultant for a specific time period based upon the qualifications of the consultant firm and/or hourly rates for specific service categories.

"Trade" means a specific category of construction work for which a firm may be classified by DPMC in accordance with this subchapter.

"Work order" means a DPMC form to be used by a contracted consultant to submit proposals for approval for limited assignment task orders based on hourly rates for professional services to be provided to State government agencies.

#### **N.J.A.C. 17:19-2.1 Statements required from firms requesting classification**

(a) Only those firms holding a valid classification in a trade as issued by the DPMC shall be eligible to bid for work in that specified trade on a public works project, unless otherwise permitted by law. In addition, no bid proposal for a public works project shall be accepted unless every subcontractor in every trade required by law, the bid advertisement, or the bid documents, to be named in the bid proposal holds a valid classification issued by the DPMC in the trade for which that subcontractor is named. Said classification and rating must be valid on the bid due date for the project.

(b) Each DPMC-27 shall be completed in its entirety and all questions must be answered and all requested information must be provided. Incomplete submissions will not be processed by the DPMC. All financial statements shall conform with generally accepted accounting principles and be completed by either a certified public accountant (CPA) or public accountant, pursuant to N.J.S.A. 45:2B-42 et seq., who is independent of and not an employee of the firm for which the financial statements are being provided. Information required by the DPMC-27 includes:

1. A financial statement, which may be a certified audited statement, review statement, or compilation of statements, depending upon the aggregate rating being sought by the firm. The firm must submit its most recent financial statement, which shall not be more than 12 months old. The financial statement shall include a cover letter signed by the public accountant or CPA who prepared the document. The financial statement shall include at a minimum a balance sheet, related statements of income and retained earnings and cash flows and notes to financial statements in complete detail and shall comprise at least a six-month accounting cycle. The certified audited financial statements shall have an unqualified opinion.

i. Submission of a compilation of financial statements will limit a firm's maximum aggregate rating to not more than \$ 5,000,000.

ii. Submission of a CPA review of financial statements will limit a firm's maximum aggregate rating to not more than \$ 15,000,000.

iii. Submission of a CPA's certified audited financial statement will be required for aggregate ratings exceeding \$ 15,000,000.

iv. Submission of combined or consolidated statements is not acceptable, unless complete supplementary (combining or consolidating) information is included within the report. This information shall be of such detail as to show the financial condition of the particular firm seeking classification;

v. Where the firm seeking classification is a subsidiary of a parent firm, submission of the parent company's 10K report (annual report required by the U.S. Securities and Exchange Commission) is permissible, if it contains a sufficient separate breakdown of information regarding the financial status and condition of the subsidiary firm. If the 10K report does not provide information clearly reflecting the financial condition of the subsidiary firm, a balance sheet provided by the firm's in-house accountant detailing current assets and liabilities will be acceptable, provided that the information is certified as both accurate and consistent with the 10K report, by the person who has signed the 10K report on behalf of the parent company.

2. A statement as to organization, which shall demonstrate the adequacy of the firm (officers, key management personnel, physical plant and equipment) to undertake a project in the classification(s) requested. A current listing of non-supervisory personnel must also be provided. If the firm uses trades and/or employees from a leasing company, such company must be registered in conformance with N.J.S.A. 34:8-67 et seq. A copy of the leasing agreement and New Jersey Department of Labor Registration of the leasing company must be included;

3. A statement as to prior experience, which shall show the number of years that the firm has been engaged in the contracting business and shall further disclose the firm's experience over that period.

i. In no instance shall a firm with less than one year of such experience be classified, unless the firm demonstrates that its principals have at least five years of experience in each trade for which the firm is seeking classification.

ii. The firm shall indicate the number of years of construction experience that the firm has had by trade, as a prime contractor and as a subcontractor. In such statement, the firm may show the experience of officers, managers and key personnel;

4. A statement as to the past performance and project experience, which shall give an accurate and complete record of work completed in the past five years by the firm giving the names of each project, type of work, location, contract price and the names of the owner and of the architect/engineer in charge for the owner. At least two significant projects that have been completed must be described for each trade requested. A copy of contracts for the completed significant projects must be provided;

5. A statement that the firm has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with applicable New Jersey and Federal laws, rules and regulations;

6. A statement of the firm's bonding capacity, as required by N.J.A.C. 17:19-2.9, which shall be from a surety authorized to issue bid, performance and payment bonds in the State pursuant to N.J.S.A. 2A:44-143;

7. A statement setting forth the names and addresses of all stockholders, partners or members owning a 10 percent or greater interest in the firm. If one or more stockholders, partners or members are a corporation, partnership or limited liability company owning a 10 percent or greater interest in the firm, the statement shall also set forth the names and addresses of all stockholders, partners or members owning a 10 percent or greater interest in that corporation, partnership or limited liability company. Disclosure of the names and addresses of all stockholders, partners or members owning a 10 percent or greater interest shall continue at each level of ownership until all stockholders, partners or members owning a 10 percent or more interest have been disclosed; and

8. A statement setting forth any other pertinent material and facts that will justify the classification requested by the firm.

(c) All foreign corporations shall include a current certificate of authority to transact business in New Jersey, issued pursuant to N.J.S.A. 14A:13-3 et seq.

(d) All firms shall furnish a current copy of all applicable licenses and permits as required in the DPMC27. All licenses and permits for electrical, HVACR, and plumbing contractors must be issued in the firm's name. The licensee listed for plumbing must be the designated "bona fide representative" as defined by the "Board of Master Plumbers" or own 10 percent of the firm seeking classification. The licensee listed for HVACR must be the designated "bona fide representative" as defined by the "Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration Contractors" or own 10 percent of the firm seeking classification.

#### **N.J.A.C. 17:19-2.2 Fraudulent statements**

A firm or an individual who makes, or causes to be made, a false, deceptive or fraudulent statement in the DPMC-27 or any other submission required in conjunction with a request for classification or in the course of any hearing under this chapter may, at the discretion of the Director, be disqualified from bidding, suspended and/or debarred in accordance with this chapter and may be subject to prosecution pursuant to applicable laws.

#### **N.J.A.C. 17:19-2.3 Joint venture statement (DPMC projects only)**

(a) Where two or more firms each with a valid classification and rating for the same trade category, propose to form a joint venture for purposes of bidding on a DPMC project, the firms shall jointly submit a Statement of Joint Venture Form (DPMC 606) to the DPMC, which shall:

1. Be provided to the DPMC by the joint venture no less than five business days before the bid due date set for the project on which they proposed to bid;
2. State the classifications of the individual firms;
3. Describe the purpose, structure and resources of the joint venture, and be supplemented by any other information requested by the DPMC;

4. Include a statement from a surety authorized to issue payment and performance bonds in the State of the bonding capacities of the individual firms and the bonding capacity of the joint venture; and

5. Be signed by all of the firms comprising the joint venture.

(b) In no event shall a joint venture's aggregate rating exceed the combined total of the individual firms' aggregate ratings. However, if the joint venture's combined aggregate rating exceeds \$ 200,000,000, the joint venture may be deemed unlimited.

#### **N.J.A.C. 17:19-2.4 Responsibility determination**

(a) The DPMC shall not classify a firm without first making an affirmative finding that the firm is responsible. A firm has the burden of proving to the DPMC that the firm is responsible.

(b) Responsibility will be determined based on criteria that include:

1. Financial resources;
2. Technical qualifications;
3. Experience;
4. Organization, facilities, personnel and other such resources;
5. Contract performance record;
6. Accounting and auditing submissions and practices;
7. Equal employment opportunity and affirmative action record;
8. Record of integrity;
9. Safety record;
10. Compliance with applicable prevailing wage laws and regulations, as evidenced by submission of a valid Public Works Contractor Registration issued by the Department of Labor and Workforce Development; and
11. Other factors deemed relevant by the DPMC.

#### **N.J.A.C. 17:19-2.5 Performance evaluation**

(a) For any firm proposing to submit bids on public work requiring the DPMC classification, a Final Project Performance Evaluation (FPPE) shall be determined. The FPPE shall be calculated pursuant to the following provisions:

1. For any firm that has no prior public work experience with the State, the performance multiplier, as defined in N.J.A.C. 17:19-2.8, shall be based on an evaluation of the firm's references and past experience, as identified in the firm's DPMC-27. The DPMC may require that the owner or his or her

representative certify that the projects/contracts referenced by the firm have been completed in a satisfactory manner or all contract obligations have been met.

2. For any firm that has prior public work experience with the State, the performance multiplier shall be based on the project evaluations submitted to the DPMC by any State agency, to the extent that the evaluations comply with the following criteria:

i. The State agency reviewed the performance of each of the prime contractors on a public work project periodically throughout the duration of the project. One or more persons directly involved in the management, supervision or inspection of the project shall make these interim performance reviews;

ii. Interim performance reviews shall be presented on a standardized performance review form approved by the DPMC; and

iii. Interim performance reviews will be based on the following factors:

(1) Quality of work;

(2) Scheduling;

(3) Management;

(4) Cost control/change orders;

(5) Safety/industrial hygiene;

(6) Subcontractors;

(7) Close-out; and

(8) Other factors affecting a firm's performance;

iv. Interim reviews on incomplete projects may be included in the FPPE at the time of classification.

(b) A firm's challenge to a FPPE shall not be conducted as part of the classification or bidding process but must proceed pursuant to N.J.A.C. 17:19-5.2(a) 3.

(c) The Director may establish special evaluation criteria for certain projects.

(d) In making a responsibility determination the DPMC may consider performance reviews (both interim and final) submitted by non-DPMC bidding entities in any format acceptable to the DPMC.

#### **N.J.A.C. 17:19-2.6 Firms to be classified**

(a) Upon receipt of the completed DPMC-27, the DPMC will begin to process the application and shall determine if the firm is entitled to a classification in any trade and an aggregate rating. Classification will be based on the information contained in the DPMC-27 and on the firm's performance rating.

(b) Firms shall reclassify every 24 months in order to remain eligible to bid on public work. A firm must submit a new DPMC-27 to the DPMC before the expiration date of the current classification. If a firm fails to timely submit a complete renewal application, the firm's classification will expire. The

classification renewal will be effective as of the date shown on the classification notice by the DPMC. The classification renewal will expire 24 months from the effective date shown on the classification notice by the DPMC. Any renewal application (DPMC-27) submitted more than three months after the expiration of a classification shall be considered a "new" application.

(c) In accordance with provisions found in N.J.S.A. 52:35-2, firms submitting a new or renewal application must include a non-refundable company check in the amount specified in N.J.S.A. 52:35-2 payable to "Treasurer, State of New Jersey." The DPMC will not process a DPMC-27 application until a company check is received. If a check is returned for any reason, the DPMC may immediately revoke the firm's classification. Any firm who submits a check that is returned will be required to submit a certified check or money order with all future submissions for a period of three years. The firm will also be responsible for any additional charges, including bank charges, incurred as a result of any returned check.

#### **N.J.A.C. 17:19-2.7 Trade classifications**

(a) To be classified for a given trade, a firm must have successfully completed at least two significant projects in that trade within the previous five years. A firm must submit with its DPMC-27 a contract document that identifies the following information: an actual dated signature page; the dollar amount of the contract; the scope of work; schedule of values; and contact names of the owner, the design professional(s), and/or the construction manager; and must be licensed and permitted to perform work in the given trade, when applicable.

(b) The trades for which an applicant may request classifications are as listed on the DPMC-27.

#### **N.J.A.C. 17:19-2.8 Aggregate rating**

(a) The aggregate rating of a firm shall be based on the following factors:

1. The firm's working capital reported in its financial statement;
2. The firm's FPPE, as described in N.J.A.C. 17:19-2.5;
3. The firm's bonding capacity, as described in N.J.A.C. 17:19-2.9; and
4. All other factors, as described in N.J.A.C. 17:19-2.4(b).

(b) Working capital shall be determined according to generally accepted accounting principles (defined as current assets minus current liabilities), but shall not include:

1. Any assets not in the name of the firm;
2. Any past due accounts exceeding one year;
3. Any fixed assets, including, but not limited to, buildings, land or furniture. However, the net book value of owned construction equipment (excluding automobiles) may be used to supplement the contractor's net working capital calculation. The value of this equipment must be based on the same



date as information provided in the financial statement submitted with the application. This information shall be provided through the schedule included in the DPMC-27;

4. Any assets not realizable within one year;

5. Securities that have been pledged; and

6. Any line of credit: The exception to this deduction is a working capital line of credit issued by a certified lending institution. The line of credit must be solely used for the purposes of the business as it relates to construction contracting. A copy of all pertinent lending covenants and agreements must be attached to the financial statement, along with a full explanation of all outstanding liabilities as of the date of the notarized certification on the DPMC-27 against the line of credit. If the line of credit meets the above criteria, 100 percent of the unused line will be added to the working capital calculation.

(c) The firm's aggregate rating shall be calculated as follows:

1. Multiply the firm's working capital according to the following table:

Working Capital Asset Multiplier

1 to \$ 500,000 12

\$ 500,001 to \$ 1,500,000 14

\$ 1,500,001 to \$ 3,000,000 16

\$ 3,000,001 or higher 18

2. Multiply the result of this calculation by the FPPE multiplier:

FPPE FPPE Multiplier

80.0 percent or higher 1.00

70.0 percent to 79.9 percent 0.50

69.9 percent or lower 0.25

EXAMPLES: The following examples show the effect of a FPPE multiplier for a firm having (1) an FPPE of 80.0 percent or higher and (2) an FPPE of 70.0 percent to 79.9 percent.

A = Working Capital

B = Asset Multiplier

C = Preliminary Aggregate Rating (A\*B)

D = Performance Multiplier

E = Aggregate Rating

(Formula) (A \* B) \* D = E

(1) \$ 85,000 \* 12 = \$ 1,020,000 \* 1.00 = \$ 1,020,000

(2)  $\$ 85,000 * 12 = \$ 1,020,000 * 0.50 = \$ 510,000$

3. If a firm has not received an FPPE, a performance multiplier will be based upon information received by the DPMC during the review of project references.

4. When the firm's FPPE is less than 69.9 percent, the Director may reject the application or assign an aggregate rating less than that provided for in this section, based on all factors relevant to the firm's ability to perform.

#### **N.J.A.C. 17:19-2.9 Bonding capacity**

(a) A firm proposing to submit bids on a public work project, which requires a performance bond or a payment bond, or both, shall submit as part of its DPMC-27 a certified statement of the firm's bonding capacity. The statement shall be contained on the standardized form entitled "Surety Affidavit," provided by the DPMC, and shall be from a surety authorized to issue bid bonds and performance and payment bonds in the State.

(b) If the aggregate rating is equal to or greater than 85 percent of the firm's bonding capacity, and if the surety attesting to the firm's bonding capacity is listed in Treasury Circular 570 with a high rating as defined in N.J.S.A. 2A:44-143, the firm shall be issued an aggregate rating equal to its bonding capacity.

(c) A firm, which does not provide a statement of bonding capacity from an authorized surety shall receive an aggregate rating of not more than \$ 200,000 and shall not be eligible to bid on any projects for which a bond is necessary, but may be eligible to bid on any project for which a bond is not required, within the firm's aggregate rating limit. In no event shall a firm's aggregate rating exceed the firm's bonding capacity, except, firms with a bonding capacity of \$ 200,000,000, and demonstrating a net working capital calculation of \$ 200,000,000 or more, shall be issued an unlimited aggregate rating.

#### **N.J.A.C. 17:19-2.10 Special classification requirements**

(a) As may be dictated by the unique, specialized nature, or scope of the work to be performed on a project, the Director may establish special classification requirements for a given project.

(b) The Director may establish special classification requirements for a given trade classification in order to ensure that firms, which have been classified conform to the latest technical or safety developments in that trade. The DPMC shall provide notice of any such special requirements to all previously classified firms via direct mail, electronically and/or by publication in major State newspapers and trade journals.

#### **N.J.A.C. 17:19-2.11 Effective dates of classifications and ratings**

(a) A classification or rating resulting from the filing of an original application or a renewal application shall be determined and effective no later than eight business days after receipt by the DPMC of all required information.

(b) A firm must have a valid classification and rating appropriate to any project on which the firm may bid, or under which a firm will be designated as a subcontractor in a principal trade, as provided in N.J.S.A. 52:32-2, or if the contract documents require the trade to be classified.

#### **N.J.A.C. 17:19-2.12 Classification change**

(a) A firm shall notify the DPMC in writing during a classification period, when the financial, bonding and/or corporate status of a firm changes substantially as to warrant a change of classification or rating. The firm shall provide said notice to the DPMC within 10 days of the change(s) and shall submit a revised DPMC-27, or applicable portions thereof, as required. Examples of substantial change include, but are not limited to, insolvency, decreases in bonding capacity, changes in ownership, or any of the factors affecting the firm's responsibility, as described in N.J.A.C. 17:19-2.4(b).

(b) A firm may request an increase in its aggregate rating for the remainder of the firm's existing classification period by submitting to the DPMC an updated financial statement for a period of at least six months from the ending date of the financial statement submitted with the prior DPMC-27 in conformance with the provisions found in N.J.A.C. 17:19-2.1(b), or, in the alternative, a firm may submit an updated surety affidavit showing an increase in bonding. The affidavit must be based on the same financial statement submitted with the application or request for an increase. However, a firm that has an aggregate rating of more than \$ 15,000,000 may request an increase in its aggregate rating by submitting a CPA reviewed financial statement.

(c) The DPMC shall review all submissions in accordance with this section and issue a decision no later than eight business days from the date of the firm's submission. Any change of classification shall be effective only for the remainder of the original classification period.

(d) The DPMC, in its discretion, may reduce a firm's aggregate rating or revoke the firm's classification entirely based upon information not provided at the time that the firm's classification was originally granted and/or the firm's aggregate rating was originally set, as determined by the factors set forth in N.J.A.C. 17:19-2.4.

#### **N.J.A.C. 17:19-2.13 Award of contracts exceeding aggregate rating**

(a) A firm shall include with each bid a certification that the firm's bid for the subject contract would not cause the firm to exceed its aggregate rating limits, including consideration of its backlog of uncompleted construction work, including public and private contracts.

(b) If at the time of a bid opening a question arises as to whether a bid for a project is within a firm's existing classification or aggregate rating, the bid shall be opened, and if the bid is at variance with the firm's trade classification or aggregate rating, the bid shall be rejected.

(c) A firm shall not be awarded a contract which, when added to the backlog of uncompleted construction work, 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 bidder before or on the date of the bid. The

firm may deduct 85 percent of the total contract value of the work performed by principal trades, as described in (e) below, on such uncompleted work. DPMC may require the firm to provide documentary proof that its backlog of uncompleted work plus the contract price of the contract to be awarded would not cause the firm to exceed its aggregate rating.

(d) If a firm successfully bids for two or more contracts 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 contracts that in combination fall within the firm's aggregate rating, as follows:

1. Contracts shall be considered in the chronological order of the bid due dates.
2. Where the dollar value of a given contract award, when combined with the dollar value of the firm's current backlog of other uncompleted work, would cause the firm's total dollar value of uncompleted work to exceed the firm's aggregate rating, the firm shall not be eligible for that award.
3. However, if a firm provides clear and convincing evidence that its total dollar value of uncompleted work (including the bid amount for the current contract) will be within its aggregate rating [by the time the bid project is scheduled to begin] as of the award date, the Director may determine to accept the bid if it is in the best interest of the State.

(e) On any project where a firm is awarded a single prime contract which encompasses work to be performed by a subcontractor in a principal trade, as defined in N.J.S.A. 52:32-2, including plumbing and gas fitting, steam and hot water heating and ventilation, electrical, structural steel and ornamental iron work, and general construction, and where the work to be performed by the subcontractors is specifically identified in the bid, the firm shall calculate the value of the awarded contract (for purposes of determining how much the contract will contribute toward determining the firm's backlog) by deducting 85 percent of the actual subcontract price of the work to be performed by principal trades from the actual price of the contract awarded to it. The firm will have the burden of proving that the work is encompassed by the principal trades and the value of the amount of the work performed by those principal trades.

#### **N.J.A.C. 17:19-3.1 Purpose**

The consultant selection procedures are established to give qualified firms an open opportunity to be selected for State contracts on the basis of demonstrated competence and experience. Selection of consultants based upon a combination of technical qualifications and cost proposals enables the public interest to be best served.

#### **N.J.A.C. 17:19-3.2 Scope**

(a) The principal elements of the consultant selection procedures provided for:

1. Verifying the qualifications of firms interested in providing consultant services to the State;
2. Initiating and advertising projects (which may include other solicitation requirements);

3. Screening all interested and qualified firms;
4. Evaluating procedures by selection committee; and
5. Obtaining final approval by the Director.

**N.J.A.C. 17:19-3.3 Prequalification of consultants**

(a) Firms desiring to be considered for consultant work with the DPMC shall submit, as appropriate, a prequalification form, DPMC-48A or a material testing laboratory prequalification form, DPMC- 48T. This form provides comprehensive information on the management of the firm, the financial history of the firm, the type and value of past project work, licensed and technical staff, and other factors deemed relevant by the DPMC. This information is used to assist in the evaluation of firms for DPMC work and to establish the maximum construction cost estimate dollar level and professional disciplines for which the firm is qualified. The result of this evaluation is the firm's "prequalification." The prequalification will be effective for a 24-month period beginning with the date shown on the prequalification notice issued by the DPMC.

(b) In accordance with provisions found in N.J.S.A. 52:34-9.3, firms submitting a new or renewal application must include a non-refundable company check in the amount specified in N.J.S.A. 52:34-9.3 payable to "Treasurer, State of New Jersey." No application will be processed until a company check is received. If a check is returned for any reason, the DPMC may immediately revoke the firm's prequalification. Any firm that submits a check that is returned will be required to submit a certified check or money-order with all future submissions for a period of three years. The firm will also be responsible for any additional charges, including bank charges, incurred as a result of any returned check.

(c) Review of the firm by the DPMC shall be completed within 30 calendar days of receipt of fully completed prequalification forms, and a notification of results shall be mailed to the firm within the same time period.

(d) If a prequalification is denied, the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the DPMC.

(e) If a firm does not agree with its prequalification as assigned by the DPMC, or the denial of its prequalification, it may make a written request to the manager of the DPMC's prequalification unit for reconsideration. Results of this review will be made known to the firm in writing. If the firm still does not agree with the DPMC's prequalification determination, it may appeal in writing to the Director whose decision will then be final.

(f) It is the responsibility of each firm to update and keep current all prequalification forms. Major changes occurring in the firm's status shall be brought to the attention of the DPMC in order that the prequalification record is current.

(g) Any firm seeking prequalification shall have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for prequalification.

(h) The prequalification level assigned does not necessarily reflect the level on which a consultant has performed for other clients. The DPMC will endeavor to assign a level that is justified by applicable overall experience, length of time in business, prior experience, the number of licensed New Jersey principals, professional and technical staffing, and management depth. At a minimum, the consultant must have three public or private projects (two completed and one in progress) at or exceeding a specific prequalification dollar level in the discipline requested prior to approval for that prequalification level.

(i) Firms may increase their technical qualification for a specific project by entering into joint-ventures with other firms. Each individual firm of the joint venture must be separately prequalified. One of the firms shall have been prequalified at the level stipulated for the project.

#### **N.J.A.C. 17:19-3.4 Public notification**

(a) The DPMC may publicly solicit the interest of prequalified firms to provide professional services by advertising in one or more of the following methods:

1. In design and construction publications and trade journals covering the construction industry in New Jersey;
2. In newspapers;
3. By written notice to New Jersey professional societies;
4. By use of direct mailings to prequalified firms; or
5. Electronic means.

(b) Public notification shall include instructions to specify any special information or experience that a firm must submit by the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

#### **N.J.A.C. 17:19-3.5 Performance evaluation**

(a) For any firm proposing to submit proposals on public work requiring the DPMC's prequalification, an FPPE shall be determined. The FPPE shall be calculated pursuant to the following provisions:

1. For any firm that has no prior public work experience with the State, the FPPE shall be based on an evaluation of the firm's references and past experience, as identified in the firm's prequalification forms and/or project specific technical proposal. The DPMC may choose to require that the owner or his or her representative certify that the projects/contracts referenced by the firm have been completed in a satisfactory manner; or
2. For any firm that has prior public work experience with the State, an FPPE shall be based on the project evaluations submitted to the DPMC, to the extent that the evaluations comply with the following criteria:

- i. The State agency reviewed the performance of each professional consultant on a public work project periodically throughout the duration of the project. One or more persons directly involved in the management, supervision or inspection of the project shall make this interim performance review;
  - ii. Interim performance reviews shall be presented on a standardized performance review form approved by the DPMC; and
  - iii. Interim reviews on incomplete projects may be included in the FPPE at the time of prequalification and/or during selection.
- (b) A firm's challenge to an FPPE shall not be conducted as part of the prequalification or selection process but must proceed pursuant to N.J.A.C. 17:19-5.
- (c) The Director may establish special evaluation criteria for certain projects.

#### **N.J.A.C. 17:19-3.6 Major project selection procedures**

- (a) The selection process will be initiated upon the receipt by the DPMC of a request from a State client agency for consultant services. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimate (if applicable) of the proposed project for both design and the construction of the project.
- (b) A selection committee will be established to select a consultant for that specific project. The selection committee shall develop the selection evaluation criteria for the project. The evaluation criteria will be part of the public notice. The evaluation criteria for each project will generally include the following: firm's experience on projects of a similar size and nature; project team experience; past project performance; project approach; understanding of project needs; project schedule, budget and cost estimating; and/or other criteria as determined to be appropriate.
- (c) The evaluation process may include submission of specific project questionnaire forms, technical proposals, past performance and interviews.
- (d) Each individual member of the selection committee will evaluate all submissions based upon specific criteria and prepare a selection evaluation. The selection coordinator shall compile all evaluation scores and prepare a ranking. The chairperson shall call for a meeting of the selection committee to review the ranking and shortlist the appropriate number of firms for further consideration. Additional technical and/or organizational information may be requested from the firms before a final ranking is prepared.
- (e) When the selection committee completes the ranking, cost proposals shall be solicited from the highest ranked firms.
- (f) Site visits, pre-interview conferences and pre-proposal conferences may be scheduled. Attendance shall be mandatory when so stipulated.
- (g) Sealed cost proposals will be accepted on a pre-determined date and time by the selection coordinator. The selection committee will meet to open and review the cost proposals. Upon completion of the review, the selection committee may begin negotiations with the highest ranked firm

or firms for a cost proposal that is fair and reasonable to the State. As required, the selection committee may request additional meetings, additional technical, organizational or cost data from any of the firms. If a satisfactory conclusion cannot be reached with the highest ranked firm or firms, the selection committee may negotiate with the next highest ranked firm or firms.

(h) The selection committee shall have the responsibility to recommend to the Director the selection of the firm that is the highest ranked and whose cost proposal is fair and reasonable to the State.

(i) The selection evaluations, rankings, negotiations and cost proposals of all firms, as well as all discussions and correspondence, relating to a consultant selection remain confidential until the contract is awarded.

### **N.J.A.C. 17:19-3.7 Routine contracts**

(a) Prequalified firms desiring to perform certain consultant services for the DPMC or its client agencies may submit proposals for routine projects.

(b) The selection process shall be initiated upon the receipt by the DPMC of a request from a State client agency for consultant services that meet the criteria for a routine project. Upon the receipt or development of a project scope of work, the DPMC shall create a selection committee for the purpose of selecting a Professional Services Consultant for the project. The DPMC and/or the selection committee shall develop the specific selection evaluation and ranking criteria to be used for the selection.

(c) The DPMC shall publicly advertise each routine contract by electronic means and/or in newspapers before the random selection of firms for that contract. The advertisement/notice shall state the date on which the DPMC will be randomly selecting, from an appropriate pool of its prequalified consultants, those firms from which proposals will be solicited. The advertisement/notice shall specify the prequalification discipline(s) and prequalification level required for the project and the criteria the DPMC will use in the selection evaluation and ranking of the proposals submitted from interested firms.

(d) From the pool of prequalified consultants specified in the advertisement, the DPMC will perform a computer-generated random selection of firms and solicit technical proposals and sealed cost proposals from the list of randomly generated firms.

(e) Pre-proposal conferences, site visits may be scheduled, as necessary.

(f) Technical proposals shall be evaluated and ranked in accordance with the specific evaluation criteria for the project.

(g) The selection process regarding the sealed cost proposals will be in accordance with the major project selection procedures, N.J.A.C. 17:19-3.6(g).

(h) The selection committee shall have the responsibility to recommend to the director of the firm that is the highest ranked and whose cost proposal is determined to be fair and reasonable to the State.

(i) Nothing in these rules shall be interpreted to prohibit the DPMC from utilizing the major election procedure for any and all emergencies.



### **N.J.A.C. 17:19-3.8 Term contracts**

(a) Firms desiring to perform certain consultant services for the DPMC may submit proposals for term contracts as required. Term contracts shall be awarded by the Director to consultants who have complied with the terms and conditions of the term contract request for proposal and have been determined by the selection committee to be the best qualified.

(b) Term contracts may also be used to provide consultant services to client agencies in specific service categories for a specific time period.

### **N.J.A.C. 17:19-3.9 Term contract project selection procedures**

(a) Term contracts may be used by the DPMC to serve a variety of consultant needs in accordance with the DPMC's duties to administer the DPMC's construction portfolio. The initiation of the selection process may be in accordance with the major or the routine project selection procedures, pursuant to N.J.A.C. 17:19-3.6 or 3.7.

(b) Firms are selected based upon technical qualifications and cost.

(c) Pre-proposal conference, site visits and interviews may be scheduled.

(d) Technical proposals shall be evaluated and ranked in accordance with the specific technical criteria for the project.

(e) The selection process regarding the sealed cost proposals shall be in accordance with the major project selection procedures, N.J.A.C 17:19-3.6(g), except that costs may be based upon hourly daily rate and/or other methods for determining costs over a specific time period.

(f) The selection committee shall have the responsibility to recommend to the Director the selection of the firm that is highest ranked and whose costs are fair and reasonable to the state.

### **N.J.A.C 17:19-3.10 Agency consultant program**

(a) The agency consultant program provides a selection process for architectural, engineering or other consultant services to assist client agencies and the DPMC in the planning of construction projects, developing scopes of work, investigating construction-related problems, designing small projects and administering small construction projects.

(b) The DPMC may delegate to client agencies the authority to award projects for consultants to perform professional services for construction projects. The client agency shall evaluate and rank the technical submissions according to selection procedures established by DPMC policy.

(c) An agency consultant fee limit for each work order shall be established by the DPMC, including a fee limit threshold per year.

(d) The client agency shall monitor and manage all activities of the consultant. Financial data and project files shall be available to the DPMC auditors.

### **N.J.A.C. 17:19-3.11 Client agency management of design/construction projects**

(a) The DPMC may delegate authority to client agencies to manage design and/or construction phases of a project with a stipulated construction cost estimates.

(b) The selection of firms to submit technical and cost proposals shall be in accordance with the major project selection procedures, pursuant to N.J.A.C. 17:19-3.6, or routine contracts selection procedures, pursuant to N.J.A.C. 17:19-3.7

### **N.J.A.C 17:19-4.1 Causes for debarment of a firm(s) or an individual(s)**

(a) In the public interest, the DPMC may debar a firm or an individual for any of the following causes:

1. Commission of a criminal offense incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Civil or criminal violation of the Federal Organized Crime Control Act of 1970 or the New Jersey Racketeer Influenced Corrupt Organizations Act, N.J.S.A 2C:41-1 et seq., or the commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;
3. Violations of the Federal or any state antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874.40 U.S.C. 276c);
4. Violations of any of the laws governing the conduct of elections of the Federal government, any state or its political subdivisions.
5. Violation of the "Law Against Discrimination" (P.L. 1945. c. 169. N.J.S.A 10:5-1 et seq., as supplemented by P.L. 1975. c.127), or the act of banning discrimination in public work employment (N.J.S.A 10:10 et seq.);
6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages or child labor.
7. Violations of any laws governing the conduct of occupations or professions or regulated industries;
8. Violation of any Federal or state laws that may bear upon a lack of responsibility or moral integrity;
9. Willful failure to perform in accordance with contract specifications or within contractual time limits;
10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the firm or the individual debarred;
11. Violation of contractual or statutory provisions regulating contingent fees;
12. Any other cause affecting responsibility as a State contractor such serious and compelling nature as may be determined by the DPMC to warrant debarment, including such conduct as may be prescribed

by the laws or contracts enumerated in this section even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment or disqualification by any other agency of government;

14. Making any offer or agreement to pay or make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other things of value of any kind to any State officer or employee of an agency of government with such vendor transacts or offer or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee of an agency of government, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A 52-13D-13;

15. Failure by a vendor to immediately report to the Attorney General and to the Executive Commissioner on Ethical Standards in writing the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A 52:13D-13;

16. Failure by a vendor to immediately report in writing, or obtain a waiver from the Executive Commissioner on Ethical Standards for, the direct or indirect undertaking of any private business, commercial or entrepreneurial relationship (including the selling of any interest in such vendor), regardless of whether the relationship is pursuant to employment, contract or other agreement, express or implied, with the following;

i. Any State officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A 52:13D-13, having duties or responsibilities connected with the purchase, acquisition or sale of any property or services by or to any State agency of government or any instrumentality thereof; or

ii. Any firm or entity with which the State officer or employee of a State agency of government is employed or associated or has an interest within the meaning of N.J.S.A. 52:13D-13g;

17. Influencing or attempting to influence or cause to be influenced, any officer or employee of any agency of government, in that officer's or employee's official capacity in any manner which might tend to impair the objectivity or independence of judgement of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee of any State agency of government or special State officer or employee as defined by N.J.S.A 52:13D-13, to use, or attempt to use, that officer or employee's official position to secure unwarranted privileges or advantages for the vendor or any other firm or individual; and/or

19. Agreeing with any agency of government to refrain from bidding on public works projects for reasons that, in the discretion of the Director, warrant debarment.

**N.J.A.C 17:19-4.2 Condition affecting the debarment of a firm(s) or an individual(s)**

(a) The following conditions apply to debarment:

1. Debarment shall be made only upon approval of the Director, except as otherwise provided.

2. The existence of any of the causes set forth in N.J.A.C. 17:19-4. I shall not necessarily require that a firm or an individual be debarred. In each instance, the decision to debar shall be made within the discretion of the Director, unless otherwise required by law, and shall be rendered in the best interests of the State.

3. All irrigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 17:19-4(a) 1 through 8 shall be established upon rendering of a final judgement or judgement of conviction or a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the written request of the debarred firm or individual, unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 17:19-4.1(a) 13 shall be proper, provided that one of the causes set forth in N.J.A.C. 17:19-4.1(a) 1 through 12 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on record of facts obtained by the original debarring agency.

**N.J.A.C. 17:19-4.3 Procedures, period(s) of debarment and scope of debarment affecting the debarment or a firm(s) or an individual(s)**

(a) The procedures, period of debarment and scope of debarment including the following:

1. When the DPMC seeks to debar a firm or an individual, the DPMC shall furnish to such firm or individual written notice: stating that debarment is being considered; setting forth the reasons for the proposed debarment; and indicating that such firm or individual will be afforded an opportunity for a hearing if such firm or individual so requests within a stated period of time. All such hearings shall be conducted in accordance with N.J.A.C. 17:19-5.

2. Where an agency of government other than the DPMC, has imposed debarment upon a firm or individual, the DPMC may also impose a similar debarment without affording an opportunity for a hearing, provided that the DPMC furnishes notice of the proposed similar debarment to that firm or individual, and affords that firm or individual an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed, in whole, or in part.

3. 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 or the individual is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed.

4. Except as otherwise provided by law, a debarment may be removed or the period thereof may be at the discretion of the Director 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.

5. A debarment may include all known affiliates of a firm or an individual, provided that each decision to include an affiliate is made on a cases-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy or performance of an individual is affiliated, where the conduct was accomplished within the course of the individual's official duty or was affected by the knowledge or approval of the individual.

6. A firm that has been given notice of debarment by the DPMC shall not be eligible for an increase in its aggregate rating or an expansion of its trade classification pending determination of the debarment action. The debarment or the suspension of a firm shall result in the immediate forfeiture of the firm's classification.

#### **N.J.A.C. 17:19-4.4 Causes for suspension of a firm(s) or an individual(s)**

In the public interest, the DPMC may suspend a firm or an individual for any cause specified in N.J.A.C. 17:19-4.1, or upon adequate evidence that such cause exists.

#### **N.J.A.C. 17:19-4.5 Condition for suspension of a firm(s) or an individual(s)**

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

1. Suspension shall be imposed only upon approval of the Director 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 Director and the Attorney General and shall be rendered in the best of the State.

3. Suspensions shall not be based upon unsupported accusation, but upon adequate evidence that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the credible evidence that is produced, to the existence or absence of corroboration as to important allegations, and to inference 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. 17:19-4.1(a) 1 through 8 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 evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency of government for any of the causes described in N.J.A.C. 17:19-4.1(a) 1 through 12 may be the basis for imposition of a concurrent suspension by the DPMC, which may impose such suspension when found to be in the best interest of the State.

#### **N.J.A.C. 17:19-4.6 Procedures, period of suspension and scope of suspension affecting the suspension of a firm(s) or individual(s)**

(a) The provisions regarding procedures, period of suspension and scope of suspension shall include the following:

1. The DPMC may suspend a firm or individual or the firm's or the individual's affiliates, provided that within 10 days before the effective date of the suspension, the DPMC provides such firm or individual with a written notice:

i. Stating that a suspension has been imposed and starting its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;

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

iv. 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 individual will be given either a statement of the reasons for the suspension and an opportunity for a hearing pursuant to N.J.A.C. 17:19-5, or a statement declining to give such reasons, which sets forth the DPMC's position regarding the continuation of the suspension. Where the DPMC suspends a firm or an individual based on a suspension by any other agency of government, the DPMC shall identify same as a reason for the suspension.

2. 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 initiated, the suspension may continue until legal proceedings are completed.

3. A suspension may include all known affiliates of a firm or an individual provided that each decision to include an affiliate is made on a case-by-case basis after given due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of a firm or an individual may be imputed within the course of the firm or individual's official duty or was effectuated by the firm or the individual with the knowledge or approval of such firm or individual.

#### **N.J.A.C. 17:19-4.7 Disqualification of a firm(s) or an individual(s)**

The disqualification of a firm or an individual shall be based upon the DPMC's reevaluation of the responsibility of a classified or prequalified firm or the individual based upon information not provided at the time of classification or prequalification was originally granted, as determined by the factors set forth in N.J.A.C. 17:19-2.4 or 3.3.

#### **N.J.A.C. 17:19-4.8 Extent of debarment, suspension or disqualification**

The exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting with in the control or jurisdiction of the DPMC. When it is determined by the Director to be essential to the public interest, an exception from total exclusion may be made with the respect to particular State contract.

#### **N.J.A.C. 17:19-4.9 Prior Notice by the DPMC**

Insofar as practicable, prior notice of any proposed debarment shall be given to the Attorney General and State Treasurer.

#### **N.J.A.C. 17:19-4.10 List of debarred, suspended or disqualified firms or individuals**

The DPMC shall supply to the State Treasurer a monthly list of all firms or individuals having been debarred, suspended or disqualified in accordance with the procedures in this subchapter. The list shall be available for public inspection.

#### **N.J.A.C. 17:19-4.11 Director's authority to contract**

Nothing contained in this chapter shall be constructed to limit the authority of the DPMC to refrain from contracting within the discretion allowed by law.

#### **N.J.A.C. 17:19-5.1 Hearings; subject matter; firms or individuals who may request hearings**

(a) Administrative hearings before the DPMC may include the following subject matter and be requested by the following firms:

1. Bid protests: A firm which has submitted a bid may request a hearing to protest the DPMC's award or rejection of a bid.
2. Selection protest: A firm which has submitted a proposal for award of a professional service contract, advertised by DPMC, may request a hearing to challenge the DPMC's decision to reject that firm's proposal and/or to award the contract to another firm.
3. Evaluation or reevaluation of classification: A firm dissatisfied with its classification, or the classification of another firm, may request a hearing to protest the classification.
4. Prequalification: A firm dissatisfied with its pre-qualification may request a hearing to protest that prequalification decision.
5. Performance Evaluation: A firm dissatisfied with its performance evaluation on a public works project under-taken by the DPMC may request a hearing for the purpose of presenting evidence to dispute that evaluation.
6. Suspension, disqualification, or debarment: Except in the case of a suspension, a disqualification, or a debarment by another agency of government, a firm or an individual may request and shall be entitled to a hearing to challenge the DPMC's proposed suspension, disqualification or debarment of the firm or individual.
7. Certain other matters of dispute that may occur relative to the activities of the DPMC: The Director, within the Director's, sound direction, may require that a firm or an individual participate in an informal hearing.

8. The provisions of this section do not apply to “claims conferences” that are provided for in the DPMC’s consultant and construction contracts. Such “claims conferences” are contractual in nature and are intended solely to provide a non-binding forum for the presentation and resolution of a disputed contract claims.

#### **N.J.A.C. 17:19-5.2 Requests for hearings; hearing procedures; time limitations**

(a) Requests for hearing shall be made as follows:

1. Bid protest: An unsuccessful bidder seeking a hearing to challenge either the rejection of its own bid or the award of the contract to another bidder shall make written request to the Director setting forth the specific ground for challenging an award of a contract or a bid rejection. The request must be received by the Director within five calendar days after the opening of bids.
2. Selection protest: An unsuccessful firm seeking a hearing to challenge either the rejection of its own proposal or award of the contract to another firm shall make written request to the Director setting forth the specific grounds for challenging the Director’s selection or rejection of a firm. The request must be received by the Director within five calendar days after the firm has been selected or rejected.
3. Evaluation or re-evaluation of classification: If a firm objects to its assigned classification or a firm objects to the classification of another firm, a hearing may be requested pursuant the N.J.S.A 52:35-4 and this subchapter. If a firm objects to its own classification, the request must be made in writing, to the Director, within 15 calendar days after the date of the classification notice. If a firm objects to the classification of another firm, the request must be submitted to the Director within five calendar days after the opening of bids or at least three calendar days before the proposed date of contract awards, whichever date is earlier.
4. Prequalification: If a firm is dissatisfied with its prequalification a hearing may be requested pursuant to N.J.S.A. 52:35-4 and this subchapter. If a firm objects to its own prequalification, the request must be made, in writing, to the Director within 15 calendar days after the date of the prequalification notice.
5. Performance evaluation: Any firm seeking to challenge a project performance evaluation by the DPMC must make written request for a hearing to the DPMC setting forth the specific grounds for the challenge. Such requests must be duly submitted within 15 calendar day after the date of receipt of written notification of the performance evaluation. Any challenge to the performance evaluation of another agency of government must be made in accordance with the other agency of government’s guidelines.
6. Suspension, disqualification or debarment: Any firm seeking to challenge a suspension, disqualification or debarment must make written request to the Director setting forth the specific grounds for the challenge. Such request must be duly submitted within 15 calendar days after the date of receipt of the DPMC’s written notification of the suspension, disqualification or debarment.
7. Certain other matters of dispute that may occur relative to the activities of the DPMC; the Director, within the Director’s sound discretion, may request that a firm participate in a hearing at a date and time to be scheduled by the Director.



(b) Hearing procedures are as follows:

1. Procedures in contested cases. Any matter constituting a contested case shall be conducted in accordance with the practice and procedures set forth in the Administrative Procedure Act.

2. Procedures in matters not constituting contested are as follows:

i. Hearings in all matters not constituting contested cases will be conducted either by the Director or by a person designated by the Director to hear such matters. Delegation of authority may include authority to issue to the creation of an evidentiary record to be transmitted to the Director for issuance of a final agency decision. Where feasible hearings shall be held within 15 calendar days of receipt of hearing request.

ii. Hearings may be held either in person or by electronic media, or a combination of both, and shall be conducted in such a manner as to afford all interested parties a fair opportunity to present their respective factual and legal positions and to create a factual record sufficient to support issuance of a final agency decision on the issue or issues presented. Should the decision maker determine that there are no material facts in dispute, or should the parties agree to stipulate to all material facts, the decision maker may accept written submissions from the parties in lieu of a hearing before rendering a final agency decision.

iii. Should it be anticipated that a hearing will involve the taking of testimony from one or more witnesses, the person conducting the hearing for the State, as a matter of discretion, may provide for the transcription of such testimony at the State's expense. Should the State not provide for transcription, any party may arrange for transcription of all testimony at the party's expense. The State's decision maker shall be provided with a copy of the transcript of all proceedings at no charge.

iv. Upon timely written request in advance of the hearing:

(1) The State shall provide copies of all relevant, non-privileged documents to any party; and

(2) A party shall provide copies of all relevant non-privileged documents to the State and to adverse parties. Copies shall be provided at the actual cost of reproduction.

#### **N.J.A.C. 17:19-5.3 Discovery procedures**

In an informal hearing, the Director shall be entitled, upon request, to review all records and documents used in evidence by a complainant. Any requested records and documents shall be made available to the Director at the actual cost of reproduction.