

1 of 23 DOCUMENTS

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RULE PROPOSALS

**TREASURY GENERAL
DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION**

40 N.J.R. 3959(a)

Proposed Readoption with Amendments: *N.J.A.C. 17:19*

Proposed New Rule: *N.J.A.C. 17:19-3.5*

Proposed Repeals: *N.J.A.C. 17:19-5.3* and *5.6*

Proposed Recodifications with Amendments: *N.J.A.C. 17:19-5* as *17:19-3*

Click here to view Interested Persons Statement

Classification and Prequalification of Firms

Authorized By: Debra Bell, Assistant State Treasurer.

Authority: *N.J.S.A. 52:35-1* et seq., specifically *N.J.S.A. 52:35-11*.

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

Proposal Number: PRN 2008-219.

Submit written comments by September 5, 2008 to:

Richard Flodmand, Deputy Director
Division of Property Management & Construction
33 West State Street, P O Box 034
Trenton NJ 08625-0034
Fax: (609) 984-8495
Email: Richard.Flodmand@treas.state.nj.us

The agency proposal follows:

Summary

The Division of Property Management and Construction (DPMC) proposes to readopt *N.J.A.C. 17:19*, which governs Classification and Prequalification of Firms. Pursuant to *N.J.S.A. 52:14B-5.1*, the rules in this

chapter are scheduled to expire June 1, 2008. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extended that expiration date 180 days to November 28, 2008.

The Department proposes to amend the chapter by recodifying the subchapters, combining the definitions subchapters, correcting the duration of classification and prequalification notices to 24 months in accordance with *N.J.S.A. 52:35-2*, requiring copies of licenses and permits in the required documentation for classification, removing classification reduction factors for prevailing wage violations from working capital calculations, correcting calculations, codifying hearing provisions for consultant firms, standardizing the notation of numbers and definitions of terms, and correcting grammar.

As the Division 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*.

Specific amendments to the rules by subsection follows:

The existing rules proposed for reoption are as follows:

Through *N.J.A.C. 17:19*, the Division of Property Management and Construction establishes rules governing the administration of the State's contractor classification and consultant prequalification process. The rules spell out the forms to be used, the DPMC 27 for contractors and Form 48A for consultants, the statements required and the criteria for evaluation of completed forms. For contractor classification, they describe how performance ratings are developed, the requirements for obtaining a trade classification, as well as the factors considered in calculating the firm's aggregate rating.

The rules enumerate the causes for debarment or suspension of a firm and identify the administrative requirements incident to the decision to debar or suspend. A hearing process is described for those firms that protest bid awards, classification and prequalification determinations, performance evaluations, suspensions, debarments or disqualification decisions.

The rules identify the principal elements of the selection process, including the verification of qualifications, advertising, screening of firms, selection committee procedures and obtaining approvals. They also describe the DPMC's advertisement process for soliciting firms to become prequalified. The rules set forth the requirements for the selection of a consultant for a relatively larger project (major engagement) and for the selection of a consultant for a relatively smaller project (routine engagement).

The rules establish the "term contract" as a mechanism that may be used by the DPMC for specific service categories for a specific time period and describe the "term contract" selection procedures and requirements. They set forth the "agency consultant" program by which agencies may utilize the services of consultants directly on relatively minor projects in accordance with the requirements of the agency consultant policy and statutory maximums.

Presently, the DPMC has over 1,900 classified contractors and 550 prequalified consultants. In addition, the Division's assignment of a classification and prequalification is relied upon by many other governmental contracting entities including the New Jersey Economic Development Authority and the New Jersey Schools Development Authority.

A discussion of the proposed amendments, repeals, new rule and recodifications follows:

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

This section sets forth the definitions for the rules. Definitions were added for "aggregate rating," and "Final Project Performance Evaluation (FPPE)." "Aggregate rating" is a newly defined term that codifies existing DPMC policy of assigning a dollar value limit to the total of all contracts, public and private, that a firm may perform at any given time. "Final Project Performance Evaluation (FPPE)" is a newly defined term that codifies existing DPMC policy calculating a final project performance evaluation from individual in-

terim evaluations. "DPMC 48A" was also added to the definitions section. This form is the Professional Services Prequalification application submitted by a firm seeking prequalification as a consultant. The definition of "public work" was amended to apply not only to the DPMC's classification of contractors, but also to the prequalification of design consultants. The term "selection evaluation," which is the numerical scoring of the consultant's submission by an individual member of the selection committee was added to the rules.

Definitions were relocated from *N.J.A.C. 17:19-5.3* for the following terms: "agency consultant," "chairperson," "client agency," "construction cost estimate," "consultant," "cost proposal," "major project," "member," "prequalification," "prequalification level," "ranking," "routine project," "selection committee," "selection coordinator," "term contract," and "work order." The re-codification puts all definitions for this chapter into one place making the definitions consistent throughout the chapter and easier to locate.

N.J.A.C. 17:19-2

This subchapter heading is changed to "Classification of Firms" to distinguish Subchapter 2 as the rules applying to contractor classification.

N.J.A.C. 17:19-2.1(b)3

This paragraph was simply split into subparagraphs (b)3i and ii for clarity.

N.J.A.C. 17:19-2.1(b)4

The qualifying statement was removed to reflect the way projects are generally staffed today. The firm's approach toward and success in staffing a project is often a better indicator of responsibility than the direct experience of permanent staff.

N.J.A.C. 17:19-2.1(c)

Reference is deleted to the issuing authority in the State so that the rules are not dependent on possible future reorganizations and to update the statutory citation.

N.J.A.C. 17:19-2.1(d)

The new subsection adds the requirement for firms seeking classification to furnish copies of all applicable licenses and permits with their application for classification, and qualifies in whose name the licenses must be.

N.J.A.C. 17:19-2.4(b)10

Compliance with applicable prevailing wage laws and regulations is added as a factor in determining responsibility of a firm. Prevailing wage compliance information is readily available and is significant in the determination of responsibility.

N.J.A.C. 17:19-2.5

The heading of this section was amended from "Performance ratings" to "Performance evaluation," to better describe the process of assessing rather than calculating a firm's performance. The use of terminology is standardized throughout this section.

N.J.A.C. 17:19-2.5(a)1

The new final sentence allows the DPMC to enhance its review of past experience references by asking for certifications from former customers.

N.J.A.C. 17:19-2.5(a)2

This amendment is to recognize that the performance multiplier used in the calculation of a firm's classification rating is based upon the firm's documented experience with the DPMC, not with the State at large. Provision is made elsewhere in these rules to incorporate the performance experience of other State entities in the calculation of a firm's classification rating.

N.J.A.C. 17:19-2.5(a)2i

Changes to this subsection amend the criteria for performance evaluations submitted to the DPMC for consideration. This subparagraph now requires periodic evaluations, throughout the duration of the project made by one or more persons directly involved in the management, supervision or inspection of the project.

N.J.A.C. 17:19-2.5(a)2iii(8)

This addition allows the DPMC to consider other factors, which may affect a firm's performance that are not included in the list. Additionally, the reference to calculating a firm's project performance rating as the average of the final project evaluations for the past five years was removed.

N.J.A.C. 17:19-2.5(b)

This addition removes bidding challenges from the process of performance review challenges. Bidding challenges are covered by provisions in Subchapter 5.

N.J.A.C. 17:19-2.5(d)

This new subsection allows the DPMC to consider performance reviews made by non-DPMC contracting entities in determining responsibility under *N.J.A.C. 17:19-2.4(b)*. This change is related to changes in *N.J.A.C. 17:19-2.5(a)2*.

N.J.A.C. 17:19-2.6(b)

Changes to this subsection are in accordance with *N.J.S.A. 52:35-2*. It defines the grace period after expiration of a classification for an application to be considered a renewal as three months, and extends the application period from 18 months to 24 months.

N.J.A.C. 17:19-2.6(c)

This new subsection is in accordance with *N.J.S.A. 52:35-2*. It incorporates application fees and returned check procedures and rules.

N.J.A.C. 17:19-2.7(a)

A new final clause was added to require evidence of valid licenses and permits in the requested trades for classification.

N.J.A.C. 17:19-2.8(a)

This amendment removes a conflicting definition of aggregate rating, and removes a prevailing wage violation record as a factor in determining an aggregate rating. The firm's prevailing wage violation record is used in determining responsibility under *N.J.A.C. 17:19-2.4(b)*, not aggregate rating.

N.J.A.C. 17:19-2.8(b)3

The new sentences add the net book value of owned equipment (excluding automobiles) as a possible supplement to a contractor's net working capital calculation under certain circumstances.

N.J.A.C. 17:19-2.8(c)

This subsection is deleted to remove the automatic reduction of the working capital calculation for prevailing wage violations. Such violations are considered in the determination of responsibility under *N.J.A.C. 17:19-2.4(b)9*.

N.J.A.C. 17:19-2.8(c)2

This amendment removes a qualifying statement that was redundant of the definition of FPPE. It also corrected the inaccurate notation of the formula for the application of performance in the aggregate rating calculation.

N.J.A.C. 17:19-2.9(c)

This amendment adds the requirement of a \$ 200 million bond rating in addition to the existing \$ 200 million working capital calculation for the granting of an unlimited aggregate rating.

N.J.A.C. 17:19-2.11(a)

This amendment clarifies and qualifies the eight business days associated with the processing and approval of an application or renewal of classification.

N.J.A.C. 17:19-2.12(b)

This amendment allows for the submission of an updated surety affidavit showing an increase in bonding for consideration of an increased aggregate rating under certain circumstances.

N.J.A.C. 17:19-3

Subchapter 5 has been recodified as Subchapter 3.

N.J.A.C. 17:19-3.1

This amendment removes qualifying terms that limited the definition of consultant as defined in *N.J.A.C. 17:19-1.1*.

N.J.A.C. 17:19-5.3

This section is repealed and all definitions are incorporated into *N.J.A.C. 17:19-1.1*, as discussed fully above.

N.J.A.C. 17:19-3.3(a)

These added statements are required by *N.J.S.A. 52:34-9.3* regarding the duration of a prequalification rating.

N.J.A.C. 17:19-3.3(b)

This new subsection is required by *N.J.S.A. 52:34-9.3*, regarding fees charged for prequalification application or renewal.

N.J.A.C. 17:19-3.3(g)

This subsection, regarding the submission of brochures and other promotional materials with applications for prequalification, is deleted. Such materials have not contributed significant information needed to determine the responsibility of a firm.

N.J.A.C. 17:19-3.3(h)

This subsection discusses the determination of a firm's prequalification level. It was revised to clarify that the DPMC considers not the size and technical staff, but both the professional and technical staff.

N.J.A.C. 17:19-5.6

This section is repealed in accordance with *GEOD Corporation v. The State of New Jersey* 01-2656 (SRC). Provisions for set-aside programs are separately codified under *N.J.A.C. 17:14*.

N.J.A.C. 17:19-3.5

Performance Evaluation is a new section setting forth the guidelines for evaluating the performance of design consultants on public works contracts with the State. It codifies current practice.

N.J.A.C. 17:19-3.6

The DPMC develops evaluation criteria for each project, which is made part of the public notice. A firm's past project performance has been added to the evaluation criteria generally included in the selection evaluation criteria.

N.J.A.C. 17:19-3.7(c)

Amendments to this subsection rearrange the first sentence to emphasize the importance of electronic means in notifying vendors of bidding and proposal opportunities.

N.J.A.C. 17:19-3.9(a)

This subsection discusses the use of term contracts to address a variety of consultant needs. The initiation of the selection process may be in accordance with the major or the routine project selection procedures set forth in *N.J.A.C. 17:19-3.6* and *3.7*. This cross-reference replaces and recodifies the previous reference, *N.J.A.C. 17:19-5.8(a)*, which mistakenly references only part of the routine contract section and did not include a cross-reference to the major project select section at all.

N.J.A.C. 17:19-4

Subchapter 3 has been recodified as Subchapter 4 with minor revisions to correct grammatical errors.

N.J.A.C. 17:19-5

Subchapter 4 has been recodified as Subchapter 5.

N.J.A.C. 17:19-5.1(a)2

This new paragraph codifies inclusion of selection protests into the hearing provisions of this chapter.

N.J.A.C. 17:19-5.1(a)4

This new paragraph codifies inclusion of prequalification protests into the hearing provisions of this chapter.

N.J.A.C. 17:19-5.2(a)2

This new paragraph codifies timeframes for consultants to protest a selection determination.

N.J.A.C. 17:19-5.2(a)4

This new paragraph codifies timeframes for consultants to protest a prequalification determination.

N.J.A.C. 17:19-5.2(b)1

This amendment recognizes that including the Deputy Director in this paragraph is redundant of the definition of Director in *N.J.A.C. 17:19-1.1*.

N.J.A.C. 17:19-5.2(b)2 and 4 are recodified as *N.J.A.C. 17:19-5.2(b)5* and 6, respectively, for the orderly flow of hearing procedures.

Social Impact

The rules proposed for readoption with amendments, repeals and a new rule create a framework for control and oversight of the classification of contractors and the prequalification and selection of design consultants as a prerequisite for the bidding and award of contracts related to the construction, improvement or repair of State public works. The process by which the DPMC solicits competitive proposals has ensured, and will continue to ensure, fairness to potential bidders and design consultants, and the efficient use of public resources.

Economic Impact

The rules proposed for readoption with amendments, repeals and a new rule will continue to enhance the competitiveness and cost effectiveness of the State's capital design and construction program, thus resulting in a positive economic impact. In providing contracting services for State construction projects, the DPMC has a significant effect on the State economy. Federal government and industry studies indicate approximately 30 private sector jobs are created for each \$ 1 million in construction contracts executed. Other industry sources estimate that for each \$ 1.00 spent on new construction, between \$ 2.00 and \$ 3.00 is generated in economic activity in industry and services. Thus, even in the current economy, projected construction awards of the DPMC, the New Jersey Building Authority (NJBA), the New Jersey Schools Development Authority (NJSDA), and local school boards, which make use of the DPMC lists of classified and prequalified firms, will generate thousands of private sector jobs. These factors demonstrate the positive impact of New Jersey's public construction program on the State's economy. Such benefits are necessarily enhanced by a classification and prequalification system that seeks to ensure that only qualified bidders perform the work. By modifying these rules additional companies may be encouraged to become classified or prequalified and to compete for work on State design and construction projects, resulting in greater economic opportunities for more companies. Increased competition for State construction projects and schools is also crucial to keeping construction costs as low as possible, resulting in savings to the State, and in turn, the taxpayers of New Jersey.

Federal Standards Statement

A Federal standards analysis is not required. There are no Federal requirements or standards that affect the subject of the rules proposed for readoption with amendments, repeals and a new rule.

Jobs Impact

The Division does not anticipate that the rules proposed for readoption with amendments, repeals and a new rule will result in any significant change in jobs in the State, inasmuch as the amount of work available is unaffected by the method of classification and prequalification.

Agricultural Industry Impact

These rules proposed for readoption with amendments, repeals and a new rule will have no impact on the agriculture industry in this State.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, repeals and a new rule affect all firms that bid for design and construction contracts with the State. Many construction contractors, architectural, engineering and consulting firms are considered small businesses under the terms of the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. No reporting or recordkeeping requirements are imposed by these rules. Firms seeking classification and/or prequalification are required to obtain the services of a certified public accountant or public accountant, see *N.J.S.A. 45:2B-29* et seq., and to submit accurate financial information. This requirement is a function of sound business practice, whose ultimate goal is to assess the financial capabilities of a firm and protect the expenditure of State capital funds. These rules should impose no capital costs upon contractors or design consultants beyond those normally incurred in the course of contracting in their respective business areas. *N.J.S.A. 52:35-2* imposes application fees of \$ 100.00 every two years. Other fees are limited to professional licensure fees required by the State to practice architecture, engineering or any other specialized construction services in the State of New Jersey. Accordingly, the DPMC foresees no unduly burdensome requirements on small businesses resulting from these rules.

Smart Growth Impact

The rules proposed for readoption with amendments, repeals and a new rule will not have any foreseeable impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at *N.J.A.C. 17:19*.

Full text of the rules proposed for repeal can be found in the New Jersey Administrative Code at *N.J.A.C. 17:19-5.3* and *5.6*.

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

SUBCHAPTER 1. GENERAL PROVISIONS

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.

...

"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.

...

"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 [which] **that** define the eligibility of firms to engage in public work as determined by the [Division of Property Management and Construction in the Department of the Treasury] **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.

...

"Deputy Director" means a Deputy Director of the [Division of Property Management and Construction in the Department of the Treasury] **DPMC** or [the] a Deputy Director's duly authorized representative.

"Director" means the Director of the [Division of Property Management and Construction in the Department of the Treasury] **DPMC** or the Director's duly authorized representative.

...

"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.

"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, [firm,] 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.

...

"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.

"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.

SUBCHAPTER 2. [RULES] CLASSIFICATION OF FIRMS

17:19-2.1 Statements required from firms requesting classification

(a) Only those firms holding a valid classification issued by the DPMC shall be eligible to bid for work on a public work project, unless otherwise permitted by law. In addition, no bid proposal for a public work project shall be accepted unless every subcontractor that is required by law, the bid advertisement, or the bid docu-

ments, to be named in the bid proposal holds a valid classification issued by **the** DPMC. 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.-2. (No change.)

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, in which case the aggregate rating shall not exceed \$ 500,000.

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 [(not by subcontractors or individuals employed by others)] 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.-8. (No change.)

(c) All foreign corporations shall include a current certificate of authority to transact business in New Jersey[, as issued by the Secretary of State], **issued** pursuant to [13-1 [13-1 [13-1 *N.J.S.A. 14A:[13-1]*]**13-3** et seq.

(d) All firms shall furnish a current copy of all applicable licenses and permits as required in the DPMC-27. All licenses and permits for electrical 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.

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. (No change.)

3. Describe the purpose, structure and resources of the joint venture, and be supplemented by any other information requested by **the** DPMC;

4.-5. (No change.)

(b) (No change.)

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.-8. (No change.)

9. Safety record; [and]

10. Compliance with applicable prevailing wage laws and regulations; and

[10.] **11.** Other factors deemed relevant by **the** DPMC.

17:19-2.5 Performance [ratings] **evaluation**

(a) For any firm proposing to submit bids on public work requiring **the** DPMC classification, a [performance rating] **Final Project Performance Evaluation (FPPE)** shall be determined. The [rating] **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 [rating] **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.**

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

i. [A project evaluation shall be made for] **The State agency reviewed the performance of** each of the prime contractors on a public work project[. The project evaluation shall be made by no less than two persons directly involved in the management, supervision or inspection of the 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. [Project evaluations] **Interim performance reviews** shall be presented on a standardized performance [evaluation] **review** form approved by **the** DPMC; and

iii. [Another evaluation] **Interim performance reviews** will be based on the following factors:

(1)-(5) (No change.)

(6) Subcontractors; [and]

(7) Close-out; **and**

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

iv. Interim [evaluations] **reviews** on incomplete projects may be included in the [performance rating] **FPPE** at the time of classification.

[3. A firm's project performance rating shall be calculated as the average of the final project evaluations for the past five years.]

(b) A firm's challenge to a [project evaluation] **FPPE** shall not be conducted as part of the classification **or bidding** process but must proceed pursuant to *N.J.A.C. 17:19-[4.2(a)3]5.2(a)3*.

(c) (No change.)

(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.

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 [18] **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 [18] **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.**

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; 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) (No change.)

17:19-2.8 Aggregate rating

(a) [A firm's aggregate rating is the limit of the dollar value of all contracts, public and private, which the firm may perform at any given time.] The aggregate rating **of a firm** shall be based on the following factors:

1. (No change.)

2. The firm's [performance rating] **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. The firm's prevailing wage violation record, as described in *N.J.A.C. 17:19-2.8(c)*; and]

[5.] **4.** (No change in text.)

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

1.-2. (No change.)

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.-6. (No change.)

[(c) If a firm has been adjudicated to have committed a prevailing wage violation in a three-year period before the receipt of the DPMC-27, the working capital calculation shall be reduced by 25 percent.]

[(d)] **(c)** The firm's aggregate rating shall be calculated as follows:

1. (No change.)

2. Multiply the result of this calculation by the [performance] **FPPE** multiplier [based upon at least three projects completed in the last five years.]:

[Average Performance Evaluations (APE)] FPPE	[Performance] 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 [performance] **FPPE** multiplier for a firm having (1) an [APE] **FPPE** of 80.0 percent or higher and (2) an [APE] **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) $(A [x] * B) [= C \text{ and } C \times D] * D = E$

[1.] (1) $\$ 85,000 [x] * 12 = \$ 1,020,000 [x] * 1.00 = \$ 1,020,000$

[2.] (2) $\$ 85,000 [x] * 12 = \$ 1,020,000 [x] * 0.50 = \$ 510,000$

3. If a firm has not received [a State performance evaluation] **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 [APE] **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.

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) (No change.)

(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, [that if the aggregate rating is equal to or greater than] **firms with a bonding capacity of \$ 200,000,000, [the firm] and demonstrating a net working capital calculation of \$ 200,000,000 or more,** shall be issued an unlimited aggregate rating.

17:19-2.10 Special classification requirements

(a) (No change.)

(b) The Director may establish special classification requirements for a given trade classification in order to ensure that firms, which have been classified conform [with] **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.

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, except as follows:

1. If a firm, which has submitted an application for a classification or a rating fails to fully respond to **the** DPMC within eight business days after receiving a request from **the** DPMC for information regarding that application, the firm will be deemed to have withdrawn its request for classification.

2. If **the** DPMC notifies a firm within eight business days after **the** DPMC's receipt of all required information that the firm's application requires further review and identifies the reasons for further review, the application will not be deemed to have been approved or denied until **the** DPMC expressly notifies the firm.

(b) (No change.)

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 [form] 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 [the] 20 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.

SUBCHAPTER [5.]3. CONSULTANT PREQUALIFICATION AND SELECTION PROCEDURES

17:19-[5.1]3.1 Purpose

The consultant selection procedures are established to give qualified [architectural, engineering, construction management or other consultant] 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.

17:19-[5.2]3.2 (No change in text.)

17:19-[5.4]3.3 Prequalification of consultants [firms]

(a) Firms desiring to be considered for consultant work with **the DPMC** shall submit a prequalification form[s as specified by DPMC], **DPMC-48A**. This form provides comprehensive information on the management of the firm, [its] **the financial history of the firm**, the type and value of past project work, licensed and technical staff, and other [related information] **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.

[(b)] (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.

[(c)] (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.

[(d)] (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.

[(e)] (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.

[(f)] (g) (No change in text.)

[(g)] Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their prequalification files that may be reviewed during the prequalification and project selection processes.]

(h) The prequalification level assigned does not necessarily reflect the level on which a consultant has performed for other clients. **The DPMC will** endeavor[s] 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**, [size] **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) (No change.)

17:19-[5.5]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.-5. (No change.)

(b) (No change.)

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.

17:19-[5.7]3.6 Major project selection procedures

(a) (No change.)

(b) A selection committee will be established to select a consultant for that specific project. The selection committee shall develop the [rating schedule and] **selection evaluation** criteria for the project. The [rating] **evaluation** criteria will be part of the public notice. The [rating] **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 [rating] **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 [rating] **selection evaluation**. The selection coordinator shall compile all [ratings] **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)-(h) (No change.)

(i) The [rating,] **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.

17:19-[5.8]3.7 Routine contracts

(a) (No change.)

(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 [rating] **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 [and/or electronic only means] 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 [rating] **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) (No change.)

(f) Technical proposals shall be [rated] **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-[5.7]3.6(g)*.

(h) (No change.)

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

17:19-[5.9]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) (No change.)

17:19-[5.10]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. 17:19-5.8(a)*3.6 or 3.7.

(b)-(c) (No change.)

(d) Technical proposals shall be [rated] **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. 17:19-5.7(g)*3.6(g), except that costs may be based upon hourly daily rates and/or other methods for determining costs over a specific time period.

(f) (No change.)

17:19-[5.11]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 [rate] **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's auditors.

17:19-[5.12]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 estimate.

(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-[5.7]***3.6**, or routine contracts selection procedures, pursuant to *N.J.A.C. 17:19-[5.8]***3.7**.

SUBCHAPTER [3.]4. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF FIRM(S) AND INDIVIDUAL(S)

17:19-[3.1]**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.-11. (No change.)

12. Any other cause affecting responsibility as a State contractor of 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.-19. (No change.)

17:19-[3.2]**4.2** Conditions affecting the debarment of a firm(s) or an individual(s)

(a) The following conditions apply to debarment:

1. (No change.)

2. The existence of any of the causes set forth in *N.J.A.C. 17:19-[3.1]***4.1** 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. (No change.)

4. The existence of a cause set forth in *N.J.A.C. 17:19-[3.1(a)1]***4.1(a)1** through 8 shall be established upon the rendering of a final judgment or judgment 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-[3.1(a)9]***4.1(a)9** through 12 shall be established by evidence that the Director determines to be clear and convincing in nature.

6. Debarment for the cause set forth in *N.J.A.C. 17:19-[3.1(a)13]***4.1(a)13** shall be proper, provided that one of the causes set forth in *N.J.A.C. 17:19-[3.1(a)1]***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.

17:19-[3.3]**4.3** Procedures, period(s) of debarment and scope of debarment affecting the debarment of a firm(s) or an individual(s)

(a) The procedures, period of debarment and scope of debarment include 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-[4]5.

2. Where an agency of government, other than **the** DPMC, has imposed debarment upon a firm or an 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.-4. (No change.)

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 case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a firm or an individual with whom the individual is affiliated, where such conduct was accomplished within the course of the individual's official duty or was [effected] **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 classifications 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.

17:19-[3.4]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-[3.1]4.1*, or upon adequate evidence that such cause exists.

17:19-[3.5]4.5 Conditions 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.-4. (No change.)

5. Reasonable suspicion of the existence of a cause described in *N.J.A.C. 17:19-[3.1(a)]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-[3.1(a)]4.1(a)1* through 12 may be the basis for the imposition of a concurrent suspension by **the** DPMC, which may impose such suspension when found to be in the best interest of the State.

17:19-[3.6]4.6 Procedures, period of suspension and scope of suspension affecting the suspension of a firm(s) or an 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.-iii. (No change.)

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 the 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-[4]**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.-3. (No change.)

17:19-[3.7]**4.7** Disqualification of a firm(s) or an individual(s)

The disqualification of a firm or an individual shall be based upon the responsibility of the firm or the individual as determined by the factors set forth in *N.J.A.C. 17:19-2.4* or **3.3**.

17:19-[3.8]**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 within 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 respect to a particular State contract.

17:19-[3.9]**4.9** Prior notice by **the** DPMC

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

17:19-[3.10]**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.

17:19-[3.11]**4.11** Director's authority to contract

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

SUBCHAPTER [4.]**5**. HEARING PROCEDURES

17:19-[4.1]**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. (No change.)

2. Selection protest: A firm which has submitted a proposal may request an informal hearing before the Director to protest the Director's selection or rejection of a firm.

[2.] 3. (No change in text.)

4. Prequalification: A firm dissatisfied with its prequalification may request an informal hearing before the Director to protest that prequalification.

[3.] 5. Performance evaluation: A firm dissatisfied with its performance evaluation on a public work project undertaken by **the** DPMC may request an informal hearing before the Director.

[4.] 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 formal hearing before the Director, to challenge **the** DPMC's proposed suspension, disqualification or debarment of the firm or individual.

[5.] 7. (No change in text.)

[6.] 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 convened at the Director's discretion.

17:19-[4.2]5.2 Requests for hearings; hearing procedures; time limitations

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

1. (No change.)

2. Selection protest: A firm which has submitted a proposal seeking a hearing 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.

[2.] 3. (No change in text.)

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.

[3.] 5. Performance evaluation: Any firm seeking to challenge a **project performance evaluation by the** DPMC [performance evaluation] must make written request for a hearing to **the** DPMC setting forth the specific grounds for the challenge. Such request must be duly submitted within 15 calendar days 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.

Recodify existing 4. and 5. as **6. and 7.** (No change in text.)

(b) Hearing procedures are as follows:

1. Informal hearings will be held, where feasible, within 15 calendar days of receipt of request. Hearings will be heard, where practicable, by an impartial hearing officer designated by the Director [or by the Deputy Director]. The hearing officer will prepare a report to the Director within 10 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. The hearing report will be advisory in nature and not binding on the Director. All parties will receive a copy of the hearing officer's report and have 10 calendar days to provide written comments or exceptions to the Director. After the 10-calendar day period for exceptions, the Director will issue a final decision on the matter.

[2. Formal hearings will be held by the Director or an Administrative Law Judge, pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.* and *52:14F-1 et seq.*]

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

[4. The Director shall determine whether a matter constitutes a contested case and shall refer any such matter for hearing pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, and *52:14F-1 et seq.* The Director may also seek to refer any uncontested matters to the Office of Administrative Law for hearing pursuant to N.J.A.C. 1:1-21.]

[5.] **3.** In an informal hearing, the Director 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 *N.J.A.C. 17:19-[4.1]5.1* and this section. In these instances, the Director shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

[6.] **4.** Notwithstanding the provisions of *N.J.A.C. 17:19-[4.1]5.1* and this section, in an informal hearing, the Director may delegate [to the Deputy Director the ability] **the authority** to issue a final decision on behalf of **the DPMC**.

5. Formal hearings will be held by the Director or an Administrative Law Judge, pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, and *52:14F-1 et seq.*

6. The Director shall determine whether a matter constitutes a contested case and shall refer any such matter for hearing pursuant to the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, and *52:14F-1 et seq.* The Director may also seek to refer any uncontested matters to the Office of Administrative Law for hearing pursuant to N.J.A.C. 1:1-21.

17:19-[4.3]5.3 (No change in text.)

(Agency Note: N.J.A.C. 17:19-5 is proposed for recodification with amendments as N.J.A.C. 17:19-3.)