

SUBCHAPTER 8. PRESUMPTIVE ELIGIBILITY FOR NJ FAMILYCARE-CHILDREN'S PROGRAM

10:79-8.2 Period of presumptive eligibility

(a) The period of presumptive eligibility shall begin on the date an approved presumptive eligibility entity determines that, based on information provided by the family of the presumptively eligible beneficiary, the child[(ren)] meets the requirements and standards of this chapter.

(b) The period of presumptive eligibility shall terminate:

1. (No change.)

2. If the child, or the child's parent, guardian, caretaker, or authorized agent fails to cooperate in the application process with the eligibility determination agency, on the last day of the month subsequent to the month in which the child[(ren)] was [(were)] determined presumptively eligible.

10:79-8.4 Presumptive eligibility processing performed by the presumptive eligibility determination entity

(a) (No change.)

(b) For any child determined presumptively eligible, the approved presumptive eligibility determination entity shall:

1.-3. (No change.)

4. Give the child (if appropriate) or the **parent, guardian, caretaker, or** authorized agent of the presumptively eligible child a copy of the completed one-page PE application; and

5. (No change.)

(c) (No change.)

10:79-8.6 Responsibilities of the eligibility determination agency

(a) (No change.)

(b) If the child is not currently receiving Medicaid, Medically Needy, or NJ FamilyCare-Children's Program benefits, the eligibility determination agency shall, notwithstanding the application disposition standards in N.J.A.C. 10:79-2.3(f), arrive at a case disposition within the presumptive eligibility period.

1. (No change.)

2. The eligibility determination agency shall also provide the individual applying on the child's behalf with written notification, prior to the expiration of the presumptive eligibility period, of the specific reasons for the delay. [(See N.J.A.C. 10:79-8.8 for information regarding the notice and the rights of the applicant to a fair hearing.)]

(c) (No change.)

10:79-8.8 Notification and fair hearing rights

(a) (No change.)

[(b) For a presumptively eligible child whose eligibility for NJ FamilyCare-Children's Program has not yet been determined within the presumptive eligibility period, in accordance with N.J.A.C. 10:79-2.3(f)3, the eligibility determination agency shall provide the parent, guardian, caretaker or authorized agent of the presumptively eligible child with written notification prior to the expiration of the presumptive eligibility period, setting forth the specific reasons for the delay in the NJ FamilyCare-Children's Program application processing.]

[(c)] (b) (No change in text.)

TREASURY—GENERAL

(a)

DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION

Classification and Prequalification of Firms

**Proposed Amendments: N.J.A.C. 17:19-1.1. 2.1, 2.7, 2.11, 2.12, 2.13, 3.3, 4.7, 5.1, and 5.2**

**Proposed Repeal: N.J.A.C. 17:19-5.3**

Authorized By: Ford M. Scudder, Acting State Treasurer, through Steven M. Sutkin, Director, Division of Property Management and Construction.

Authority: N.J.S.A. 52:34-9.1 et seq., and 52:35-11.

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

Proposal Number: PRN 2016-116.

Submit comments by September 30, 2016, to:

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The agency proposal follows:

**Summary**

The Division of Property Management and Construction (DPMC) proposes to amend N.J.A.C. 17:19.1 et seq., which governs the State's process for classifying and prequalifying firms seeking to contract with the State of New Jersey for performance of construction work or rendering of professional design services on State public works projects.

The foregoing technical and substantive amendments are intended to improve the administration of the State's classification and prequalification procedures, and are as follows:

SUBCHAPTER 1. GENERAL PROVISIONS

DPMC proposes to amend N.J.A.C. 17:19-1.1, Definitions, to add a definition of the "DPMC-48T" form. This form is prepared and submitted by materials testing laboratories seeking prequalification to submit proposals on State public works projects.

DPMC also proposes to amend N.J.A.C. 17:19-1.1, Definitions, to revise the definition of the term "significant project." The current rule defines the term as a project having a dollar value equal to or greater than the average dollar value of completed projects for the previous two years. These projects may be public projects, private projects, or a combination of the two. DPMC rules require that a firm applying for classification to bid public work must have successfully completed at least two "significant" projects in the last five years. Under the proposed amendment, the dollar value of a "significant project" would be determined by averaging out the value of all projects over three years instead of the current two years. In DPMC's view, averaging out the projects over a longer period provides a more representative and accurate picture of the contractor's capabilities.

DPMC further proposes to amend N.J.A.C. 17:19-1.1, Definitions, to add a definition of the word "trade" as it is referenced in Subchapter 2. Under authority of the statutes and rules governing classification of bidders, contractors seeking classification to submit bids on State public works projects must demonstrate their capacity and experience to perform.

SUBCHAPTER 2. CLASSIFICATION OF FIRMS

DPMC proposes to amend N.J.A.C. 17:19-2.1(a) to clarify that firms are only eligible to bid for work in such trades for which a firm possesses a valid classification and to clarify the requirement that all subcontractors required by law, the bid advertisement, or the bid documents to be

identified in a firm's bid proposal must hold a valid DPMC classification in the trade for which the subcontractor is named.

DPMC proposes to add N.J.A.C. 17:19-2.1(b)1v to state the financial disclosures required for classification of firms which are subsidiaries of a parent company. In such instances, DPMC will accept a copy of the firm's parent company's current annual 10K report filed with the U.S. Securities and Exchange Commission, provided that the report provides a sufficient separate breakdown of the financial status and condition of the firm seeking classification. Should the 10K report not sufficiently break down the financial information of the subsidiary firm, DPMC will accept a balance sheet prepared by the firm's in-house accountant detailing the subsidiary firm's current assets and liabilities. Such balance sheet must be certified as both accurate and consistent with the disclosures stated in the 10K report by the person signing the 10K report on the parent company's behalf.

DPMC proposes to amend N.J.A.C. 17:19-2.1(b)3i to delete the maximum \$500,000 aggregate rating limit which may be granted to a firm having less than one year experience but whose principals all have at least five years experience in each trade for which the firm is seeking classification. DPMC believes that a \$500,000 aggregate rating limit may not be appropriate in all cases, and that its elimination will afford DPMC the flexibility to grant an aggregate limit appropriate to the experience level of the firm's principals.

DPMC proposes to amend N.J.A.C. 17:19-2.1(d) to require any firm seeking classification in the heating, ventilating, air conditioning, and refrigeration (HVACR) trade to provide with its classification application proof that the firm is licensed as required by N.J.S.A. 45:16A-1 et seq., the State Heating, Ventilating, Air Conditioning, and Refrigeration Contracting License Law, and the rules promulgated thereunder, N.J.A.C. 13:32A. State licensure of HVACR firms is a new requirement that did not exist when this chapter was originally enacted.

DPMC proposes to amend N.J.A.C. 17:19-2.7(a) to add a requirement that a firm seeking classification in a trade must submit, in addition to other documented proof of its prior successful completion of a project in that trade, a schedule of values for the firm's contract on that project. A schedule of values breaks down the scope of work of a contract, so as to enable DPMC to better ascertain the value of work in each specific trade covered by a contract.

DPMC proposes to delete N.J.A.C. 17:19-2.11(a)1 and 2. As presently codified, those paragraphs provide that if a firm seeking classification fails to respond within eight business days to a request for further information or a need for further review, the classification request is automatically deemed to be withdrawn. Because in individual cases there may be extenuating circumstances that prevent a firm from responding within the eight-day limit, elimination of this rigid notice requirement will afford DPMC flexibility to deal with each classification request on a case-by-case basis.

DPMC proposes to amend N.J.A.C. 17:19-2.12(c) by reducing from 20 to eight business days, the time within which DPMC must notify a firm of its decision regarding a requested classification change. The change will make this regulation consistent with N.J.A.C. 17:19-2.11(a), which requires DPMC to notify a firm its decision on an application for classification within eight days of receiving all required documents.

DPMC also proposes to add new N.J.A.C. 17:19-2.12(d), which expressly recognizes DPMC's authority, on its own initiative, to modify a firm's aggregate rating or revoke its classification during a firm's classification period, should DPMC receive new information relevant to any of the factors that determine a firm's eligibility for classification and/or appropriate aggregate rating. Should DPMC receive such information while a firm is classified, it does not serve the public interest to require DPMC to wait until expiration of the current classification period before reconsidering the firm's eligibility to submit bids on State public works contracts.

DPMC proposes to amend N.J.A.C. 17:19-2.13(a) to modify the work backlog disclosure required by a firm in its bid proposal. Presently the regulation requires the bidder to disclose in its bid proposal the current value and status of its backlog of uncompleted work, plus a certification that its bid price together with its work backlog will not cause the bidder to exceed its aggregate rating. DPMC proposes to eliminate the requirement that the bidder disclose the value and status of its work

backlog, and to require only a certification by the bidder. As provided elsewhere in this section, DPMC may require a bidder to document the value and status of its work backlog as a condition of contract award, rendering such disclosure by all bidders in their bid proposals unnecessary.

DPMC also proposes to amend N.J.A.C. 17:19-2.13(c) to strike the reference to Form DPMC 701, calling for bidders to disclose, among other things, the current value and status of its work backlog. Consistent with the amendment of subsection (a) as discussed above, DPMC does not require bidders to provide this disclosure. Additionally, subsection (c) is proposed for amendment to expressly recognize DPMC's authority to require a firm, as a condition of contract award following bid opening, to document its backlog of uncompleted work and demonstrate that the award of the contract, together with the firm's current backlog, will not cause the firm to exceed its aggregate rating. Having a firm substantiate the amount of its current work backlog as a condition of contract award rather than in its bid proposal, as required under existing subsection (a) (and proposed for amendment), provides a more thorough, effective, and efficient way for DPMC to avoid the award of contracts to firms in excess of their financial capacity to perform.

DPMC also proposes to amend N.J.A.C. 17:19-2.13(d)1 and 2, describing the procedure to be followed when a firm successfully bids for two or more contracts that, either in combination with each other or with the firm's current backlog, would exceed the firm's aggregate rating. The proposed amendment clarifies existing procedure.

### SUBCHAPTER 3. CONSULTANT PREQUALIFICATION AND SELECTION PROCEDURES

DPMC proposes to amend N.J.A.C. 17:19-3.3 to address the submission of the DPMC-48T form by firms seeking prequalification as material testing laboratories. This rule is proposed for amendment to more accurately reflect existing prequalification procedures.

### SUBCHAPTER 4. DEBARMENT, SUSPENSION, AND DISQUALIFICATION OF FIRM(S) AND INDIVIDUAL(S)

DPMC proposes to amend N.J.A.C. 17:19-4.7 to clarify the nature of disqualification as either the temporary exclusion of a firm from public work generally, or revoking the firm's opportunity to bid or engage on a particular public works contract, based upon reconsideration of any one or more of the same factors considered by DPMC when evaluating the firm's application for contractor classification under N.J.A.C. 17:19-2.4 or consultant prequalification under N.J.A.C. 17:19-3.3.

### SUBCHAPTER 5. HEARING PROCEDURES

DPMC proposes to amend N.J.A.C. 17:19-5.1 for the purpose of achieving consistency with the substantive changes to N.J.A.C. 17:19-5.2, described below. The revisions also include non-substantive changes intended to promote greater clarity and understandability.

DPMC proposes to amend N.J.A.C. 17:19-5.2(a) to promote greater clarity and understandability.

DPMC proposes to amend N.J.A.C. 17:19-5.2(b)1 and 2, which currently set forth the procedures to be followed in the case of "formal" and "informal" hearings, respectively. Since enactment of the New Jersey Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 52:14F-1 et seq. (the APA), the former distinction between "formal" hearings and "informal" hearings, based upon the subject matter of the hearing and the degree of procedural formality and due process required, has been superseded by the APA's division of administrative hearings into "contested cases" defined in N.J.S.A. 52:14B-2 and all other less formal administrative hearings, which do not meet the definition of a "contested case." Proposed new paragraph (b)1 sets forth that hearings in contested cases are governed by the APA and by the rules promulgated under the APA, N.J.A.C. 17:19-5.2. Because the APA affords an agency broad discretion on the conduct of hearings that are not "contested cases," proposed new paragraph (b)2 sets forth DPMC's procedures to be followed in these matters, superceding the existing provisions governing "informal hearings." These new procedures essentially describe those currently followed by DPMC and allow for a delegation of the Director's authority.

DPMC proposes to repeal N.J.A.C. 17:19-5.3, Discovery procedures. Under the proposed amendments to N.J.A.C. 17:19-5.2, discovery in

hearings that are not contested cases will now be governed by N.J.A.C. 17:19-5.2(b)2iii.

As the DPMC 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.

**Social Impact**

The proposed amendments and repeal will better enable DPMC to regulate and administer the procurement of construction work and professional services on public works construction projects. The process by which DPMC solicits competitive proposals has ensured and will continue to ensure fairness to firms seeking to submit competitive bids and proposals for work and services, while at the same time protecting the public interest by limiting the award of contracts to firms possessing the requisite experience, financial and physical resources, and integrity.

**Economic Impact**

The proposed amendments and repeal will better enable DPMC to promote economic growth by facilitating the ability of the State, as well as local governmental entities and school districts that rely upon the State’s classification and prequalification system, to efficiently expend public monies for the design and construction of public works projects, through procurement of high-quality professional services and work at a fair price.

**Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and repeal are mandated by the provisions of N.J.S.A. 52:18A-191.1 et seq., and are not subject to any Federal requirements or standards.

**Jobs Impact**

The Division does not anticipate that the proposed amendments and repeal will have any impact on jobs.

**Agriculture Industry Impact**

The proposed amendments and repeal will have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The proposed amendments and repeal consist of minor changes and clarification of DPMC’s administrative hearing procedures. None of the prospective changes would impose undue burdens that would decrease the current level of participation of small businesses, as that term is defined within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The reporting, recordkeeping, and compliance requirements that are changed as a result of the proposed amendments and repeal are discussed in the Summary above and any capital costs are discussed in the Economic Impact above. The types of small businesses affected by the rules are firms seeking contracts to render professional services or perform construction work on State, local, and school public works projects.

**Housing Affordability Impact Analysis**

The proposed amendments and repeal will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the clarification of DPMC’s administrative hearing procedures and classification and prequalification of firms.

**Smart Growth Developmental Impact Analysis**

The proposed amendments and repeal will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to the clarification of DPMC’s administrative hearing procedures and classification and prequalification of firms.

**Full text** of the proposal 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.

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

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

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

SUBCHAPTER 2. CLASSIFICATION OF FIRMS

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 [that is] **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.-iv. (No change.)

**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. (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. (No change.)

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.-8. (No change.)

(c) (No change.)

(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, **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.**

#### 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) (No change.)

#### 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)-(b) (No change.)

(c) The DPMC shall review all submissions in accordance with this section and issue a decision no later than [20] **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.**

#### 17:19-2.13 Award of contracts exceeding aggregate rating

(a) A firm shall include with each bid a [statement of the current value and status of its backlog of uncompleted construction work (not to include "non-at-risk" construction management contracts) as of the bid due date and a] certification that the [award of] **firm's bid** for the subject

contract would not cause the firm to exceed its aggregate rating **limits, including consideration of uncompleted construction work.**

(b) (No change.)

(c) A firm shall not be awarded a contract which, when added to the backlog of uncompleted construction work[, as shown on Form DPMC 701,] 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 [which] **that** in combination fall within the firm's aggregate rating, as follows:

1. (No change.)

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 [with its bid] clear and convincing evidence that its [outstanding balance of contracts] **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) (No change.)

### SUBCHAPTER 3. CONSULTANT PREQUALIFICATION AND SELECTION PROCEDURES

#### 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)-(i) (No change.)

### SUBCHAPTER 4. DEBARMENT, SUSPENSION, AND DISQUALIFICATION OF FIRM(S) AND INDIVIDUAL(S)

#### 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 re-evaluation of the responsibility of [the] a classified or prequalified firm or the individual based upon information not provided at the time that 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.

### SUBCHAPTER 5. HEARING PROCEDURES

#### 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 protest: A firm which has submitted a bid may request [an informal] a hearing [before the Director] to protest [the Director's] 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 [an informal] a hearing [before the Director to protest the Director's selection or rejection of a firm] to challenge the DPMC's decision to reject that firm's proposal and/or to award the contract to another firm.

3. Evaluation or re-evaluation of classification: A firm dissatisfied with its classification, or the classification of another firm, may request [an informal] a hearing [before the Director] to protest that classification.

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

5. Performance evaluation: A firm dissatisfied with its performance evaluation on a public works project undertaken by the DPMC may request [an informal] a hearing [before the Director] 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 [formal] hearing [before the Director.] to challenge the DPMC's proposed suspension, disqualification, or debarment of the firm or individual.

7. (No change.)

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] contractual in nature and are intended solely to provide a non-binding forum for the presentation and resolution of disputed contract claims.

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

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

1. Bid protest: [A firm that is a participating] 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 grounds 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: [A] An unsuccessful firm [which has submitted a proposal] 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.-6. (No change.)

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 [an informal hearing or] a [formal] hearing at a date and time to be scheduled by the Director.

[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. 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. Informal hearings as convened under these rules are fact-finding for the benefit of the Director. Accordingly, the Director may request or require a hearing. Alternatively, the Director may determine that

sufficient information already exists in the record so that a decision can be made without a hearing and the Director may waive the hearing and issue a final decision accordingly.

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. 17:19-5.1 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.

4. Notwithstanding the provisions of N.J.A.C. 17:19-5.1 and this section, in an informal hearing, the Director may delegate 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.]

(b) Hearing procedures are as follows:

1. Procedures in contested cases. Any matter constituting a contested case shall be conducted in accordance with the practices and procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. Procedures in matters not constituting contested cases 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 a final agency decision or, alternatively, may be limited 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 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 decisionmaker determine that there are no material facts in dispute, or should the parties agree to stipulate to all material facts, the decisionmaker 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 that party's expense. The State's decisionmaker 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 all adverse parties. Copies shall be provided at the actual cost of reproduction.

[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.]