

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

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(a) Administrative hearings before the DPMC may include the following subject matter:

1. Bid protest: An unsuccessful bidder seeking a hearing to challenge either the rejection of its own bid or the award of the contract to another bidder shall make written request to the Director setting forth the specific 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: An unsuccessful firm seeking a hearing to challenge either the rejection of its own proposal or award of the contract to another firm shall make written request to the Director setting forth the specific grounds for challenging the Director's selection or rejection of a firm. The request must be received by the Director within five calendar days after the firm has been selected or rejected.
3. Evaluation or re-evaluation of classification: A firm dissatisfied with its classification, or the classification of another firm, may request a hearing to protest that classification.
4. Prequalification: A firm dissatisfied with its prequalification may request a hearing 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 a hearing for the purpose of presenting evidence to dispute that evaluation.
6. Suspension, disqualification, or debarment: Except in the case of a suspension, a disqualification, or a debarment by another agency of government, a firm or an individual may request, and shall be entitled to, a hearing to challenge the DPMC's proposed suspension, disqualification, or debarment of the firm or individual.
7. Certain other matters of dispute that may occur relative to the activities of the DPMC: The Director, within the Director's sound discretion, may require that a firm or an individual participate in an informal hearing or a formal hearing.
8. The provisions of this section do not apply to "claims conferences" that are provided for in the DPMC's consultant and construction contracts. Such "claims conferences" are contractual in nature and are intended solely to provide a non-binding forum for the presentation and resolution of disputed contract claims.

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

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

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

(b) Hearing procedures are as follows:

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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. 1:12. Procedures in matters not constituting contested cases are as follows:

2. 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.

a. 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.

b. 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.

c. 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.