

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

CHAPTER 32

SCHOOL FACILITIES PROJECTS:
SECTION 15 GRANT PROCEDURES

Authority

P.L. 2007, c.137, specifically §26, and P.L. 2000, c. 72, specifically §15.

Source and Effective Date

R.2008 d.8, effective January 7, 2008.
See: 39 N.J.R. 2478(a), 40 N.J.R. 199(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 32, School Facilities Projects: Section 15 Grant Procedures, expires on January 7, 2015.
See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 32, School Facilities Projects: P.L. 2000, c.72, Section 15 Grant Procedures, was adopted as new rules by R.2001 d.263, effective June 29, 2001. See: 33 N.J.R. 2702(a).

Chapter 32, School Facilities Projects: P.L. 2000, c.72, Section 15 Grant Procedures, was readopted as R.2002 d.184, effective May 22, 2002. See: 34 N.J.R. 876(a), 34 N.J.R. 2137(a). Chapter 32, School Facilities Projects: P.L. 2000, c.72, Section 15 Grant Procedures, expired on May 22, 2007.

Subchapter 5, Affirmative Action and Set Asides In Authority-Financed School Facilities Construction Projects Financed and Contracted For by the Authority, was adopted as new rules by R.2002 d.302, effective September 16, 2002. See: 33 N.J.R. 2737(a), 34 N.J.R. 3274(a).

Subchapter 5, Affirmative Action and Set Asides In Authority-Financed School Facilities Construction Projects Financed and Contracted For by the Authority, was readopted as R.2007 d.380, effective November 14, 2007. As a part of R.2007 d.380, Subchapter 5 was recodified to N.J.A.C. 19:39 and renamed Affirmative Action Rules, and Subchapter 5 Appendices 1 and 2 were repealed, effective December 17, 2007. See: 39 N.J.R. 2003(a), 39 N.J.R. 5369(a).

Chapter 32, School Facilities Projects: Section 15 Grant Procedures, was adopted as new rules by R.2008 d.8, effective January 7, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 1. GENERAL PROVISIONS

19:32-1.1 Applicability and scope

These rules are promulgated by the New Jersey Schools Development Authority (the "Authority") to implement Section 15 of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-15) and section 26 of P.L. 2007, c. 137 (collectively, the "Act"). Section 15 of the Act establishes a grant program to fund the State share of the final eligible costs of school facilities projects undertaken by school districts other than Abbott districts. These rules also apply to a school district whose district aid percentage is 55 percent or greater, that had a school facilities project approved by the Department of Education, and had not issued debt prior to the effective date of P.L. 2000, c. 72. These rules are adopted in order to provide the mechanism whereby school districts which are eligible to receive grants from the Authority can receive such grants and to ensure that these grant funds are used properly by the school districts. Any district applying for a grant or having received a grant pursuant to the Act shall at a minimum comply with the requirements of this chapter, as applicable.

Amended by R.2002 d.184, effective June 17, 2002.

See: 34 N.J.R. 876(a), 34 N.J.R. 2137(a).

Rewrote section.

Amended by R.2004 d.411, effective November 1, 2004.

See: 36 N.J.R. 935(a), 36 N.J.R. 4954(a).

Inserted "New Jersey Schools Construction Corporation (the "Corporation"), a subsidiary of the" preceding "New Jersey Economic Development Authority"; substituted references to the Corporation for the Authority throughout.

Amended by R.2008 d.8, effective January 7, 2008.

See: 39 N.J.R. 2478(a), 40 N.J.R. 199(a).

Rewrote the section.

19:32-1.2 Construction of rules

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

Amended by R.2004 d.411, effective November 1, 2004.
See: 36 N.J.R. 935(a), 36 N.J.R. 4954(a).
Administrative correction.
See: 40 N.J.R. 809(b).

19:32-1.3 Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended.

“Agreement” or “grant agreement” means the grant agreement (and all attachments thereto) between the Authority and the district. The agreement shall set forth the terms and conditions of the grant, amount of the grant, final eligible costs, State share, local share, and disbursement schedule.

“Approved costs” means costs of the school facilities project which are eligible to be paid from the proceeds of the grant and have been paid or shall be paid by the district.

“Authority” means the New Jersey Schools Development Authority established, pursuant to section 3 of P.L. 2007, c. 137, the successor entity to the New Jersey Schools Construction Corporation.

“Authorized officer” means:

1. With respect to the district, any person or persons authorized pursuant to a resolution of the governing body of the district to perform any act or execute any document relating to the grant and the grant agreement, including the school business administrator; and
2. With respect to the Authority, any person or persons authorized to perform any act or execute any document relating to the grant and the grant agreement.

“Bond counsel” means any lawyer or firm of lawyers nationally recognized in the field of municipal finance and satisfactory to the NJEDA.

“Capital maintenance project” means a school facilities project intended to extend the useful life of a school facility, including upgrades and replacements of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems.

“Capital reserve account” means the account of the district established pursuant to N.J.A.C. 6A:23-2.13.

“Change order” means a written order, directing or authorizing some change, in whatever degree to a design consultant

contract or construction contract, including, but not limited to, an increase or decrease in the scope of work to be performed by the design consultant or the contractor, as the case may be, or an acceleration of time for the performance of such work, or a change in the sequence in which such work is being performed.

“Checklist” means a form to be provided by the Authority and to be completed by the district at various milestones in the design and construction of the school facilities project prior to receiving certain disbursements of the grant. There may be a design phase checklist, a construction phase checklist, a final completion checklist or a checklist or other certification to be submitted by the district for other stages in the completion of a school facilities project. The district may file a checklist electronically if such option is made available to the district by the Authority.

“Closeout” means the process by which the Authority determines that all applicable administrative actions and all required work have been completed by the district.

“Code” means the “Internal Revenue Code of 1986, as amended,” as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto, and administrative and judicial interpretations thereof.

“Commencement date” means the date on which a grant agreement has been fully executed by all the parties thereto and the district has delivered, to the satisfaction of the Authority, the documentation required by the grant agreement and N.J.A.C. 19:32-2.4.

“Commissioner” means the Commissioner of the New Jersey Department of Education or his or her designee.

“Completion date” means the date specified by the district for completion of the school facilities project which may be changed by the district upon notice to the Authority.

“Construction contract” means an agreement between the district and the contractor governing the construction of all or a portion of a school facilities project and any documents attached thereto and amendments thereof. There may be one or more construction contracts for a school facilities project.

“Construction phase” means that phase of a school facilities project in which construction of the school facilities project is undertaken by a contractor or contractors.

“Consultant” means a consultant, including a design consultant, engaged by the district for a school facilities project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, con-

ceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. There may be one or more consultants engaged by the district for a school facilities project.

“Contract” means a contract between a contracted party and the district for a school facilities project. The term “contract” includes a design consultant contract, a construction contract and any other contracts, subcontracts and agreements between:

1. The district and its consultants;
2. The district and its contractors;
3. Contractors and their subconsultants and subcontractors; and
4. Consultants and their subconsultants and subcontractors.

“Contracted party” means a consultant, contractor, and their subconsultants and subcontractors and any other party providing material or services to the district in connection with a school facilities project.

“Contractor” means that person or firm engaged by the district to undertake the construction of a school facilities project. There may be either a single “general” contractor who has overall contractual responsibility for delivering all of the construction services needed to complete a school facilities project or there may be multiple contractors who have responsibility for delivering particular aspects of a school facilities project.

“DCA” means the New Jersey Department of Community Affairs.

“Department” means the New Jersey Department of Education.

“Department regulations” means regulations issued by the Commissioner and/or the State Board of Education which govern the financing, construction and maintenance of school facilities projects.

“Design consultant” means an architect or engineer or other consultant selected by the district to provide design services and/or construction administration services in connection with a school facilities project pursuant to a design consultant contract.

“Design consultant contract” means an agreement between the district and the design consultant for design of a school facilities project and any documents attached to such agreement and any amendments to such agreement.

“Design phase” means that phase of a school facilities project in which a school facilities project is designed by the design consultant.

“Disbursement” means a release of a portion of the grant to the district to pay for approved costs.

“District aid percentage” means the number, expressed as a percentage derived from dividing the district’s actual core curriculum standards aid calculated pursuant to N.J.S.A. 18A:7F-15 available as of the date of the Commissioner’s determination of preliminary eligible costs by the district’s actual Thorough and Efficient (T & E) budget calculated pursuant to N.J.S.A. 18A:7F-13(d) available as of the date of the Commissioner’s determination of preliminary eligible costs.

“District board” means the board of education of the district.

“Division of Criminal Justice, Bureau of Fiscal Oversight/SDA” or “Bureau of Fiscal Oversight/SDA” means the unit which is the successor to the Unit of Fiscal Integrity within the Office of the Attorney General created by N.J.S.A. 18A:7G-43.

“DOL” means the New Jersey Department of Labor and Workforce Development.

“Event of default” means any event specified in N.J.A.C. 19:32-1.13.

“Excess costs” means the additional costs of a school facilities project, if any, which shall be borne by the district, which result from design factors that are not required to meet the facilities efficiency standards and are not approved pursuant to N.J.S.A. 18A:7G-5(g) or are not authorized as community design features included in final eligible costs pursuant to N.J.S.A. 18A:7G-6(c). Excess costs are to be distinguished from the additional costs arising out of design factors that are required to meet the facilities efficiency standards and that are either approved or authorized pursuant to N.J.S.A. 18A:7G-5 or 6.

“Expiration date” means the date upon which the term of the grant agreement automatically ends, which shall be the third anniversary of the date of final payment of the grant and closeout.

“Final completion” means that point in time when all requirements of all contracts for a school facilities project have been fully performed, all items on the punchlist have been fully performed, all manuals, warranties and as-builts are delivered, all liens have been released and a final certificate of occupancy, continued use or completion has been issued.

“Final eligible costs” means the final approved costs of a school facilities project as determined pursuant to N.J.S.A. 18A:7G-5(h)(1) and N.J.A.C. 6A:26-3.6.

“Governmental authority” means the United States, the State or any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality which has jurisdiction over a school facilities project or any

part thereof or over the design, construction, equipping, use or occupancy of a school facilities project.

“Grant” means the funds to be provided to the district by the Authority to pay for the approved costs of a school facilities project pursuant to this chapter.

“Local share” means the total costs less the State share as determined pursuant to N.J.S.A. 18A:7G-15.

“Long-range facilities plan” means the plan required to be submitted to the Commissioner by a district pursuant to N.J.S.A. 18A:7G-4.

“Milestones” means the critical activities of the design and construction of a school facilities project which are expected to be completed and the percentage of the grant to be paid provided that all conditions precedent have been satisfied to the sole satisfaction of the Authority.

“NJEDA” means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c. 80 (N.J.S.A. 34:1B-1 et seq.)

“NJEDA bonds” means bonds issued by the New Jersey Economic Development Authority pursuant to section 25 of P.L. 2007, c. 137, the proceeds of which may fund all or part of the grant.

“Other facilities” means athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities, including, but not limited to, grandstands and night field lights, greenhouses, facilities used for non-instructional or non-educational purposes, and any structure, building or facility used solely for school administration.

“Performance evaluation policy and procedure” means the policies and procedures developed by the Authority for the purpose of evaluating the performance of consultants and contractors who perform services in connection with school facilities projects.

“Plans and specifications” means the plans and specifications of a school facilities project prepared by a design consultant and approved by the Department pursuant to N.J.A.C. 6A:26-5.4.

“Preliminary eligible costs” means the initial approved costs of a school facilities project determined pursuant to the formulas set forth in N.J.S.A. 18A:7G-7 which shall be deemed to include the costs of construction and other allowable costs.

“PSCL” means the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., together with all applicable regulations and guidance issued by the DCA in connection therewith.

“Punchlist” means the list, prepared before substantial completion, of incomplete or defective work to be performed or remedied by a contractor after substantial completion.

“Request for disbursement” means a written certified statement by the district, in such form and manner as specified by the Authority requesting that grant funds be disbursed to the district by the Authority for approved costs which shall provide a complete description of the approved costs that have been paid or shall be paid, as applicable, and shall be certified by the vendor and the authorized officers of the district. The request for disbursement shall include a voucher.

“Requirements” means any law, ordinance, order, rule or regulation of a governmental authority applicable to a school facilities project, a grant and the work performed thereunder.

“School bonds” means the bonds, notes or other obligations issued by a district to finance the local share.

“School business administrator” means the person appointed by the district board pursuant to N.J.A.C. 6:11-9.

“School facility” means and includes any structure, building or facility used wholly or in part for educational purposes by a district and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, but shall exclude other facilities.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the school facilities project.

“State” means the State of New Jersey.

“State share” means the State’s proportionate share of the final eligible costs, which equals 115 percent of the district aid percentage or 40 percent, whichever is greater as provided in N.J.S.A. 18A:7G-15.

“Subconsultant” means a consultant or contractor to whom a consultant subcontracts part of the work of a school facilities project for which the consultant is responsible.

“Subcontractor” means a contractor to whom a contractor or consultant subcontracts part of the work of a school facilities project for which such contractor or consultant is responsible.

“Substantial completion” means that point in time for a school facilities project when all of the following have occurred:

1. All essential requirements of the contracts have been fully performed so that the purpose of the contracts is accomplished;