CHAPTER 32

SCHOOL FACILITIES PROJECTS: P.L. 2000, C.72, SECTION 15 GRANT PROCEDURES

Authority

P.L. 2000, c.72 §§ 15 and 26(b).

Source and Effective Date

R.2002 d.184, effective May 22, 2002.
See: 34 N.J.R. 876(a), 34 N.J.R. 2137(a)

Chapter Expiration Date

Chapter 32, School Facilities Projects: P.L. 2000, c.72, Section 15 Grant Procedures, expires on May 22, 2007.

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: 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: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

19:32–1.1 Applicability and scope
19:32–1.2 Construction of rules
19:32–1.3 Definitions
19:32–1.4 Administration and performance of grant agreements
19:32–1.5 Disclosure and publicity
19:32–1.6 Access and record retention
19:32–1.7 Fraud and other unlawful or corrupt practices
19:32–1.8 Debarment
19:32–1.9 Performance evaluation policy and procedure
19:32–1.10 Noncompliance
19:32–1.11 Notice of noncompliance
19:32–1.12 Withholding of funds
19:32–1.13 Termination of the grant agreement for cause
19:32–1.14 Termination by mutual agreement
19:32–1.15 Severability
19:32–1.16 Waiver

SUBCHAPTER 2. ELIGIBILITY

19:32–2.1 Applicability
19:32–2.2 Eligibility
19:32–2.3 Eligibility determination
19:32–2.4 Execution of the grant agreement
19:32–2.5 No assignment of grant agreement or grant by the district
19:32–2.6 Effect of grant awards

SUBCHAPTER 3. DISBURSEMENT OF THE GRANT

19:32–3.1 Amount of the grant
19:32–3.2 Cost overruns
19:32–3.3 Legal and/or equitable interest
19:32–3.4 Disbursements
19:32–3.5 Conditions precedent to payment of a disbursement
19:32–3.6 Checklists
19:32–3.7 Closeout procedures
19:32–3.8 (Reserved)

SUBCHAPTER 4. UNDERTAKING THE SCHOOL FACILITIES PROJECT

19:32–4.1 General provisions
19:32–4.2 Contract award and compliance

SUBCHAPTER 1. GENERAL PROVISIONS

19:32–1.1 Applicability and scope

These rules are promulgated by the New Jersey Economic 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) (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 whose district aid percentage as defined in the Act is less than 55 percent and which elect not to have the Authority undertake the construction of the school facilities project. These rules also apply to a school district whose district aid percentage is less than or equal to 55 percent, providing this district has had a school facilities project approved by the Department pursuant to Section 9(c) of the Act and the district elects not to have the Authority undertake the construction of the school facilities project. 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.

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.

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.

"Agreement" or "grant agreement" means the grant agreement (and all attachments thereto) between the Authority and the district. The agreement shall set forth the

New Jersey State Library

terms and conditions of the grant, the 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 Economic Development Authority established pursuant to P.L. 1974, c.80 (N.J.S.A. 34:1B–1 et seq.)

"Authority bonds" means bonds issued by the Authority pursuant to N.J.S.A. 18A:7G–14, proceeds of which may fund all or part of the grant.

"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 Authority.

"Capital reserve account" means the account of the district established pursuant to N.J.A.C. 6A:26–9.1.

"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, conceptual 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.

Section was "Closeout procedures".

SUBCHAPTER 4. UNDERTAKING THE SCHOOL FACILITIES PROJECT

19:32–4.1 General provisions

(a) The district shall design and construct the school facilities project pursuant to the plans and specifications and as approved by the Department pursuant to N.J.S.A. 18A:7G–5. Any changes in the school facilities project which may impact educational adequacy (the number, size, configuration, location or use of educational spaces) shall be reviewed and approved by the Department as required under N.J.A.C. 6:20–8.3 and 6A:26–4.9 prior to such changes being made. Notwithstanding anything to the contrary, any changes whether reviewed by the Department or not, shall not be eligible for funding under the grant agreement.

(b) The district shall, with all due diligence, proceed to construct the school facilities project in accordance with the plans and specifications. If during the construction of the school facilities project, the district determines that a change in a construction contract is required, it shall comply with any and all requirements for approval of a request for a change order pursuant to N.J.A.C. 6A:26–4.9 and any other applicable Department regulations.

(c) The district shall promptly notify the Authority in writing of events or proposed changes in the scope of the school facilities projects, the schedule for completion and/or any other significant changed conditions concerning the school facilities project.

Amended by R.2002 d.184, effective June 17, 2002.
See: 34 N.J.R. 876(a), 34 N.J.R. 2137(a).
In (a), rewrote second sentence; in (b), inserted N.J.A.C. reference in second sentence, and deleted third sentence.

19:32–4.2 Contract award and compliance

(a) The district shall be responsible for the letting of contracts for the design, acquisition, construction and installation of the school facilities project, supervision of design and construction, acceptance of the completed school facilities project or parts thereof, and all other matters incidental to performance of the duties and powers expressly granted herein to be undertaken in connection with the acquisition, construction and completion of the school facilities project. The district shall continually monitor its performance to assure that time schedules are being met and that the completion of the school facilities project will occur in a timely, efficient and effective manner. In the event of default of any contracted party under any contract, or in the event of a breach of warranty with respect to any contract, the district shall reasonably exhaust the remedies against the defaulting contracted party and against each such surety for the performance of such contracts. The district shall diligently prosecute or defend any action or proceeding, or take any other action involving the contracted party, that the district deems reasonably necessary.

(b) The district shall obtain and maintain all licenses, certifications, authorizations, or any documents required by all governmental authorities wherever necessary. The district shall promptly notify the Authority and the Unit of Fiscal Integrity in writing of any disciplinary action against itself or, if it has knowledge of, any contracted party or any change in the status of any license, permit, or other authorization required for the school facilities project.

(c) The district shall award all contracts for the school facilities project in accordance with the PSCL and the rules and regulations adopted pursuant thereto.

(d) All contractors engaged by the district and subcontractors named in the four branches specified in N.J.S.A. 18A:18A–18 who perform any work on the school facilities project shall be prequalified pursuant to the Authority prequalification process. Any contractor whose contract amount is less than the bid threshold pursuant to N.J.S.A. 18A:18A–3 shall not be subject to the prequalification process for bidders on school facilities projects pursuant to Section 59 of the Educational Facilities Construction Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G–33).

(e) All construction contracts shall contain provisions that the contractor and subcontractor, as applicable, shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11–56.25 et seq. The district shall not hire any contractor or subcontractor to perform any work for the district who is listed or is on record in the Office of the Commissioner, Department of Labor, as having failed to pay prevailing wages in accordance with the provision of the New Jersey Prevailing Wage Act.

(f) All contracts shall contain provisions that the contracted party shall comply with the anti-discrimination provisions of N.J.S.A. 10:2–1 et seq., the New Jersey Law Against Discrimination, N.J.S.A. 10:5–1 et seq., N.J.A.C. 17:27 and N.J.A.C. 6:4–1.6. The district and its contracted parties shall in addition agree by contract and guarantee to afford equal opportunity in performance of the contracts in accordance with an affirmative action program approved by the State Treasurer. During the design and construction of the school facilities project, the district and the contracted parties shall abide by the following provisions and shall provide in any contracts provisions as follows:

1. The district and its contracted parties shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. The district and its contracted parties shall take affirmative action to ensure that such applicants are recruited and employed, that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The district and its contracted parties agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The district and its contracted parties shall, in all solicitations or advertisements for employees placed by or on behalf of the district and its contracted parties state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.

3. The district and its contracted parties shall send to each labor union or representative of workers with whom they have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the district, advising the labor union or workers representative of the district's and its contracted parties' commitments under the grant agreement and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(g) No official or employee of the district who is authorized in his or her official capacity to negotiate, make, accept or approve or to take part in such decision regarding a contract in connection with the school facilities project shall have any financial or other personal interest in any such contract. The School Ethics Law, N.J.S.A. 18A:12–21 et seq. and N.J.A.C. 6A:28 shall by reference be incorporated as part of the grant agreement.

1. The district shall report in writing to the Attorney General, the Unit of Fiscal Integrity and the Executive Commission on Ethical Standards the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor.

2. The district shall not influence, or attempt or influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner that might tend to impair the objectivity or independence of judgment of said officer or employee.

(h) All contractors and subcontractors bidding on the school facilities project shall be registered pursuant to N.J.S.A. 34:11–56.48 et seq.

(i) Upon final completion and thereafter, the district shall ensure that the school facilities project is properly maintained so that its useful life can be achieved and shall ensure that all warranties remain in full force and effect. The district shall submit a plan for the maintenance of the school facility project to the Department and the Authority prior to closeout, which plan shall, in addition to other requirements, provide for the establishment and funding of a maintenance reserve fund in accordance with N.J.A.C. 6:24. In addition, prior to closeout, the district shall establish dates for equipment testing, acceptance periods, warranties and instructional requirements and shall thereafter maintain the school facilities project in accordance therewith.

(j) The district shall submit proof to the Authority that it and any contracted party shall comply with all insurance requirements of the grant agreement and, when appropriate, shall certify that the insurance is in full force and effect and that the premiums have been paid.

(k) The district shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any Authority bonds from Federal gross income for purposes of Federal income taxation as that status is governed by Section 103(a) of the Code. The district shall submit information at the times and in the manner as may be required by bond counsel, from time to time.

(*l*) The district shall require all contracted parties to enter into certifications at the times and in the manner specified by the Authority in the grant agreement. Such certifications shall include a certification by the design consultant, upon award of its contract, at construction completion stages identified in the schedule of disbursements and again at final completion; certifications by any other consultants upon award of their contracts; certification by the contractors upon award of their contracts; certification by the school business administrator, upon award of the design consultant contract and again at final completion. The district shall also complete tax certifications as may be required by the Authority to ensure the tax-exempt status of the Authority bonds.

(m) The district shall require all bidders to submit with their bids an unconditional certified check, cashier's check, or bid bond in an amount of 10 percent of the bidder's base bid but not in excess of $20,000. Such bid guarantee serves as a guarantee that, should a bidder's bid be accepted, the bidder will execute and comply with the contract.

(n) The district shall require the provision of performance bonds or other security pursuant to N.J.S.A. 18A:18A–25.

(*o*) The following concern contracts:

1. The district shall include the following statements in each contract awarded by the district in connection with the school facilities project: "This contract or subcontract is or may be funded in part with funds from the New Jersey Economic Development Authority. Neither the State, the New Jersey Economic Development Authority, nor any of its departments, agencies, board members or employees is, or will be, a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the requirements contained in N.J.A.C. 19:32. In accordance with the provisions of N.J.S.A. 18A:7G–15, the contractor (subcontractor) (consultant) (subconsultant) agrees to comply with all of the provisions of N.J.A.C. 19:32."

2. The district shall include a provision in each contract awarded by the district in connection with the school facilities project which states that the contracts are assignable to the Authority.

(p) The Authority may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Act.

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.