

CHAPTER 32

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

Authority

P.L. 2000, c.72, §§ 15 and 26b.

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Chapter Historical Note

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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. These rules are adopted in order to provide the mechanism whereby school districts who 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.

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

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. Any references to particular sections of the New Jersey Code Administrative (N.J.A.C.) shall be deemed to refer to any sections of the N.J.A.C. that amend or supersede sections of the N.J.A.C. indicated in this Agreement.

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

"Agreement" means the grant agreement (and all attachments thereto) between the Authority and the district.

"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. 6:23A-5.

“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 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. The district will submit the completed checklist to the DCA for review which will forward the information to the Authority for approval. There shall be a design phase checklist; a construction phase checklist; and a final completion checklist. The district may file a checklist electronically if such option is made available to the district by the Authority. The checklists may be revised 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.

“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.

“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” shall have its meaning as set forth in the Act.

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

“DOL” means the New Jersey Department of Labor.

“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 and which are not contained in the final eligible costs.

“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).

“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.

“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 dates by which critical activities of the design phase and the construction phase 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.

“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. 6:22-1.6.

“Preliminary eligible costs” means the initial approved costs of a school facilities project determined pursuant to N.J.S.A. 18A:7G-7.

“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 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 academic purposes by a district, but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration.

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or 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;
2. The punchlist has been created;
3. There are no important or material omissions or technical defects or deficiencies regarding the school facilities project;
4. When a temporary certificate of occupancy, continued use or completion has been issued; and
5. The school facilities project is ready for occupancy in accordance with its intended purpose.

"Suspension" means a temporary cessation of disbursements to the district.

"Term" means the term of the grant agreement which shall commence on the commencement date and shall end on the expiration date, unless sooner terminated.

"Termination" means the cancellation of the grant agreement as a result of an event of default or by mutual consent of the parties pursuant to N.J.A.C. 19:32-1.13.

"Total costs" means the actual total amount spent on a school facilities project.

"Unavoidable delays" means any delays due to weather, strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes similarly beyond the control of the district; provided, however, that any lack of funds beyond those funds to be provided pursuant to the grant agreement shall not be deemed a cause beyond the control of the district.

"Unit of Fiscal Integrity" means that unit within the Office of the Attorney General created by N.J.S.A. 18A:7G-43.

"Voucher" means the voucher in the form provided by the Authority executed and delivered to the Authority by the district, together with a request for disbursement.

19:32-1.4 Administration and performance of grant agreements

The district is responsible for the administration and success of the school facilities project, and the provision of the grant by the Authority shall not in any way be deemed to imply that the Authority shall have any responsibility for the administration or success of the school facilities project. Although districts are encouraged to seek the advice and opinion of the Authority on problems that may arise regarding the school facilities project, the giving of such advice by the Authority shall not shift the responsibility for final decisions from the district to the Authority, nor render the Authority responsible for such advice. Moneys awarded pursuant to this chapter shall be used in conformance with the Act, this chapter and the provisions of the grant agreement to achieve the grant objectives and to insure that the purposes set forth in the Act are fully executed.

19:32-1.5 Disclosure and publicity

(a) All applications and submissions received by the Authority shall constitute public records of the Authority. The Authority shall make them available to persons who request their release to the extent required by State law.

(b) Press releases and other public dissemination of information by the district concerning the school facilities project shall acknowledge Authority financial assistance.

19:32-1.6 Access and record retention

(a) The Authority, the Department, the DCA, the Unit of Fiscal Integrity, the DOL, and their duly authorized agents may, at their discretion and cost, investigate, audit, examine and inspect the activities, documents, records and accounts (pertaining to the school facilities project) of the district and all other parties involved with the school facilities project. They shall have the right to enter upon and examine, inspect and audit the school facilities project and to make any copies or abstracts of any document, record or account relating thereto. The district or the contracted parties, as the case may be, shall furnish facilities for such access, inspection and document reproduction. The Authority, the Department and the Unit of Fiscal Integrity, the DCA and the DOL and their agents shall have the right to make unannounced examinations, inspections and audits as deemed necessary. Such agencies shall, whenever possible, make such visits and inspections at reasonable times and upon prior notice but shall not be required to do so if in their sole judgment such notice and times cannot be provided. The district shall include in all contracts a provision requiring contracted parties to permit the Authority, the Unit of Fiscal Integrity, DCA, the Department, the DOL and their duly authorized agents to investigate, audit, examine and inspect in such manner and at such times as the Authority, the Unit of Fiscal Integrity, the DCA, the Department, the DOL and their agents deem necessary. The Authority and the Unit of Fiscal Integrity shall have the right to have access to all work product produced in connection with audits made by the district or its accountant or by the contracted parties or their accountants.

(b) The district shall keep those records and accounts and shall require all contracted parties to keep those records and accounts for the school facilities project as necessary in order to evidence compliance with the Act, the PSCL, the grant agreement, and all applicable regulations and requirements. Financial records, supporting documents, and all other records of the district and the contracted parties which relate in any way to the school facilities project and/or to the grant shall be retained for 10 years following closeout, provided however, if any litigation, claim or audit relating to the school facilities project and/or to the grant is commenced prior to closeout, such records and documents shall be retained until all litigation, claims or audit findings involving the records have been fully resolved.

19:32-1.7 Fraud and other unlawful or corrupt practices

(a) The district shall administer moneys pursuant to this chapter, the grant agreement and any contracts entered into in connection with the school facilities project free from bribery, graft and corrupt practices. The district has the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The Authority shall have the right to pursue administrative or other legally available remedies in the event it suspects the occurrence of such conduct.

(b) The district shall diligently pursue available judicial and administrative remedies and take any other appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The district shall immediately notify the Authority and the Unit of Fiscal Integrity in writing when any such allegation or evidence comes to its attention and shall periodically advise the Authority and the Unit of Fiscal Integrity in writing of the status and ultimate disposition of any related matter.

19:32-1.8 Debarment

(a) The district and its consultants or contractors shall not enter into a contract for work on the school facilities project with any person or firm who has been debarred, suspended or disqualified from State, Authority or Federal government contracting.

(b) The district shall insert in all contracts with all contracted parties, and all contractors and consultants shall insert into all of their contracts with all subconsultants and subcontractors, a clause stating that the contracted party, its subconsultants or subcontractors may be debarred, suspended or disqualified from contracting and/or working on the school facilities project if the contracted party commits any of the acts listed in N.J.A.C. 17:19-3 or 6:20-7 or any applicable regulation issued by the Authority.

(c) The district's bid specification for any work on the school facilities projects shall require all bidders to submit a sworn statement by the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's, the Authority's, or the Federal government's List of Debarred, Suspended or Disqualified Bidders as a result of action taken by any State or Federal agency, as the case may be. Bid specifications for the school facilities project shall also state that the district shall immediately notify the State, the Authority and the Unit of Fiscal Integrity in writing whenever it appears that a bidder is on the Treasurer's, the Authority's or the Federal government's List. The State and the Authority reserve the right in such circumstances to immediately suspend such bidder from contracting and/or engaging in work on the school facilities project and to take such other action as it deems appropriate pursuant to N.J.A.C. 17:19-3 or 6:20-7 or any applicable regulation issued by the Authority.

(d) The district shall have a continuing and affirmative obligation so long as the grant agreement is in effect to immediately notify the State and the Authority in writing whenever it obtains knowledge that any contracted party, subconsultant or subcontractor is on the Treasurer's, the Authority's or the Federal government's List. The State and the Authority reserve the right in such circumstances to immediately suspend such contracted party, subconsultant or subcontractor from contracting and/or engaging in work on the school facilities project and to take such other action as

it deems appropriate pursuant to N.J.A.C. 17:19-3 or 6:20-7 or any applicable regulation issued by the Authority.

19:32-1.9 Performance evaluation policy and procedure

The Authority may establish and maintain a consultant and contractor performance evaluation policy and procedure. The performance of any consultants and contractors engaged by the district for the school facilities projects shall be evaluated by the district at the times and in the manner specified by the Authority. This evaluation shall consider, among other things, the consultants' and contractors' ability to deliver and complete the school facilities project within the specified time frame and budget established by the district and consistent with the requirements of the contracts.

19:32-1.10 Noncompliance

(a) In addition to any other remedies as may be provided by law or by the grant agreement, in the event of noncompliance with any provisions of the Act, any condition of the grant agreement or any requirement of this chapter, the Authority may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 19:32-1.11;
2. Withhold grant moneys pursuant to N.J.A.C. 19:32-1.12;
3. Suspend the provision of grant moneys pursuant to N.J.A.C. 19:32-1.13; and/or
4. Terminate the grant agreement or rescind the grant moneys pursuant to N.J.A.C. 19:32-1.13.

19:32-1.11 Notice of noncompliance

In the event that the Authority determines that the district is not in compliance with any provision of the Act, any condition of the grant agreement, or any condition of this chapter, it will notify the district of the noncompliance in writing. The Authority may require the district, its consultants and/or contractors to take and complete corrective action within 10 working days of receipt of the notice. If the corrective action is not taken within the requisite time period or if the action taken is inadequate as determined by the Authority, the Authority may take any of the following actions or combinations contained in N.J.A.C. 19:32-1.12 and 1.13.

19:32-1.12 Withholding of funds

The Authority may withhold, upon written notice to the district, grant disbursements or any portion thereof where it determines that a district has failed to comply with any provision of the Act, any condition of the grant agreement or any requirement of this chapter.

19:32-1.13 Termination of the grant agreement for cause

(a) The Authority may terminate the grant agreement upon an event of default, which shall include, but not be limited to:

1. Failure by the district to observe and perform any duty, covenant, condition or agreement on its part to be observed or performed under the grant agreement, which failure shall continue for a period of 30 days after receipt of written notice specifying such failure and requesting that it be remedied is given to the district by the Authority, unless the Authority shall agree in writing to an extension of such time prior to its expiration, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Authority may not unreasonably withhold its consent to an extension of such time up to 120 days from delivery of the written notice referred to above or if corrective action is instituted by the district within the applicable period and diligently pursued until the event of default is corrected;
2. Any representation made by or on behalf of the district contained in the grant agreement, or in any instrument furnished in compliance with or with reference to the grant agreement or the grant, is false or misleading in any material respect;
3. A determination is made by the Authority that:
 - i. The grant was obtained by fraud; or
 - ii. Gross abuse or corrupt practices have occurred in the administration of the school facilities project by the district;
4. Subject to unavoidable delays, the construction of the school facilities project has not commenced within 18 months after the commencement date;
5. Subject to unavoidable delays, the construction of the school facilities project has not reached final completion on or before the completion date;
6. The district has utilized grant moneys for costs that are not approved costs;
7. Work on the school facilities project has ceased without good cause as agreed to by the Authority. The term "good cause" shall include, but not be limited to, circumstances beyond the control of the District or any of the contracted parties such as fire, flood, riot or strike;
8. The district has contracted with a contractor or a subcontractor in one of the four branches specified in N.J.S.A. 18A:18A-18 and such contractor or subcontractor has not been prequalified;
9. The district has disbursed grant monies to a firm which is debarred, suspended or disqualified from State or Authority contracting or to a firm which has not been prequalified; or

10. The district fails to permit the Authority, DCA or the Unit of Fiscal Integrity immediate entry or inspection.

(b) The Authority shall promptly notify the district, in writing, of its determination to terminate the grant agreement and the reasons for the termination, together with the date on which the termination shall take effect.

(c) Upon termination of the grant agreement, the Authority may demand that an amount equal to the grant received by the district be immediately returned to the Authority and the district shall waive payment by the Authority of the undistributed balance, and upon notice to the district, the amount of the grant disbursed by the Authority shall be immediately due and payable by the district together with any costs to the Authority resulting from an event of default by the district.

(d) In addition to any termination action, the Authority retains the right to pursue any and all other remedies as may be available under State law as warranted.

(e) The Authority may, upon written notice to the district, suspend the grant agreement and withhold further payments thereunder and prohibit the district from incurring additional obligations of grant funds pending corrective action by the district.

(f) At the option of the Authority, in its sole discretion, the Authority may, without prejudice to any other rights or remedies, take an assignment of any of the contracts in order to complete the school facilities project, and the district shall take whatever actions are necessary in order to ensure the proper assignment to the Authority of such contracts.

(g) The district shall on demand pay to the Authority the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of the repayment of the grant or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements, of the district upon an event of default.

19:32-1.14 Termination by mutual agreement

The Authority and the district may terminate the grant agreement when both parties agree that the continuation of the school facilities project would not produce beneficial results commensurate with the further expenditure of funds. The Authority and the district shall agree upon the conditions for termination including the date on which the termination shall take effect. The closeout provisions specified in N.J.A.C. 19:32-3.8 shall apply.

19:32-1.15 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid by a court of

competent jurisdiction, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this chapter are declared to be severable.

19:32-1.16 Waiver

If the district received approval from the Department for the school facilities project prior to the effective date of these regulations, the district may request a waiver from compliance with certain provisions of these regulations and the grant agreement with which it would not be possible for the district to comply. The request for a waiver must specify the specific provisions of these regulations and the grant agreement that the district is requesting should not apply together with the reasons why such compliance is not possible. If such justification is found to be valid by the Authority, a waiver for such provision(s) shall be issued.

SUBCHAPTER 2. ELIGIBILITY

19:32-2.1 Applicability

This subchapter establishes the Authority's procedures and requirements governing the application for a grant and the execution of every grant agreement pursuant to Section 15 of the Act. Any affected district applying for a grant or having received a grant pursuant to Section 15 of the Act shall at a minimum conform with the requirements of this subchapter, as applicable.

19:32-2.2 Eligibility

(a) All of the following conditions shall apply regarding eligibility for a grant:

1. The district shall obtain one of the following:
 - i. Approval of the district's long range facilities plan pursuant to N.J.A.C. 6A:23;
 - ii. A waiver for approval of the school facilities project pursuant to N.J.S.A. 18A:7G-4(b); or
 - iii. Approval for retroactive funding pursuant to N.J.S.A. 18A:7G-9(c)—second paragraph.
2. The district shall obtain approval of the school facilities project from the Department pursuant to N.J.S.A. 18A:7G-5 and N.J.A.C. 6A:23A-2.3(n).
3. There is a final determination of the final eligible costs and the State share of the school facilities project by the Department pursuant to N.J.S.A. 18A:7G-5(h) and N.J.A.C. 6:23A-2.6(f).
4. The district shall obtain approval of educational adequacy and schematics from the Department pursuant to N.J.A.C. 6:22, if applicable. If land was acquired as part of the school facilities project, the district shall obtain

approval of the land acquisition from the Department pursuant to N.J.A.C. 6:22-2.

5. Any appeals by the district regarding any of the above approvals required to be obtained by the district from the Department for the school facilities project shall have been taken and completed at the highest level of appeal so that a final nonappealable order shall have been issued establishing approval for the school facilities project and determination of final eligible costs and State share.

6. The district shall obtain approval for the local share in accordance with the provisions for the approval of capital projects pursuant to N.J.S.A. 18A:22-1 et seq., N.J.S.A. 18A:24-1 and P.L. 1991, c.139 (N.J.S.A. 18A:7A-46.1 et seq.), as applicable to the district pursuant to N.J.S.A. 18A:7G-11 and N.J.A.C. 6:23A-2.7.

i. If the local share is funded through the issuance of school bonds, the district shall submit a referendum to the voters pursuant to N.J.S.A. 18A:22-39 and N.J.A.C. 6:23A-2.7 and the voters shall have approved the referendum in the amount of the local share.

ii. If the local share is to be funded through the capital reserve account, the district shall comply with the requirements of the Department regulations governing the use of the capital reserve account for the local share.

7. The local share must be available for expenditure.

i. In the case where the local share is funded through the issuance of school bonds, the district shall take such actions as are necessary to ensure that the school bonds are issued at such times and in such amounts as are required to fund the local share.

ii. In the case of use of other funds, the district shall provide evidence to the Authority that such funds are available to the district for expenditure as the local share.

8. The district shall delegate to the school business administrator supervision of the school facilities project.

19:32-2.3 Application procedures

(a) To apply for a grant, the district shall submit a completed application on a form to be provided by the Authority for review by the Authority. A completed application shall include:

1. A brief description of the school facilities project and the proposed timetable for completion of the school facilities project; and

2. Evidences of the approvals required pursuant to N.J.A.C. 19:32-2.2.

(b) Applications are processed through several layers of staff review at the Authority. If all conditions for eligibility have been satisfied, the application for a grant shall be approved.

(c) Applications shall be reviewed and approved for funding in the order in which they are received by the Authority.

19:32-2.4 Execution of the grant agreement

(a) Upon approval of an application pursuant to N.J.A.C. 19:32-2.3, the Authority shall prepare and transmit to the district the grant agreement as well as a sign which is to be erected by the district at the project site to the extent permitted by zoning laws indicating that financing was made available to the district through the Authority.

(b) The grant agreement shall set forth the terms and conditions of the grant, the amount of the grant, final eligible costs, State share, local share, and disbursement schedule.

(c) The district shall execute the grant agreement within such period of time and pursuant to such terms and conditions as the Authority may determine in its sole discretion.

(d) The grant agreement shall be executed by an authorized officer. A certified, true sealed copy of the authorizing resolution of the district shall also be submitted to the Authority at such time, together with all certifications, opinions and documents required to be submitted at the time of execution of the grant agreement including, but not limited to, a certificate executed by the school business administrator in the form to be provided by the Authority.

(e) The grant agreement shall be deemed to incorporate all requirements, provisions and information in documents or papers submitted to the Department or the Authority in the application process.

(f) Upon execution of the grant agreement by the district, the district shall return the grant agreement together with all applicable attachments to the Authority for execution by the Authority. After the Authority has completed its internal processing and execution of the grant agreement, the Authority shall transmit a copy of the executed grant agreement to the district.

(g) The Authority shall have no obligation to execute a grant agreement unless and until the Authority has determined that all conditions precedent to the execution of the grant agreement have been satisfied as the Authority may determine.

19:32-2.5 No assignment of grant agreement or grant by the district

The district shall not assign the grant agreement or its right to receive disbursements of the grant. The Authority may, at any time and in its sole option, assign the grant agreement to another instrumentality of the State.

19:32-2.6 Effect of grant awards

(a) At the time of the execution of the grant agreement by the district and the Authority, the grant for the school facilities project shall become effective and shall constitute an obligation of moneys in the amount and for the purposes set forth in the grant agreement.

(b) The award of the grant by the Authority shall not be used as a defense by the district to any action brought against the district by any governmental agency on account of the district's failure to comply with the Act or in order to obtain any requisite permit, license or operating certificate.

SUBCHAPTER 3. DISBURSEMENT OF THE GRANT

19:32-3.1 Amount of the grant

(a) The grant shall be in the amount of the State share and may be reduced upon final completion as set forth in the following paragraph.

(b) Prior to final completion and the final disbursement, the district shall certify to the Authority the total costs of the school facilities project. If such amount is less than the final eligible costs, the Authority shall adjust the amount of the grant accordingly pursuant to the following:

1. The total costs shall be subtracted from the final eligible costs;
2. The amount determined in (b)1 above shall be multiplied by 115 percent of the district aid percentage or 40 percent, whichever is greater; and
3. The number determined in (b)2 above shall be subtracted from the original amount of the grant. The remaining number represents the final amount of the grant.

19:32-3.2 Cost overruns

Cost overruns of the school facilities project shall be the sole responsibility of the district. The grant shall in no case exceed the amount of the State share, and the award of the grant shall not commit the Authority or the State to award any continuation or supplemental funds to cover cost overruns of the school facilities project. There shall be no grant modification increasing the grant amount. Increased costs resulting from changes in the scope of the school facilities project shall be the sole responsibility of the district.

19:32-3.3 Legal and/or equitable interest

The district shall have no legal or equitable interest in the assets of the Authority or in any amount from time to time on deposit in the funds and accounts of the Authority which may provide funding of the grant.

19:32-3.4 Requests for disbursements

(a) The district shall submit written requests for disbursements to the Authority requesting that grant monies be paid by the Authority to the district at various stages of the school facilities project as follows:

1. Upon execution of the grant agreement;
2. Upon completion of the design phase and satisfactory compliance with Executive Order No. 215(1989) as determined by the Authority, if applicable;
3. Upon award of the construction contracts;
4. Interval disbursements during construction; and
5. The disbursements upon final completion.

(b) The request for disbursement shall provide a complete description of the approved costs paid, shall include a voucher and shall be signed by an authorized officer of the district. Except with respect to the request for disbursement upon final completion, the request for disbursement shall only be for approved costs which have already been paid by the district.

19:32-3.5 Schedule of disbursements

(a) Disbursement of grant funds shall be made at intervals as work progresses and expenses are incurred by the district and approved by the Authority for payment. Total disbursements shall not exceed the grant amount and in any case shall not exceed the State share. No disbursement of the grant shall be made until the Authority receives all documentation required for that disbursement, including all forms and information required by the Authority and completed in a manner satisfactory to the Authority.

(b) The first disbursement of the grant in the amount of one half of one percent of the grant shall be made after execution of the grant agreement.

(c) The second disbursement of the grant in the amount of five percent of the grant shall be made upon:

1. Completion to the satisfaction of the Authority of the design phase checklist;
2. Satisfactory compliance with the Executive Order No. 215(1989) as determined by the Authority; and
3. Approval by the Department of the final plans and specifications pursuant to N.J.A.C. 6:22-1.6.

(d) The third disbursement of the grant in the amount of five percent of the grant shall be made upon completion to the satisfaction of the Authority of the construction phase checklist.

(e) Following the third disbursement and up to the disbursement upon final completion, the Authority shall make disbursements to the district upon submission to the satis-

faction of the Authority of a request for disbursement based upon construction completion as follows:

1. When the school facilities project is 10 percent complete, the district will receive 15 percent of the grant;
2. When the school facilities project is 35 percent complete, the district will receive 20 percent of the grant;
3. When the school facilities project is 65 percent complete, the district will receive 35 percent of the grant.

(f) Upon final completion, the district shall prepare and submit to the Authority, for review and approval, a request for disbursement together with the final completion checklist. Upon approval, the Authority shall disburse the amounts remaining under the grant, the District shall thereupon make final payment to its contracted parties and thereupon, the Authority shall be released from any further responsibility to make any payments in connection with the school facilities project.

(g) In the case of special circumstances and/or extraordinary need, the district may request a waiver from the above schedule of disbursements upon application to the Authority indicating the reasons for such request and a proposed schedule of disbursements. Upon review by the Authority, the Authority may approve the waiver and shall notify the district accordingly.

19:32-3.6 Conditions precedent to payment of a disbursement

(a) When all of the following conditions precedent to the payment of a disbursement have been met, the Authority will provide the district with the disbursement.

1. The grant agreement has been executed and delivered;
2. No event of default has occurred and is continuing;
3. Costs listed in the request and voucher contain only approved costs;
4. The costs, including the costs paid by the Authority previously, do not exceed the grant;
5. The applicable checklist, if any, has been reviewed by DCA and approved by the Authority;
6. None of the items for which payment is requested has formed the basis for any previous request for disbursement; and
7. The district is in compliance with all requirements of governmental authorities with respect to the school facilities project.

19:32-3.7 Checklists

(a) The district shall be required to report to DCA and the Authority on the progress of the school facilities project by completing various checklists at various time points during the design and construction of the school facilities project as outlined in this section. Such checklists may, at the option of the district, be filed electronically.

1. Design phase: Upon completion of the design of the school facilities project as evidenced by the approval by the Department of the final plans and specifications, the district must complete the design phase checklist in the form provided by the Authority which shall evidence, to the satisfaction of the Authority, that the district has complied with the PSCL and all other applicable laws and regulations regarding the engagement of consultants by the district for the design of the school facilities project. This checklist will initially be submitted to DCA for review which will then forward the information to the Authority for approval.

2. Construction phase: Prior to beginning construction of the school facilities project, the district shall be required to complete the construction phase checklist in the form provided by the Authority which shall provide evidence, to the satisfaction of the Authority, that the district has complied with the PSCL and all other applicable laws and regulations in the engagement of contractors for the school facilities project. This checklist will be submitted to DCA for review which will then forward the information to the Authority for approval.

3. Final completion: Upon final completion, the district shall complete the final completion checklist in the form provided by the Authority to evidence, to the satisfaction of the Authority, that the school facilities project has been completed and that all applicable laws and regulations have been complied with.

19:32-3.8 Closeout procedures

(a) Closeout shall occur when all applicable administrative actions and all required work have been completed by the district. This process shall include the steps enumerated below:

1. In the event there are any grant proceeds which have not been expended on approved costs, such unexpended grant proceeds shall be released to the Authority and the amount of the grant shall be reduced by the amount of the unexpended proceeds.

2. Any proceeds of school bonds issued by the district for the purpose of funding the local share of the school facilities project which remain unspent upon completion of the school facilities project shall be used by the district to reduce the outstanding principal amount of the school bonds either through redeeming bonds at the earliest call date or applying such proceeds to payment of principal as principal becomes due. In no event shall such proceeds be utilized to pay the interest expense on the school bonds issued for any school facilities project.

3. The district shall refund to the Authority any grant funds spent on any costs which were disallowed by the Authority as not being approved costs. Such refund shall be made within 30 days of the request by the Authority.

4. If a final audit has not been performed on behalf of the district prior to closeout of the school facilities project, the Authority retains the right to recover any appropriate amount after full consideration of any recommendation on disallowed costs resulting from the final audit.

5. The Authority may require additional information from the district or its consultants and contractors and/or retain any grant amount not disbursed until closeout is completed.

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 final 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 shall be reviewed and approved by the Department as required under N.J.A.C. 6:20-8.3 and 6:23A-2.10(c)5 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 the construction contract is required, it shall comply with any and all requirements for approval of a request for a change order pursuant to applicable Department regulations. Any costs associated with any change orders shall be deemed excess costs and shall be paid by the district in their entirety, and neither the Authority nor the State shall have any liability whatsoever for such excess costs.

(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.

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.

(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 em-

ployment 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 which 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 applicable regulations. 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 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. 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-24.

(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. 19:32-1 et seq. 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. 19:32-1 et seq."

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.