

CHAPTER 36**P.L. 2000, c.72, SECTION 5(s) COMMUNITY EARLY CHILDHOOD EDUCATION FACILITIES****Authority**

P.L. 2000, c.72, §§ 5(s) and 26(b)

Source and Effective Date

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Chapter Expiration Date

Chapter 36, P.L. 2000, c.72, Section 5(s) Community Early Childhood Education Facilities, expires on November 17, 2008.

Chapter Historical Note

Chapter 36, P.L. 2000, c.72, Section 5(s) Community Early Childhood Education Facilities, was adopted as R.2003 d.449, effective November 17, 2003. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**19:36-1.1 Purpose and applicability of rules**

(a) These rules are promulgated by the New Jersey Schools Construction Corporation (the "Corporation"), a subsidiary of the New Jersey Economic Development Authority (the "Authority") to implement Section 5(s) of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-5(s) (the "Act"). Section 5(s) of the Act provides that school districts which are eligible for early childhood program aid (ECPA) may propose community early childhood education facility projects for facilities owned and operated by community providers. Such projects, when reviewed and approved by the Commissioner of Education, shall be eligible for State support under the Act, and either undertaken by the Corporation or, at the Corporation's discretion, delegated to the community provider. Whether the project is constructed by the Corporation or by the community provider, the Corporation is required under the Act to enter into an agreement with the district, the Commissioner of Education, and the community provider in

order to effectuate the project. The agreement will take the form of a grant agreement in the event of a delegated project and an implementation agreement if the Corporation itself undertakes the project. The Act also requires as a condition of providing State support for any such project that the State support must be repaid by the community provider under certain circumstances, such as the project no longer being used for its intended purposes.

(b) Any school district and community provider seeking to initiate a community early childhood education facilities project to be funded under section 5(s) of the Act shall at a minimum comply with the requirements of the chapter, as applicable.

19:36-1.2 Construction of rules

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

19:36-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Abbott district” means a school district as defined in N.J.S.A. 18A:7F-3.

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

“Approved costs” means the costs of the community early childhood education facilities project included in the approved budget and the initial project report which are approved by the Department as eligible costs to be paid from the State share pursuant to N.J.S.A. 18A:17G-5, unless disallowed by the Department prior to closeout as provided herein.

“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.).

“Authorization-to-proceed” means a notice to the community provider from the Corporation directing the community provider to commence performance of its responsibilities pursuant to the grant agreement. There may be separate authorizations-to-proceed as the community early childhood education facilities project progresses and according to the procurement, contract award, or other action authorized.

“Authorized officer” means:

1. With respect to the community provider, any person or persons authorized pursuant to a resolution of the governing body of the community provider to perform any act or execute any document relating to a grant agreement or implementation agreement;

2. 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 agreement or the implementation agreement, including the school business administrator; and

3. With respect to the Corporation, any person or persons authorized to perform any act or execute any document relating to the grant agreement or implementation agreement.

“Bond counsel” means any lawyer or firm of lawyers nationally recognized in the field of municipal finance and satisfactory to the 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 State share of the eligible costs of the community early childhood education facilities project.

“Budget” means the budget for pre-development costs approved by the Department.

“Change order” means a written order, directing or authorizing some change to a 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 or lengthening of time for the performance of such work, or for a change in the sequence in which such work is being performed.

“Closeout” means the process by which the Corporation determines that the community provider has completed all applicable administrative actions and all required work.

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

“Community early childhood education facility” means a facility in which early childhood education programs are provided to three and/or four-year-old children under contract with an ECPA district but where the facility is owned and operated by a community provider as defined in the Act.

“Community early childhood education facilities project” or “community provider project” means a school facilities project consisting of the rehabilitation of or addition to existing facilities in which early childhood education programs are provided to preschool students under contract with an ECPA district, but which are owned and operated by a community provider, as defined in the Act.

“Community provider” means a private entity which has contracted to provide early childhood education programs for an ECPA district and which:

1. Is licensed by the New Jersey Department of Human Services to provide day care services pursuant to N.J.S.A. 30:5B-1 et seq.; and

2. Is a tax exempt, nonprofit organization, as defined in the Act.

“Completion date” means the date specified by the community provider and the district for final completion of the community early childhood education facilities project, which may be changed as provided in the grant agreement for a Corporation-delegated project.

“Compliance period” means the period commencing upon execution of the grant agreement or the implementation agreement and ending 20 years after final completion, during which period the community provider is obligated to comply with the applicable agreement and may be liable for repayment of the State share to the Corporation, as evidenced by the note and mortgage, in the event of a default under the applicable agreement.

“Construction contract” means the agreement between the community provider and the contractor governing the construction of all or a portion of a delegated community early childhood education facilities project, and any documents attached thereto and amendments thereof. There may be one or more construction contracts for a community early childhood education facilities project.

“Consultant” means a consultant, including a design consultant, engaged by the community provider for a delegated community early childhood education facilities project providing professional services associated with 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, feasibility studies, 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 for the community early childhood education facilities project.

“Contract” means any contract between a contracted party and the community provider for the delegated community early childhood education facilities project. The term “contract” includes the design consultant contract, the construction contract and any other agreements between:

1. The community provider and its consultants;
2. The community provider and its contractors;
3. The contractors and their subconsultants and sub-contractors; and
4. The consultants and their subconsultants and sub-contractors.

“Contracted party” means a consultant, contractor, and their subconsultants and subcontractors and any other party providing material or services to the community provider in connection with the delegated community early childhood education facilities project.

“Contractor” means that person or firm engaged by the community provider to undertake the construction of a delegated community early childhood education 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 community early childhood education facilities project or there may be multiple contractors who have responsibility for delivering particular aspects of a community early childhood education facilities project.

“Corporation” means the New Jersey Schools Construction Corporation, a subsidiary of the Authority created by the Authority on August 13, 2002 pursuant to N.J.S.A. 34:1B-159 to carry out the Authority’s responsibilities under Act except for the power to incur indebtedness.

“Current working estimate” or “CWE” means the reasonable estimated cost to complete a community early childhood education facilities project as determined by the Department and includes the cost of construction, permits, site development, furnishings, contingencies, professional fees and any other similar types of costs. The CWE is as set forth in an initial and final project report and may be adjusted from time to time as provided in the applicable agreement entered into by the community provider, the district, the Department and the Corporation.

“Delegated community early childhood education facilities project” or “delegated community provider project” means a community early childhood education facilities project that the Corporation in its discretion delegates to be undertaken by the community provider.

“Department” means the New Jersey Department of Education.

“Department rules” means rules issued by the Commissioner and/or the State Board of Education that govern the financing, construction and maintenance of community early childhood education facilities projects.

“Design consultant” means the licensed architect or engineer or other consultant selected by a community provider to provide design services and/or construction administration services in connection with a delegated community early childhood education facilities project pursuant to a design consultant contract.

“Design consultant contract” means an agreement between a community provider and a design consultant for design of a delegated community early childhood education

facilities project and any documents attached to such agreement and any amendments to such agreement.

"Disbursement" means a release of a portion of a grant to a community provider or to a consultant or to a contractor to pay for approved costs.

"DOL" means the New Jersey Department of Labor.

"Due date" means the date established pursuant to a grant agreement when the district and the community provider shall submit the completed community early childhood education facilities project application to the Department.

"ECPA district" or "Early Childhood Program Aid district" means, under this chapter, a local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to Article 8 of Chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to Article 3 of Chapter 54 of Title 18A of the New Jersey Statutes, or a State-operated school district established pursuant to N.J.S.A. 18A:7A-35 et seq., that qualifies for early childhood program aid pursuant to N.J.S.A. 18A:17F-16.

"Event of default" means any event specified in N.J.A.C. 19:36-6.1 or 6.2.

"Final completion" means that point in time when all requirements of all contracts for the delegated community early childhood education facilities project have been performed; all items on the punchlist have been performed; all manuals, warranties and as-builts have been delivered; any and all liens have been released; and when a certificate of occupancy, continued use, or completion has been issued.

"Final project report" means the report issued by the Department as required by the Act, N.J.S.A. 18A:7G-5(s)(3), upon approval of the detailed plans and specifications and the determination of the CWE, and any amendments thereto by the Department, upon application by a community provider.

"For cause" means a material breach of contract by the community provider or any suspension, revocation or lapse of the community provider's license to provide day care services.

"Governmental authority" means the United States, the State of New Jersey or any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality that has jurisdiction over a community early childhood education facilities project or any part thereof or over the design, construction, equipping use or occupancy of the community early childhood education facilities project.

"Grant" means the funds to be provided to a community provider by the Corporation to pay for design and construction of a delegated community early childhood education facilities project (including any pre-development grant funds) pursuant to a grant agreement.

"Grant agreement" means the grant agreement among the Corporation, the ECPA district, the Department, and the community provider setting forth the contractual terms and conditions under which the Corporation funds the State share of the costs of a delegated community early childhood education facilities project. For Abbott districts, the grant agreement may provide for a pre-development grant.

"Implementation agreement" means the agreement among the Corporation, the ECPA district, the Department, and the community provider setting forth the contractual terms and conditions under which the Corporation funds the State share of the costs of a community early childhood education facilities project undertaken by the Corporation.

"Initial project report" means the report issued by the Commissioner to the Corporation approving a community early childhood education facilities project and establishing the current working estimate and State share in accordance with N.J.A.C. 6A:26-3.11(b).

"Land" means a community provider's right, title and interest in the real property upon which a community early childhood education facilities project is located.

"Local share" means the total costs of a community early childhood education facilities project less the State share as determined by the Department pursuant to Section 5(s) of the Act.

"Mortgage" means the mortgage granted by a community provider to the Corporation, executed pursuant to the applicable agreement, which shall be a lien upon a community early childhood education facilities project and the land to secure the community provider's State share repayment obligation under the note.

"Note" means the promissory note executed by the community provider pursuant to the applicable agreement to secure repayment to the Corporation of State share in the event of default under the applicable agreement during the compliance period.

"Pre-development activities" means the activities that must be undertaken prior to submitting a community early childhood education facilities project to the Department for approval and calculation of reasonable estimated costs. Such activities include, but are not limited to, site analysis (for example, invasive and non-invasive environmental analysis), remediation and site development, feasibility studies (for example, to determine the viability of new construction versus rehabilitation), and pre-development design work. The Corporation may either undertake such activities or, at its discretion, delegate them to the community provider.

"Pre-development costs" means costs associated with pre-development activities, including fees for the services of consultants, design consultants, legal fees and costs of obtaining zoning and planning board reviews and permit approvals, and other allowable costs, incurred by a community provider or the Corporation before the Department's issuance of a project report.

"Pre-development design work" means the design work performed by a design consultant in preparation of a project application to the Department, including, but not limited to, a conceptual site plan, educational specifications, and schematic plans.

"Pre-development grant" means the amount of Corporation funding for approved pre-development costs to complete a community early childhood education facilities project application for a community provider early childhood education facilities project under contract with an Abbott district, included in the budget approved by the Department with the project proposal, and provided to the community provider pursuant to a grant agreement.

"Preschool contract" means the contract between the ECPA district and the community provider to provide preschool programs to the ECPA district, as further described in N.J.A.C. 6A:10-3.2(c).

"Project application" means the application submitted to the Department by the community provider and the ECPA district pursuant to N.J.A.C. 6A:26-3.11(a) to obtain Departmental approval of a community early childhood education facilities project, and all documents required or submitted in support thereof.

"Project proposal approval" means the proposal accepted by the Department approving pre-development funding to a community provider undertaking a proposed community early childhood education facilities project under contract with an Abbott district. A project proposal approval describes and approves the nature and scope of a proposed project, approves the budget, and establishes the amount of the pre-development grant.

"Punchlist" means the list, prepared before final completion of a community early childhood education facilities project, of incomplete or defective work to be performed or remedied by a contractor to reach final completion of the community early childhood education facilities project.

"Repayment obligation" means the community provider's obligation upon default under the applicable agreement and under this chapter to repay the amount of the State share disbursed by the Corporation for the community early childhood education facilities project, plus the costs to the Corporation of the default, which repayment obligation is evidenced by the note and the mortgage executed by the community provider in favor of the Corporation under this chapter.

"Request for payment" means a statement by a community provider as required under the grant agreement, requesting that grant funds be disbursed by the Corporation for approved costs, which shall provide a complete description of the approved costs to be paid and shall be certified by an authorized officer of the community provider.

"State" means the State of New Jersey.

"State parties" means the State of New Jersey, the Authority, the Corporation, the Department, and any and all agencies, agents, instrumentalities, officers and employees of the State of New Jersey, the Authority, the Corporation, and the Department.

"State share" means the State's proportionate share of the reasonable, estimated costs of a community early childhood education facilities project as determined by the Department pursuant to Section 5(s) of the Act.

"Subconsultant" means a consultant to whom the consultant subcontracts part of the work for which the consultant is responsible.

"Subcontractor" means the contractor to whom a contractor subcontracts part of the work for which the contractor is responsible.

"Suspension" means a temporary cessation of disbursements to the community provider.

"Termination" means the cancellation of the applicable agreement as a result of an event of default or by mutual consent of the parties pursuant to N.J.A.C. 19:36-6.4 below.

"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 community provider; 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 community provider.

"Unforeseen circumstances" means unavoidable delays, or subsoil or site conditions which were undetected or unforeseen at the time of issuance of the final project report.

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

19:36-1.4 Compliance period and repayment obligations of community providers

(a) The community provider is responsible for compliance with the grant agreement or the implementation agreement and with this chapter during the entire period beginning with execution of the applicable agreement and ending

20 years following final completion of the community early childhood education facilities project.

(b) The community provider shall be liable for repayment of the State share to the Corporation in the event of a default under the applicable agreement or a violation of this chapter during the compliance period.

(c) The State share repayment obligation shall be evidenced by a promissory note executed by the community provider and secured by a mortgage granted to the Corporation by the community provider. The mortgage shall be a lien upon the community provider's right, title and interest in the community early childhood education facilities project and the land upon which it is located, throughout the compliance period. The Corporation may also require such additional security from the community provider as may be necessary to secure the State share repayment obligation. Where the community provider's interest in the land is a ground lease interest, the ground lessor shall give its written consent to the mortgage granted to the Corporation. The community provider shall submit the duly executed note and mortgage, evidence that the lessor's interest (if any) has been subordinated to the mortgage, and ground lessor's consent (if applicable) along with evidence that the mortgage has been submitted for recording, at the time the community provider requests that the Corporation execute the applicable agreement. The mortgage shall be recorded in the land records office of the county in which the community early childhood education facilities project is located. At the end of the compliance period, provided that no default has occurred under the applicable agreement, the community provider's repayment obligation shall terminate, the note shall be deemed satisfied, and the mortgage shall be discharged of record.

(d) For good cause and in the best interest of the ECPA facilities needs of the ECPA district, the Corporation may release the mortgage and accept other security for a community provider's repayment obligation, and/or enter into a repayment agreement with a community provider for payment of the grant repayment obligation in installments over time, not to exceed the remainder of the compliance period.

19:36-1.5 Undertaking or delegating of the community early childhood education facilities project

(a) Upon submission to the Corporation of a project proposal approval and approved pre-development cost budget from the Department in the case of an Abbot district, or in the case of any ECPA district upon submission to the Corporation of a final project report from the Department and the availability or receipt of local support as applicable, if any, required for the project, the Corporation shall either undertake the project or, subject to (b) below, delegate the project to the community provider.

(b) The Corporation may delegate to the community provider the community early childhood education facilities project pursuant to the following criteria:

1. The community provider has the appropriate prior experience in undertaking capital facilities projects;
2. The community provider has the current capability to construct or manage the construction of the community early childhood education facilities project; and
3. The delegation is in the best interests of the project.

19:36-1.6 Prerequisites for execution of the implementation agreement by the parties and the Corporation

(a) When State share funding is approved for a community early childhood education facilities project under this chapter, and the Corporation determines not to delegate the project to the community provider, the Corporation shall prepare and transmit to the community provider, the ECPA district and the Commissioner, an implementation agreement which sets forth the terms and conditions necessary to effectuate the project and the amount of State share funding.

(b) The ECPA district and the community provider shall execute the implementation agreement and submit it to the Corporation.

(c) The community provider shall deliver to the Corporation the following:

1. Three copies of the implementation agreement fully executed by the community provider and the ECPA district;
2. A promissory note executed by the community provider in favor of the Corporation in the amount of the State share, memorializing the community provider's State share repayment obligation under this chapter;
3. A certified copy of a resolution of the community provider board of trustees authorizing the execution and delivery of the implementation agreement, and the promissory note; and
4. A certificate executed by the authorized officer or agent certifying to the following:
 - i. All adoptions and approvals required to be given by the community provider or by any other governmental authority with respect to the implementation agreement have been obtained;
 - ii. The community provider has full legal right, power and authority to enter into the implementation agreement and to consummate the transactions contemplated thereby;

iii. The community provider holds a valid license to provide day care services issued by the New Jersey Department of Human Services pursuant to P.L. 1983, c.492, and stating the license number and expiration date; and

iv. The implementation agreement has been duly authorized, executed and delivered by the community provider, and assuming due authorization, execution and delivery by the ECPA district and the State parties, constitutes a valid and binding agreement of community provider enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, moratorium and other laws affecting the rights of creditors generally or equitable principles, whether considered in a proceeding at law or in equity.

(d) With regard to the community provider's interest in the land which shall be the site of the community early childhood education facilities project, the community provider shall submit a duly executed mortgage, evidence of the ground lessor's consent (if applicable), and evidence that the mortgage has been submitted for recording, at the time the community provider requests that the Corporation execute the implementation agreement. The Corporation may also require such additional security from the community provider as may be necessary to secure the State share repayment obligation.

(e) The Corporation shall have no obligation to execute an implementation agreement or to expend State share unless and until the Corporation has determined that all conditions precedent to the execution of the implementation agreement and the expenditure of State share have been satisfied as the Corporation may determine.

19:36-1.7 Prerequisites for execution of the grant agreement by the parties and the Corporation

(a) When State share funding is approved for a community early childhood education facilities project under this chapter, and the Corporation determines to delegate the project to the community provider, the Corporation shall prepare and transmit to the community provider, the ECPA district and the Commissioner, a grant agreement which sets forth the terms and conditions of the grant and the amount of the grant.

(b) The ECPA district and the community provider shall execute the grant agreement and submit it to the Corporation.

(c) The community provider shall deliver to the Corporation the following:

1. Three copies of the grant agreement fully executed by the community provider and the ECPA district;
2. A promissory note executed by the community provider in favor of the Corporation in the amount of the

approved grant, memorializing the community provider's grant repayment obligation under this chapter;

3. A certified copy of a resolution of the community provider board of trustees authorizing the execution and delivery of the grant agreement, and the promissory note;

4. A certified resolution whereby the community provider board of trustees has delegated authority to an authorized officer or agent for supervision of the community early childhood education facilities project; and

5. A certificate executed by the authorized officer or agent certifying to the following:

i. All adoptions and approvals required to be given by the community provider or by any other governmental authority with respect to the grant agreement have been obtained;

ii. The community provider has full legal right, power and authority to enter into the grant agreement and to consummate the transactions contemplated thereby;

iii. The community provider holds a valid license to provide day care services issued by the New Jersey Department of Human Services pursuant to P.L. 1983, c.492, and stating the license number and expiration date; and

iv. The grant agreement has been duly authorized, executed and delivered by the community provider, and assuming the due authorization, execution and delivery by the ECPA district and the State parties, constitutes a valid and binding agreement of the community provider enforceable in accordance with its terms, except as the enforcement thereof may be limited to bankruptcy, insolvency, moratorium and other laws affecting the rights of creditors generally or equitable principles, whether considered in a proceeding at law or in equity.

(d) With regard to the community provider's interest in the land, which shall be the site of the community early childhood education facilities project, the community provider shall submit a duly executed mortgage, evidence of the ground lessor's consent (if applicable), and evidence that the mortgage has been submitted for recording, at the time the community provider requests that the Corporation execute the grant agreement. The Corporation may also require such additional security from the community provider as may be necessary to secure the State share repayment obligation.

(e) The Corporation shall have no obligation to execute a grant agreement or to disburse grant funding unless and until the Corporation has determined that all conditions precedent to the execution of the grant agreement and the disbursement of grant funds have been satisfied as the Corporation may determine.

19:36-1.8 No assignment of the applicable agreement or grant by community providers

The community providers shall not assign the applicable agreement or its right to receive State share under either the implementation agreement or the grant agreement without the written approval of the ECPA district, the Corporation, and the Department. The Corporation may, as provided by State law, assign the applicable agreement to another instrumentality of the State.

19:36-1.9 Disclosure and publicity

(a) Applications and submissions received by the Corporation under this chapter which are government records as defined in the Open Public Records Act (P.L. 2001, c.404) shall be made available to persons who request them as provided by State law.

(b) Press releases and other public dissemination of information by the community provider or the ECPA district concerning the community early childhood education facilities project shall acknowledge Corporation financial assistance.

(c) To the extent permitted by local zoning ordinances, the community provider shall erect a sign provided by the Corporation on the site of the community early childhood education facilities project which acknowledges Corporation financial assistance to the project.

19:36-1.10 Access and record retention

(a) This section shall apply to delegated community early childhood education facilities projects.

(b) The Corporation, the Authority, the Department, 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, work product arising from audits, records and accounts (pertaining to the community provider project) of the community provider, the ECPA district and all contracted parties involved with the community early childhood education facilities project as further set forth below:

1. They shall have the right to enter upon and examine, inspect or audit the community early childhood education facilities project at reasonable times and upon notice but shall not be required to do so if in their sole judgment such notice and times cannot be provided.

2. They shall have the right to make any copies or abstracts of any document, record or account relating to the community provider project.

(c) The responsibilities of the community provider, the ECPA district, and/or the contracted parties with regard to access to the activities, documents, records, and accounts pertaining to community provider projects include, but are not limited to, the following:

1. The party having custody of the requested documents, records, accounts, or conducting the activities, as the case may be, shall furnish facilities for such access, inspection and document reproduction.

2. The community provider shall include in all contracts a provision requiring contracted parties to permit the Corporation, Authority, the Unit of Fiscal Integrity, the Department, the DOL, and their duly authorized agents to investigate, audit, examine and inspect in such manner and at such times as these parties deem necessary.

(d) The community provider and the ECPA district shall keep those records and accounts and shall require all contracted parties to keep those records and accounts for the community early childhood education facilities project as necessary in order to evidence compliance with the Act, the grant agreement, and all applicable rules and requirements. Financial records, supporting documents, and all other records of the community provider, the ECPA district and the contracted parties which relate in any way to the community early childhood education 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 community early childhood education 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.

**SUBCHAPTER 2. PRE-DEVELOPMENT
ACTIVITIES UNDERTAKEN BY
COMMUNITY PROVIDERS**
19:36-2.1 Eligibility for pre-development funding

(a) The Corporation shall provide funding to community providers under contract with Abbott districts for the costs of certain pre-development activities approved by the Department which are required to prepare and submit community early childhood education facilities project applications to the Department for community provider projects under N.J.S.A. 18A:7G-5(s).

(b) Community providers under contract with ECPA districts which are not Abbott districts shall undertake and fund all pre-development activities required to complete a community provider project application without requesting pre-development grant funding from the Corporation. The community provider and the ECPA district may request in the project application to the Department that eligible pre-development costs be credited toward the local funding of the project once those costs are allocated to the applicable project and the project has been approved by the Department.

(c) For community providers under contract with Abbott districts, the Corporation shall either undertake and fund such activities or, at its discretion, delegate such activities to the community provider to be funded through a pre-development grant conditioned upon compliance with this subchapter. The delegation criteria shall be the same as set forth in N.J.A.C. 19:36-1.5(b).

(d) The pre-development activities of a community provider developing a community provider project under contract with an Abbott district which may be funded by the Corporation pursuant to this subchapter are:

1. Site analysis, including non-invasive and invasive environmental analysis, relating to the use of community provider owned or leased land for purposes of undertaking a community early childhood education facilities project on the site;

2. Consultant fees for feasibility studies, such as a pre-construction evaluation to determine whether, because of health and safety, efficiency, or cost it would be more feasible to rehabilitate or construct an addition to a community provider facility;

3. Design consultant fees for pre-development design work;

4. Consultant fees related to any necessary remediation and/or site development work to prepare the land for construction;

5. Legal fees and costs incurred to obtain local zoning and site plan approvals and State or local permits; and

6. Other eligible costs approved by the Department in the approved budget which would necessarily be incurred by the community provider after the date of execution of the grant agreement and before the submission of the community early childhood education facilities project application to the Department.

(e) The following expenditures will be deemed ineligible for pre-development funding by the Corporation:

1. The Corporation will not fund or reimburse for the community provider's costs related to the acquisition of land.

2. The Corporation will not fund or reimburse the community provider's costs related to the acquisition of a facility.

3. The Corporation will not fund or reimburse the community provider for the costs of demolition or environmental remediation on the site of the community early childhood education facilities project which is performed prior to approval of the community early childhood education facilities project application by the Department.

19:36-2.2 Pre-development grant agreements with community providers and Abbott districts

(a) The Department shall provide a project proposal approval and approved pre-development cost budget to the Corporation on each proposed community provider project planned by an Abbott district which has been approved by the Department for Corporation funding of pre-development activities. The Corporation shall either undertake such activities or, at its discretion, delegate them to the community provider. In the case of delegation, the Corporation shall prepare and transmit to the community provider, the Abbott district and the Commissioner, a grant agreement which sets forth the terms and conditions of the grant including funding for the approved pre-development activities in accordance with the approved budget. The proposal report and approved pre-development budget shall be attached to the grant agreement as an exhibit. The Abbott district and the community provider shall execute the grant agreement and submit it to the Corporation with the documents required under N.J.A.C. 19:36-1.6.

(b) The pre-development grant shall be disbursed to the community provider from time to time upon community provider requests for payments to the Corporation as provided in the grant agreement. Grant funds shall be used only to pay for approved pre-development costs incurred by the community provider in amounts not to exceed the line items in the approved budget.

19:36-2.3 Funding for pre-development design work of the delegated community early childhood education facilities project

(a) For delegated pre-development design work, upon receipt of the executed grant agreement, the community provider may engage a design consultant for pre-development design work at a cost not to exceed the line item for such work in the approved budget. Upon such engagement, the community provider shall submit to the Corporation an executed consultant certification in the form attached to the grant agreement and acceptable documentation of insurance coverage. Any design consultant engaged by the community provider must be pre-qualified by the Corporation.

(b) The design consultant shall then prepare schematic plans, the educational specifications, and other pre-development design work for the community early childhood education facilities project in accordance with the project proposal approved by the Department, in compliance with the N.J.A.C. 6A:26-3.11(b), and sufficient for inclusion by the ECPA district and the community provider with the community early childhood education facilities project application to be submitted for approval by Department.

19:36-2.4 Funding for other approved pre-development costs of delegated community early childhood education facilities projects for Abbott districts

(a) Upon receipt of the executed grant agreement, the community provider may engage a design consultant or

other consultants for a feasibility study or studies at a cost not to exceed the line item for such work in the approved budget.

1. The community provider submission and pre-qualification requirements for design consultants shall be as set forth in N.J.A.C. 19:36-2.3. For other consultants, the community provider shall submit to the Corporation all documentation and certifications required for the engagement of the consultant under the grant agreement.

2. Feasibility studies may include analysis of whether the land for a proposed addition is suitable for environmental or other reasons as a site for the project; and may also include a pre-construction evaluation to determine whether, because of health and safety, efficiency, or cost it would be more feasible to rehabilitate or construct an addition to a community provider facility.

3. The Corporation shall assist the community provider in defining the scope of the feasibility study, approve of the scope, and determine how and when the scope has been satisfied. If, in the course of a feasibility study, the Corporation determines that the site is unsuitable for use for an addition to a community provider facility, it may require the community provider to terminate the feasibility study for the site.

(b) Upon receipt of the executed grant agreement, the community provider may engage a design consultant or other consultants for site analysis at a cost not to exceed the line item for such work in the approved budget.

1. The community provider submission and pre-qualification requirements of design consultants and submission requirements of other consultants shall be as set forth in N.J.A.C. 19:36-2.3(a) above.

2. Site analysis may include the non-invasive and invasive due diligence and investigation prior to the use of land for the construction of a community early childhood education facilities project. Specifically, it may consist of activities set forth in N.J.A.C. 19:36-3.4.

3. The Corporation shall assist the community provider in defining the scope of the site analysis, approve of the scope, and determine how and when the scope has been satisfied. If, in the course of site analysis, the Corporation determines that the site is unsuitable to use for an addition to a community provider facility, it may require the community provider to terminate the site analysis for the site.

(c) Upon receipt of the executed grant agreement, the community provider may engage a design consultant or other consultant for pre-development consultant services relating to remediation and/or site development needed to prepare the land for construction.

1. The community provider submission and pre-qualification requirements for design consultants and submission requirements for other consultants shall be as set forth in N.J.A.C. 19:36-2.3 and (a) above.

2. The Corporation shall assist the community provider in defining the scope of services, approve of the scope, and determine how and when the scope has been satisfied. If, during the course of such services, the Corporation determines that the land is unsuitable for use as a site for a community early childhood education facilities project, it may require the community provider to terminate the consultant services related to remediation and/or site development.

(d) The community provider may request disbursement of pre-development grant funds to pay reasonable legal costs not to exceed the line item for legal fees included in the approved budget for legal work related to the site proposed for the project, including preparation of planning, zoning and permit applications.

(e) The community provider may request pre-development grant disbursement for other approved costs included as line items in the approved budget which costs are incurred after executing the grant agreement and before submitting the community early childhood education facilities project application to the Department.

19:36-2.5 Due date for the community early childhood education facilities project application

(a) A community provider, which receives pre-development grant funding from the Corporation under this subchapter, is required to pursue the approved pre-development activities diligently and to complete and submit a community early childhood education facilities project application to the Department by the due date established in the grant agreement. In the event that the Corporation funds and undertakes, rather than delegates, the pre-development activities, the Corporation may also under the implementation agreement require the community provider to submit a community early childhood education facilities project application by a due date after completion of the pre-development activities.

(b) The community provider shall give prompt written notice to the Department and the Corporation of any delay in submitting the application, and request an extension of the due date. Requests for extension for good cause or due to unavoidable delays may be granted by the Corporation, provided that no request for an extension setting the due date later than six months from the date of the grant agreement or the completion by the Corporation of the pre-development activities may be granted without the written consent of both the Corporation and the Department.

(c) A failure to submit a complete and satisfactory community early childhood education facilities project application or a written request for extension by the due date or any extended due date shall be an event of default under the grant agreement or the implementation agreement.

**SUBCHAPTER 3. FUNDING APPROVED
COMMUNITY EARLY CHILDHOOD
EDUCATION FACILITIES PROJECTS**

19:36-3.1 Eligibility for corporation grant funding

(a) The ECPA district and community provider shall obtain approval of the community early childhood education facilities project from the Commissioner pursuant to N.J.S.A. 18A:7G-5(s) and N.J.A.C. 6A:26-3.11.

(b) The ECPA district and community provider shall obtain from the Corporation a copy of the Commissioner's initial project report issued to the Corporation including a determination of the current working estimate of the total costs of the community early childhood education facilities project and the State share of the approved costs pursuant to N.J.S.A. 18A:7G-5(s) and N.J.A.C. 6A:26-3.11(d).

(c) Any appeals by the ECPA district regarding any of the above approval required to be obtained by the ECPA district from the Department for the community early childhood education 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 community early childhood education facilities project and determination of estimated costs and State support.

(d) In the case of an ECPA district where local support is required, the community provider shall provide evidence satisfactory to the Corporation that the local share is available to the community provider for expenditure first before the Corporation begins to disburse the grant funds.

19:36-3.2 Initial project report; execution of the grant or implementation agreement

(a) Where a grant agreement was previously executed by the parties in conjunction with a pre-development grant as provided in N.J.A.C. 19:36-2, the initial project report shall be attached thereto as an exhibit and the grant amount shall be adjusted to equal the State share as set forth in the initial project report. The community provider shall execute a promissory note in favor of the Corporation and the amount of the State share. The note previously executed by the community provider memorializing the obligation to repay the pre-development grant shall be returned to the community provider.

(b) Where a grant agreement has not been executed pursuant to N.J.A.C. 19:36-2, upon receipt by the Corporation of the Department's initial project report, the Corporation, after determining to delegate the project, shall prepare and transmit to the community provider, the ECPA district and the Commissioner, a grant agreement which sets forth the terms and conditions of the grant, the amount of the grant, attaching the initial project report as an exhibit. The ECPA district and the community provider shall execute the

grant agreement and submit it to the Corporation with the documents required under N.J.A.C. 19:36-1.7.

(c) The Corporation shall have no obligation to execute a grant agreement or to disburse grant funding unless and until the Corporation has determined that the local share (if any) is available to be expended by the community provider prior to the disbursement of grant funds, and all conditions precedent to the execution of the grant agreement and the disbursement of funds have been satisfied as the Corporation may determine.

(d) In the event that the Corporation determines to undertake, rather than delegate, the project, the Corporation shall attach the initial project report to the implementation agreement. The community provider shall execute a promissory note in favor of the Corporation in the amount of the State share. The Corporation shall have no obligation to execute an implementation agreement or to expend State share unless and until the Corporation has received the local support from the community provider, and all conditions precedent to the execution of the implementation agreement and the expenditures of State share have been satisfied as the Corporation may determine.

19:36-3.3 Disbursement of the grant

(a) The grant shall be in the amount of the State share as approved by the Department, which may be reduced by the Department upon final completion based upon the final audit.

(b) Disbursement of grant funds shall be made in accordance with the provisions of the grant agreement, at intervals as work progresses and expenses are incurred by the community provider and approved by the Corporation 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 Corporation receives all documentation required for that disbursement as provided in the grant agreement. Where local support is required, the community provider shall provide evidence that the local support is available for expenditure first before the Corporation begins to disburse the grant funds.

(c) A grant disbursement shall only be made for approved costs that have already been incurred by the community provider.

(d) Neither the ECPA district nor the community provider shall have a legal or equitable interest in the assets or in any amount on deposit in the funds and accounts of the Corporation or the Authority.

19:36-3.4 Closeout procedures

(a) Closeout shall occur when the community early childhood education facilities project has reached final completion, and all applicable administrative actions and all required work have been completed by the community provider. 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 Corporation and the amount of the grant shall be reduced by the amount of the unexpended proceeds.

2. The community provider shall refund to the Corporation any grant funds spent on any costs which were disallowed by the Corporation as not being approved costs. Such refunds shall be made within 30 days of the request by the Corporation.

3. Promptly after final completion, the community provider shall submit to the Corporation and the Department the final audit of the community early childhood education facilities project prepared by an independent auditor licensed in the State of New Jersey.

4. Once a final audit has been submitted by the community provider, reviewed by the Department, and the final State share is approved by the Department, the Corporation retains the right to recover from the community provider any amount of grant funds disbursed for costs disallowed by the Department.

5. The Corporation may require additional information from the ECPA district, the community provider, or its consultants and contractors and/or retain any grant amount not disbursed until the final audit is completed to the satisfaction of the Corporation and the Department, the State share is finally determined by the Department and the Corporation has been fully reimbursed for disallowed costs.

2. The Corporation shall be under no obligation to reimburse the community provider for costs incurred for work performed prior to the issuance of a written authorization-to-proceed with such work. No grant funds shall be disbursed until the community provider has executed a note in favor of the Corporation as required pursuant to N.J.A.C. 19:36-1.7.

(b) Before requesting an authorization-to-proceed with any demolition, environmental remediation, or construction of improvements on the land approved as the site of the community early childhood education facilities project, the community provider shall demonstrate to the Corporation that it holds title to the land or shall submit a copy of a fully executed lease evidencing a leasehold interest in the land for a lease term which is at least co-terminus with the compliance period. No grant funds shall be disbursed for demolition, environmental remediation or improvements on the land, until the community provider has executed a mortgage secured by the land in favor of the Corporation, and submitted it for recording, as required pursuant to N.J.A.C. 19:36-1.7.

(c) The Corporation shall establish a completion date for the community early childhood education facilities project in the grant agreement and the community provider shall, with all due diligence, undertake to design, construct, and complete the community early childhood education facilities project in accordance with the grant agreement and the plans and specifications approved by the Department.

(d) The community provider shall execute written contracts with its consultant(s), and contractor(s), in form and substance satisfactory to the Corporation and shall appropriately monitor their performance to assure that time schedules are being met and that the completion of the community early childhood education 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 community provider shall reasonably exhaust the remedies against the defaulting contracted party and against any surety for the performance of such contracts. The community provider shall diligently prosecute or defend any action or proceeding, or take any other action involving the contracted party, that the community provider deems reasonably necessary.

(e) The community provider shall promptly notify the Corporation in writing of events or proposed changes in the scope of the delegated community early childhood education facilities projects, the schedule for completion and/or any other significant changed conditions concerning the delegated community early childhood education facilities project, including material delays, damages, or litigation resulting from contract defaults or breaches of warranty by its contractors, and any unforeseen circumstances as defined in N.J.A.C. 19:36-1.3.

SUBCHAPTER 4. SPECIFIC REQUIREMENTS FOR COMMUNITY PROVIDERS UNDERTAKING COMMUNITY EARLY CHILDHOOD EDUCATION FACILITIES PROJECTS WITH CORPORATION FUNDING

19:36-4.1 General provisions

(a) The Corporation shall describe the phases of the community early childhood education facilities project in the grant agreement, including a design phase and a construction phase, and shall provide that the community provider receive a written authorization-to-proceed from the Corporation before commencing the construction phase, including any demolition and remediation set forth in (b) below.

1. After the Corporation receives satisfactory evidence that the design phase of the project is completed, as certified by the design consultant, the Corporation may issue to the community provider an authorization-to-proceed with the construction phase.

(f) Change orders for delegated community early childhood education facilities projects including, but not limited to, the following, shall be approved by the Corporation, which approval shall be granted only upon a determination by the Corporation that an extraordinary circumstance exists:

1. Change orders that, in the aggregate, increase the amount of the original award of any individual contract, or of the entire project, by greater than 20 percent;
2. Change orders that eliminate or affect the project scope that is the basis of the Department's determination of the State share as issued in the final project report; or
3. Change orders that impact the number, size, configuration, location or use of educational spaces.

(g) Change orders for community early childhood education facilities projects, whether constructed by the Corporation or delegated to the community provider, if impacting educational adequacy (the number, size, configuration, location or use of educational spaces), shall be reviewed and approved by the Department prior to such change being made.

19:36-4.2 Contract requirements

(a) The community provider shall be responsible for awarding and executing written contracts for the design, construction, furnishing and equipping the community early childhood education facilities project, and all other matters incidental to completion of the community early childhood education facilities project, in compliance with the grant agreement and this chapter.

(b) The design consultant retained by the community provider to prepare the detailed plans and specifications for submission to the Department pursuant to N.J.A.C. 6A:26-5.4 shall be pre-qualified by the Corporation.

(c) The community provider and its consultants or contractors shall not contract with or purchase furnishings, equipment or supplies for the community early childhood education facilities project from any person or firm who has been debarred, suspended or disqualified from contracting by the State, the Corporation, the Authority, or any agencies of any State or the Federal government.

(d) The community provider shall require all proposed consultants, contractors and subcontractors, vendors and suppliers to submit a sworn statement by the contractor, or an officer or partner of the contractor, indicating whether or not the contractor is, at the time of the bid or prior to execution of the contract in the case of contracts not required to be bid, included on the State Treasurer's, the Corporation, the Authority's, any agencies of any State or the Federal government's list of debarred, suspended or disqualified bidders. The community provider shall immediately notify the Corporation whenever it appears that a proposed contractor is on the Treasurer's, the Corpora-

tion's, the Authority's, any agencies of any State or the Federal government's list of debarred, suspended or disqualified bidders as a result of action taken by any agency. The Corporation reserves the right in such circumstances to immediately suspend such contractor from contracting and to take such other action pursuant to N.J.A.C. 17:19-3 and any applicable rule issued by the Corporation.

(e) The community provider shall insert in all contracts, and shall cause all contractors and consultants to insert in all of their contracts with all subconsultants and subcontractors, a clause stating:

"A contractor may be debarred, suspended or disqualified from contracting with the Corporation and working on the community early childhood education facilities project if found to have committed any of the acts listed in N.J.A.C. 17:19-3.1 et seq. and any applicable regulation issued by the Corporation."

(f) The community provider shall require its contractors and consultants to obtain and maintain all licenses, permits, certifications, authorizations, or any documents required by all governmental authorities wherever necessary. The community provider shall promptly notify the Corporation 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 community early childhood education facilities project.

(g) All contractors and subcontractors performing work on the community early childhood education facilities project shall be registered with the New Jersey Department of Labor pursuant to N.J.S.A. 35:11-56.48 et seq. The community provider shall not hire any contractor or subcontractor to perform any work on the community early childhood education facilities project who is listed or is on record in the Office of the Commissioner, DOL, as having failed to pay prevailing wages in accordance with the provisions of the New Jersey Prevailing Wage Act. All construction contracts and subcontracts shall contain provisions stating:

"The contractor and the subcontractors, as applicable, shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 35:11-56.25 et seq."

(h) All contracts shall contain provisions that the contracted party shall comply with the anti-discrimination provisions of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. During the design and construction of the community early childhood education facilities project, the community provider and the contracted parties shall abide by the following provisions and shall include the following provisions in all contracts:

1. "The community provider 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 community provider 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 community provider 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 community provider and its contracted parties shall, in all solicitations or advertisements for employees placed by or on behalf of the community provider 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 community provider 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 community provider, advising the labor union or workers representative of the community provider'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."

(i) The community provider shall include the following statement in each contract awarded by the community provider in connection with the community early childhood education facilities project:

"This contract or subcontract may be funded in part with funds from the New Jersey Schools Construction Corporation. Neither the State, the New Jersey Schools Construction Corporation, 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 awarded to implement the provisions of N.J.S.A. 18A:7G-5(s), and the (contractor) (subcontractor) (consultant) (subconsultant) agrees to comply with the regulations promulgated thereunder."

(j) The community provider shall include in all contracts a provision stating: "All contracted parties agree to execute certifications, to maintain records for at least 10 years, to provide access, to permit reproduction, audit, examination or inspection of records, and to disclose information pertaining to the community early childhood education facilities project to the Corporation, the Authority, the Unit of Fiscal Integrity, the Department, the DOL, and their duly authorized agents at the times and in the manner specified by the Corporation in the grant agreement and in Subchapter 1 of N.J.A.C. 19:36."

(k) The community provider shall include a provision in each contract awarded in connection with the community early childhood education facilities project which states:

"This contract may be assigned by the community provider to the New Jersey Schools Construction Corporation upon notice to the contractor."

(l) The Corporation may impose such other conditions upon the community provider and the contractors, consultants, subcontractors and subconsultants performing work on the community early childhood education facilities project as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Act.

19:36-4.3 Additional contract requirements for projects with current working estimate of \$500,000 or more

(a) Where the Department has determined in the initial project report that the current working estimate for the community early childhood education facilities project is anticipated to equal or exceed \$500,000, the community provider must comply with the following requirements:

1. The request for bids for construction of the community early childhood education facilities project shall be publicly advertised by the community provider and sealed bids shall be solicited based upon written bid specifications;

2. All bidders on the construction contract shall submit 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;

3. All bidders on the construction contract shall 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 Corporation's, the Authority's, any agencies of any State or the Federal government's list of debarred, suspended or disqualified bidders as a result of action taken by any agency. Bid specifications for the community early childhood education facilities project shall also state that the community provider shall immediately notify the Corporation whenever it appears that a bidder is on the Treasurer's, the Corporation's, the Authority's, any agencies of any State or the Federal government's list of debarred, suspended or disqualified bidders as a result of action taken by any agency. The Corporation reserves the right in such circumstances to immediately suspend such bidder from contracting and to take such other action pursuant to N.J.A.C. 17:19-3 and any applicable regulation issued by the Corporation;

4. All bidders on the construction contract shall be registered with the New Jersey Department of Labor pursuant to N.J.S.A. 35:11-56.48 et seq.;

5. The construction contractor recommended to the Corporation by the community provider for award of the construction contract, and any subcontractors performing work in the four branches specified in N.J.S.A. 18A:18A-18, shall be pre-qualified pursuant to the Corporation's pre-qualification process;

6. The community provider shall recommend to the Corporation the award of the construction contract to the responsible bidder selected through competitive bidding whose bid is most advantageous to the Corporation and the community provider, considering price and other factors, as the term "other factors" is defined in N.J.S.A. 34:1B-5.7(d); and

7. Before performing any work under the construction contract, the construction contractor shall obtain and submit to the Corporation payment and performance bonds in the amount of the contract price, issued by a surety licensed to issue such bonds in this State, which shall name the community provider and the Corporation as obligees.

19:36-4.4 Specific requirements for demolition and environmental remediation contracts

(a) Where the project report includes approved costs for demolition and/or environmental remediation activities, the community provider may request the Corporation's approval to engage contractors or consultants duly licensed or certified in this State to undertake such work, prior to and independent of, the award of the construction contract for the community early childhood education facilities project. Community providers must solicit at least three price quotes from eligible contractors or consultants to obtain competitive prices.

(b) When requesting authorization-to-proceed with any demolition or environmental remediation on the approved site of the community early childhood education facilities project, the community provider shall demonstrate to the Corporation that it holds title to the land or shall submit a copy of a fully executed lease evidencing a leasehold interest in the land for a lease term which is at least co-terminus with the compliance period. No grant funds shall be disbursed until the community provider has executed a mortgage on the land in favor of the Corporation, and submitted it for recording, as required by N.J.A.C. 19:36-1.7.

(c) All contracts with demolition contractors or environmental consultants must comply with the requirements of N.J.A.C. 19:36-4.2 and must be submitted to the Corporation for approval prior to execution by the community provider. Any contract where the price equals or exceeds \$500,000 must be awarded as provided for construction contracts and meet all requirements for construction contracts set forth in N.J.A.C. 19:36-4.3. The contract may be executed by the community provider, and work may be authorized to commence when an authorization-to-proceed with demolition or environmental remediation is issued by the Corporation.

(d) A copy of the fully executed contract for demolition or environmental remediation shall be submitted to the Corporation when grant funds are first requested for this work.

19:36-4.5 Detailed plans and specifications; final project report

(a) The community provider shall submit multiple copies of the detailed plans and specifications for the community early childhood education facilities project to the Corporation and the Department with an updated current working estimate, as required in the grant agreement. In the event that the Corporation itself undertakes the project, the Corporation shall submit such plans and specifications along with an updated cost estimate to the Department. Detailed plans and specifications must be sealed by a licensed engineer or architect, and must meet the requirements of the Department for Corporation school facilities projects under N.J.A.C. 6A:26-5.4(a), other than requirements expressly waived in the grant agreement.

(b) Thereafter, the final project report issued by the Department to the Corporation pursuant to N.J.S.A. 18A:7G-5(s) and N.J.A.C. 6A:26-3.11(e) shall be attached to the applicable agreement as an exhibit. In the case of a delegated project, the grant amount shall be adjusted to equal the State share as determined by the Department in the final project report. The grant amount shall not be increased thereafter unless an amended final project report is issued by the Department as provided in N.J.A.C. 19:36-4.6. In the event of a project that the Corporation undertakes, State share shall be adjusted as determined by the Department.

19:36-4.6 Petition for amended final project report

(a) The community provider and the ECPA district may petition the Department and the Corporation for an amended final project report under the following circumstances:

1. Local officials, such as the municipal code enforcing agency, have required material changes to the plans and specifications previously approved by the Department which affect the number, size, location or proposed use of the educational spaces;

2. After competitive bidding, the award of the construction contract to the bidder recommended by the community provider would reduce the contingency line to less than 80 percent of the contingency amount approved by the Department in the final project report; or

3. Due to unforeseen circumstances during the construction phase, the community provider anticipates that one or more change orders or additional contracts will be required to complete the community early childhood education facilities project, which, when taken together with all other change orders and contracts previously approved, would reduce the balance in the contingency line to zero and would exceed the total amount of project costs approved by the Department. Due to these unforeseen circumstances, the community early childhood education facilities project may not be completed in accordance with the approved plans and specifications unless the final report is amended to increase the amount of the State share and/or the local support or to incorporate changes to the plans and specifications for the community early childhood education facilities project which will reduce costs.

(b) Under the circumstances described in (a) above, the community provider may submit to the Department and to the Corporation (with a copy to the ECPA district) a petition for an amended final project report. In the event of a project that the Corporation itself undertakes, the Corporation submits the petition on behalf of the community provider. The petition shall fully describe the proposed changes to the community early childhood education facilities project, the increased costs to be included in the final project report, and shall discuss any proposal for changing the plans and specifications to reduce costs or for funding the increased costs from non-State sources. The community provider shall provide such additional documentation as may be requested by the Corporation and/or the Department during their review of the petition.

(c) Any amended final project report issued by the Department to the Corporation shall be attached to the grant agreement or the implementation agreement as an exhibit, and the State share shall be adjusted as determined by the Department in the amended final project report.

19:36-4.7 Specific requirements for purchases of equipment and furnishings

(a) Where the final project report includes approved costs for equipment and furnishings, the community provider may order from vendors or suppliers independent of the construction contract. Community providers must solicit at least three price quotes from eligible vendors or suppliers to obtain competitive prices.

(b) All contracts with vendors or suppliers for such equipment or furnishings must be assignable to the Corporation upon notice to the vendor or supplier.

(c) A copy of the fully executed contract and/or invoices showing actual delivery of the furnishings or equipment to the address of the community early childhood education facilities project shall be submitted when requesting disbursement of grant funds for such purchases.

(d) The community provider is responsible for safe delivery, storage, and installation of the equipment and furnishings at the community early childhood education facilities project and for hazard insurance covering any loss or damage to furnishings and equipment.

**SUBCHAPTER 5. OPERATION OF THE
COMMUNITY EARLY CHILDHOOD
EDUCATION FACILITIES PROJECT
DURING THE COMPLIANCE PERIOD**

19:36-5.1 Covenants of the community provider

(a) The community provider shall operate and use the community early childhood education facilities project to provide educational services to early childhood education students under contract with the ECPA district throughout the compliance period.

(b) Throughout the compliance period, the community provider shall ensure that the community early childhood education 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 community provider shall establish dates for equipment testing, acceptance periods, warranties and instructional requirements and shall thereafter maintain the community early childhood education facilities project in accordance therewith.

(c) The community provider is required to notify the Corporation in writing within 10 business days if any of the following events occur during the compliance period:

1. The community provider's license to provide day care services lapses, or is suspended or revoked by the New Jersey Department of Human Services;

2. The tax-exempt status of the community provider is terminated;

3. The community provider's contract with the ECPA district is breached, suspended, terminated or not renewed;

4. The community early childhood education facilities project is partially or completely destroyed or condemned, or ceases to be used for the educational purposes of this program for any reason and the cessation of use is anticipated to continue for more than 180 consecutive days;

5. The community early childhood education facilities project is under contract to be, or is sold, leased or transferred to an entity which is not a tax-exempt non-profit organization or a governmental unit; or

6. The community provider is acquired by or merged with another legal entity, or is dissolved, liquidated, or adjudicated insolvent or bankrupt, or files a petition in bankruptcy under the U.S. Bankruptcy Code.

(d) The community provider shall not take any action or omit to take any action which would result in any bonds issued by the Authority losing their exclusion of the interest from Federal gross income for purposes of Federal income taxation. The community provider shall submit information at the times and in the manner as may be required by bond counsel, from time to time.

(e) No official, employee or agent of the community provider 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 funded in whole or in part by the Corporation in connection with the community early childhood education facilities project shall have any financial or other personal interest in the contractor or vendor receiving the grant funds.

(f) The community provider shall promptly 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 contracted party or recipient of grant funds.

(g) The community provider shall not influence, or attempt to 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.

19:36-5.2 Covenants of the ECPA district

(a) The ECPA district shall notify the Corporation in writing within 10 business days if any of the following events occur during the compliance period:

1. The ECPA district suspends, terminates, cancels, or decides not to renew its contract with the community provider for any reason. If such action was taken for cause as defined in this chapter, the ECPA district shall notify the Corporation of the material facts; or

2. The community early childhood education facilities project is partially or completely destroyed or condemned, or ceases to be used for the educational purposes of this program for any reason and it is anticipated that the cessation of use shall last for more than 180 consecutive days.

(b) No official, employee or agent of an ECPA 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 funded in whole or in part by the Corporation in connection with the community early childhood education facilities project shall have any financial or other personal interest in the contractor or vendor receiving the grant funds.

(c) The ECPA district shall promptly 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 contracted party or ECPA district officer or employee.

(d) The ECPA district shall not influence, or attempt to 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.

SUBCHAPTER 6. DEFAULT, TERMINATION, OR CESSATION OF APPROVED USE DURING THE COMPLIANCE PERIOD

19:36-6.1 Events of default under the grant agreement

(a) Any of the following events which occur during the compliance period shall constitute an event of default under the grant agreement:

1. The community provider has failed or fails 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 written notice specifying such failure and requesting that it be remedied is given to the community provider by the Corporation, unless the Corporation shall agree in writing to an extension of such time prior to its expiration. However, if the failure stated in such notice is correctable but cannot be corrected within the applicable

period, the Corporation 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 community provider within the applicable period and diligently pursued until the event of default is corrected;

2. Any representation made to the Corporation by or on behalf of the community provider or the ECPA district contained in the grant agreement, or in any certification furnished in compliance with the grant agreement, is false or misleading in any material respect;

3. A written report or recommendation is made to the Corporation by the Unit of Fiscal Integrity or other law enforcement agency that:

i. The grant was obtained by fraud; or

ii. Gross abuse or corrupt practices have occurred in the administration of the community early childhood education facilities project;

4. Subject to unavoidable delays as defined in N.J.A.C. 19:36-1.3, the construction of the community early childhood education facilities project has not commenced within the time provided in the grant agreement;

5. Subject to unavoidable delays as defined in N.J.A.C. 19:36-1.3, the construction of the community early childhood education facilities project has not reached final completion on or before the completion date established in the grant agreement;

6. The community provider has utilized grant monies for costs other than approved costs as defined in N.J.A.C. 19:36-1.3;

7. Work on the community early childhood education facilities project has ceased without good cause as determined by the Corporation. The term "good cause" shall include, but not be limited to, unforeseen circumstances as defined in N.J.A.C. 19:36-1.3;

8. The community provider has contracted with any person or firm which, at the time of entering into such contract, has been debarred, suspended or disqualified, or with a firm which has not been pre-qualified, when pre-qualification is required under N.J.A.C. 19:36-4;

9. The community provider has disbursed, or authorized the disbursement of, grant monies to a contracted party which is debarred, suspended or disqualified from State, Corporation, or Authority contracting, or to a firm which has not been pre-qualified, when pre-qualification is required under N.J.A.C. 19:36-4;

10. The community provider fails to permit Department, the Corporation, the Authority, the Unit of Fiscal Integrity, or the New Jersey Department of Labor access to records or inspection of the site as required in N.J.A.C. 19:36-1.10;

11. The community provider's license to provide day care services lapses or is revoked or suspended by the New Jersey Department of Human Services;

12. The tax-exempt status of the community provider is terminated;

13. The community provider's preschool contract with the ECPA district for use of the community early childhood education facility to provide early childhood education services to preschool students is suspended or terminated or not renewed for cause as defined in N.J.A.C. 19:36-1.3;

14. The community early childhood education facility is partially or completely destroyed or condemned and is not restored to use within 180 days;

15. The community early childhood education facility ceases to be used for the approved educational purposes of this program for any reason for more than 180 consecutive days, and the community provider fails to obtain Department approval of an alternative use plan or fails to implement an approved alternative use plan, or fails to comply with an approved repayment plan, all as provided in N.J.A.C. 19:36-6.3 and 6.5;

16. The community early childhood education facility and/or the land is sold, leased or otherwise transferred to an entity which is not a tax-exempt non-profit organization or a governmental unit;

17. Grant funds have been disbursed for pre-development costs pursuant to N.J.A.C. 19:36-2, but the ECPA district and the community provider have failed to submit a community early childhood education facilities project application by the due date or any extension thereof as provided in N.J.A.C. 19:36-2.5, or the ECPA district and the community provider have submitted a project application which was denied by the Department pursuant to the Act, and no extension of time to cure defects in the project application has been granted; or

18. The community provider is dissolved, liquidated, or adjudicated insolvent or bankrupt, or files a petition in bankruptcy under the U.S. Bankruptcy Code.

19:36-6.2 Events of default under the implementation agreement

Any of the events set forth in N.J.A.C. 19:36-6.1(a)1, 2, 10, 11, 12, 13, 15, 16 and 18, which occur during the compliance period shall constitute an event of default under the implementation agreement.

19:36-6.3 Grant termination, suspension and other remedies for default of the grant agreement

(a) When an event of default shall have occurred, the Corporation may suspend or terminate the grant agreement, withhold further payments thereunder, and prohibit the community provider from incurring additional obligations of grant funds pending corrective action by the community provider. The Corporation shall promptly notify the community provider, in writing, of its determination to suspend or terminate the grant agreement due to an event of default, and the reasons for the action, together with the date on which the suspension or termination shall take effect.

(b) Upon termination of the grant agreement, the community provider shall waive payment by the Corporation of any undisbursed balance of the grant.

(c) Upon termination of the grant agreement, the Corporation may make written demand upon the community provider that the amount of the grant disbursed by the Corporation shall be immediately due and payable by the community provider together with any costs to the Corporation resulting from an event of default by the community provider. The Corporation may authorize reduction of the community provider's repayment obligation based upon the number of years that the community early childhood education facilities project has actually been used for approved early childhood educational programs in proportion to the compliance period.

(d) The Corporation may suspend the grant and, upon written notice to the community provider and the ECPA district, withhold grant disbursements or any portion thereof where it determines that an event of default has occurred, or a community provider has failed to comply with any provision of the Act, any condition of the grant agreement or any requirement of this chapter.

(e) At the option of the Corporation, in its sole discretion, the Corporation may, upon the occurrence of an event of default, without prejudice to any other rights or remedies, take an assignment of any of the contracts in order to complete the community early childhood education facilities project, and the community provider shall take whatever actions are necessary in order to ensure the proper assignment to the Corporation of such contracts.

(f) Upon suspension or termination of the grant agreement, the community provider shall pay to the Corporation, promptly on written demand, the reasonable fees and expenses of attorneys and other reasonable expenses incurred by the Corporation 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 community provider upon an event of default.

(g) In addition to any action suspending or terminating the grant, the Corporation retains the right to pursue any and all other remedies for default under the grant agreement, or for violation of this chapter, as may be available under State law as warranted, including foreclosure of the mortgage granted to the Corporation pursuant to this chapter.

19:36-6.4 Remedies for default of the implementation agreement

(a) When an event of default shall have occurred, the Corporation may suspend or terminate the implementation agreement and without further State share thereunder. The Corporation shall promptly notify the community provider, in writing, of its determination to suspend or terminate the

implementation agreement due to an event of default, and the reasons for the action, together with the date on which the suspension or termination shall take effect.

(b) Upon termination of the implementation agreement, the community provider shall waive payment by the Corporation of any further State share.

(c) Upon termination of the implementation agreement, the Corporation may make written demand upon the community provider that the State share expended by the Corporation shall be immediately due and payable by the community provider together with any costs of the Corporation resulting from an event of default by the community provider. The Corporation may authorize reduction of the community provider's repayment obligation based upon the number of years the community early childhood education facilities project has actually been used for approved early childhood education programs in proportion to the compliance period.

(d) The Corporation may suspend the implementation agreement and, upon written notice to the community provider and the ECPA district, withhold State share or any portion thereof where it determines that an event of default has occurred, or a community provider has failed to comply with any provision of the Act, any condition of the implementation agreement or any requirement under this chapter.

(e) Upon suspension or termination of the implementation agreement, the community provider shall pay to the Corporation, promptly on written demand, the reasonable fees and expenses of attorneys and other reasonable expenses incurred in the collection of the repayment of State share or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements, of the community provider upon an event of default.

(f) In addition to any action suspending or terminating the implementation agreement, the Corporation retains the right to pursue any and all other remedies for default under the implementation agreement, or for violation of this chapter, as may be available under State law as warranted, including foreclosure of the mortgage granted to the Corporation pursuant to this chapter.

19:36-6.5 Non-renewal of the community provider's contract by the ECPA district; alternative use during the compliance period

(a) Should an ECPA district determine not to renew the preschool contract with a community provider for reasons other than for cause as defined in N.J.A.C. 19:36-1.3, or the community provider project ceases to be used for the purposes approved by the Department for more than 60 consecutive days for any reason for good cause during the compliance period, the Corporation shall ask the community provider to submit an alternative use plan to the Corpora-

tion and the Department within 60 days. The community provider may seek approval of an alternative use plan which will provide for the use of the community early childhood education facilities project during the compliance period by any non-profit community provider or governmental entity for any educational purpose which serves children in an ECPA district as approved by the Department. If an alternative use plan is proposed and approved, the grant or implementation agreement shall be modified in writing to incorporate the terms of the approved alternative use plan and the community provider shall promptly implement the approved plan.

(b) Where no alternative use plan is timely submitted, or the alternative use plan is not approved by the Department within six months of the date the community early childhood education facilities project was last used to provide services under contract with an ECPA district or for other approved purposes, or where the approved alternative use plan is not implemented by the community provider within 60 days after the Department approval, the Corporation may declare an event of default and demand repayment of State share or institute other remedies.

(c) The Corporation may reduce the community provider's repayment obligation based upon the number of years that the community early childhood education facilities project has actually been used for educational programs approved by the Department in proportion to the compliance period.

(d) The Corporation may enter into a repayment agreement with the community provider for repayment in installments over time, not to exceed the remainder of the compliance period.

(e) When the ECPA district notifies the Corporation in writing that the ECPA district has acted to suspend, terminate, or has denied renewal of the community provider's contract for cause as defined in N.J.A.C. 19:36-1.3, the Corporation may declare an event of default and invoke its remedies under N.J.A.C. 19:36-6.2 or 6.4 without requesting an alternative use plan from the community provider under this section.

19:36-6.6 Termination of the grant agreement or the implementation agreement by mutual agreement

The Corporation, the Department, the community provider and the ECPA district may terminate the grant agreement or the implementation agreement when all parties agree that the continuation of the community early childhood education facilities project would not produce beneficial results commensurate with the further expenditure of funds. The Corporation and the community provider shall agree upon the conditions for termination including the date on which the termination shall take effect. The closeout provisions, and the provisions for non-renewal of the community provider's contract by the ECPA district, in this subchapter, shall apply.

19:36-6.7 Appeals

(a) Appeals arising from decisions of the Corporation may be requested in writing, and an opportunity given for an informal hearing on the papers, in person or via telephone with Corporation staff. Such written request for an informal hearing must be made within 30 days of receipt of the Corporation's decision.

(b) In the event of an adverse decision after an informal hearing under (a) above, or if a district or community provider determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in N.J.S.A. 52:14B-2(b), a district or community provider may request, within 90 days of the written decision resulting from the informal hearing or the determination of the Corporation if any informal hearing is not sought, a formal hearing.

(c) Upon filing of an initial pleading in a contested case, the Board of the Corporation may by resolution either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(d) Every determination of a dispute or controversy arising from this chapter by the Corporation, constituting final agency action by the Board, shall be embodied in a written decision which shall set forth findings of fact and conclusions of law pursuant to the applicable rules of the Office of Administrative Law.