

**CHAPTER 32****SCHOOL FACILITIES PROJECTS: P.L. 2000, C.72,  
SECTION 15 GRANT PROCEDURES****Authority**

P.L. 2000, c.72 §§ 15 and 26(b).

**Source and Effective Date**

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

**Chapter Expiration Date**

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

In accordance with N.J.S.A. 52:14B-5.1c, Subchapter 5, Affirmative Action and Set Asides in Authority-Financed School Facilities Construction Projects Financed and Contracted For by the Authority, expires on November 18, 2007. See: 39 N.J.R. 2003(a).

**Chapter Historical Note**

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

Chapter 32, School Facilities Projects: P.L. 2000, c.72, Section 15 Grant Procedures, was readopted as R.2002 d.184, effective May 22, 2002. See: Source and Effective Date. See, also, section annotations.

**CHAPTER TABLE OF CONTENTS****SUBCHAPTER 1. GENERAL PROVISIONS**

- 19:32-1.1 Applicability and scope
- 19:32-1.2 Construction of rules
- 19:32-1.3 Definitions
- 19:32-1.4 Administration and performance of grant agreements
- 19:32-1.5 Disclosure and publicity
- 19:32-1.6 Access and record retention
- 19:32-1.7 Fraud and other unlawful or corrupt practices
- 19:32-1.8 Debarment
- 19:32-1.9 Performance evaluation policy and procedure
- 19:32-1.10 Noncompliance
- 19:32-1.11 Notice of noncompliance
- 19:32-1.12 Withholding of funds
- 19:32-1.13 Termination of the grant agreement for cause
- 19:32-1.14 Termination by mutual agreement
- 19:32-1.15 Severability
- 19:32-1.16 Waiver
- 19:32-1.17 Appeals

**SUBCHAPTER 2. ELIGIBILITY**

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

**SUBCHAPTER 3. DISBURSEMENT OF THE GRANT**

- 19:32-3.1 Amount of the grant
- 19:32-3.2 Cost overruns
- 19:32-3.3 Legal and/or equitable interest
- 19:32-3.4 Disbursements
- 19:32-3.5 Conditions precedent to payment of a disbursement

- 19:32-3.6 Checklists
- 19:32-3.7 Closeout procedures
- 19:32-3.8 (Reserved)

**SUBCHAPTER 4. UNDERTAKING THE SCHOOL FACILITIES PROJECT**

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

**SUBCHAPTER 5. AFFIRMATIVE ACTION AND SET ASIDES IN AUTHORITY-FINANCED SCHOOL FACILITIES CONSTRUCTION PROJECTS FINANCED AND CONTRACTED FOR BY THE AUTHORITY**

- 19:32-5.1 Definitions
- 19:32-5.2 Statement of intent
- 19:32-5.3 Application of affirmative action rules
- 19:32-5.4 Compliance
- 19:32-5.5 Monitoring by the Authority
- 19:32-5.6 Contract provisions
- 19:32-5.7 Failure to comply
- 19:32-5.8 Training programs
- 19:32-5.9 Set asides and goals for MBE, WBE, and SBE contractors and consultants on school facilities projects
- 19:32-5.10 Good faith efforts
- 19:32-5.11 Subcontractor replacement on school facilities projects
- 19:32-5.12 Reporting requirements in school facilities projects
- 19:32-5.13 Sanctions on school facilities projects
- 19:32-5.14 Consultant and contractor training
- 19:32-5.15 Prompt payment of subcontractors
- 19:32-5.16 Assessment of data from school facilities projects
- 19:32-5.17 Additional representations

**APPENDIX 1****APPENDIX 2****SUBCHAPTER 1. GENERAL PROVISIONS****19:32-1.1 Applicability and scope**

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 15 of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G-15) (the "Act"). Section 15 of the Act establishes a grant program to fund the State share of the final eligible costs of school facilities projects undertaken by school districts whose district aid percentage as defined in the Act is less than 55 percent and which elect not to have the Corporation undertake the construction of the school facilities project. These rules also apply to a school whose district aid percentage is less than or equal to 55 percent, providing this district has had a school facilities project approved by the Department pursuant to Section 9(c) of the Act and the district elects not to have the Corporation undertake the construction of the school facilities project. These rules are adopted in order to provide the mechanism whereby school districts which are eligible to receive grants from the Corporation can receive such grants and to ensure that these grant funds are used

properly by the school districts. Any district applying for a grant or having received a grant pursuant to the Act shall at a minimum comply with the requirements of this chapter, as applicable.

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

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

Rewrote section.

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

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

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

### 19:32-1.2 Construction of rules

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

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

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

### 19:32-1.3 Definitions

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

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

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

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

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

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

"Authorized officer" means:

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

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

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

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

"Change order" means a written order, directing or authorizing some change, in whatever degree to a design consultant contract or construction contract, including, but not limited to, an increase or decrease in the scope of work to be performed by the design consultant or the contractor, as the case may be, or an acceleration of time for the performance of such work, or a change in the sequence in which such work is being performed.

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

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

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

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

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

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

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

**19:32-4.2 Contract award and compliance**

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

(b) The district shall obtain and maintain all licenses, certifications, authorizations, or any documents required by all governmental authorities wherever necessary. The district shall promptly notify the 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 school facilities project.

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

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

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

(f) All contracts shall contain provisions that the contracted party shall comply with the anti-discrimination provisions of N.J.S.A. 10:2-1 et seq., the New Jersey Law Against

Discrimination, N.J.S.A. 10:5-1 et seq., N.J.A.C. 17:27 and N.J.A.C. 6:4-1.6. The district and its contracted parties shall in addition agree by contract and guarantee to afford equal opportunity in performance of the contracts in accordance with an affirmative action program approved by the State Treasurer. During the design and construction of the school facilities project, the district and the contracted parties shall abide by the following provisions and shall provide in any contracts provisions as follows:

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

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

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

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

1. The district shall report in writing to the Attorney General, the Unit of Fiscal Integrity and the Executive Commission on Ethical Standards the solicitation of any fee, commission, compensation, gift, gratuity or other

thing of value by any State officer or employee or special State officer or employee from any State vendor.

2. The district shall not influence, or attempt 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.

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

(i) Upon final completion and thereafter, the district shall ensure that the school facilities project is properly maintained so that its useful life can be achieved and shall ensure that all warranties remain in full force and effect. The district shall submit a plan for the maintenance of the school facility project to the Department and the Corporation prior to closeout, which plan shall, in addition to other requirements, provide for the establishment and funding of a maintenance reserve fund in accordance with N.J.A.C. 6A:26A. In addition, prior to closeout, the district shall establish dates for equipment testing, acceptance periods, warranties and instructional requirements and shall thereafter maintain the school facilities project in accordance therewith.

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

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

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

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

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

(o) The following concern contracts:

1. The district shall include the following statements in each contract awarded by the district in connection with the school facilities project: "This contract or subcontract is or may be funded in part with funds from the New Jersey Schools Construction Corporation. Neither the State, the New Jersey Economic Development Authority, 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 subject to the requirements contained in N.J.A.C. 19:32. In accordance with the provisions of N.J.S.A. 18A:7G-15, the contractor (subcontractor) (consultant) (subconsultant) agrees to comply with all of the provisions of N.J.A.C. 19:32."

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

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

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

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

Rewrote section.

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

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

In (i), updated the N.J.A.C reference; in (o), substituted "Schools Construction Corporation" for "Economic Development Authority" at the end of the first sentence and inserted ", the New Jersey Schools Construction Corporation" preceding ", nor any of its departments" in 1.

## SUBCHAPTER 5. AFFIRMATIVE ACTION AND SET ASIDES IN AUTHORITY-FINANCED SCHOOL FACILITIES CONSTRUCTION PROJECTS FINANCED AND CONTRACTED FOR BY THE AUTHORITY

Authority

N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5.4.

## Source and Effective Date

R.2002 d.302, effective September 16, 2002.  
See: 33 N.J.R. 2737(a), 34 N.J.R. 3274(a).

**19:32-5.1 Definitions**

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

“Abbott district” means an Abbot district as defined in section 3 of P.L. 1996, c.138 (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-1.1 et seq.

“Authority” or “EDA” means the New Jersey Economic Development Authority.

“Construction contract” means any contract, subcontract or agreement for a school facilities project that is entered into by the Authority.

“Consultant” means an architect, engineer, or construction management firm that enters into a contract with the Authority for the provision of services in connection with a school facilities project.

“Contractor” means any party who enters into a construction contract with the Authority.

“Minority-owned business enterprise” or “MBE” means a business that is certified by the New Jersey Commerce and Economic Growth Commission as a minority-owned business enterprise.

“Minority worker” means any worker as defined by the New Jersey Department of Treasury rule N.J.A.C. 17:27-2.1.

“Office of Affirmative Action” means the Division of Contract Compliance and Equal Employment Opportunity in Public Contracting in the New Jersey Department of Treasury, or a successor agency.

“Performance evaluation” means the Act-mandated uniform performance evaluation of contractors on all school facilities projects that must be utilized in reviewing bid submissions.

“School facility” means and includes any structure, building or facility used wholly or in part for academic purposes.

“School facilities project” means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction or maintenance of all or any part of a school facility or of any personal property necessary for or ancillary to any school facility, pursuant to a contract between a contractor or consultant and the Authority.

“Small business enterprise” or “SBE” means a business that is registered with the New Jersey Commerce and Economic Growth Commission as a small business enterprise, or any other race and gender neutral business enterprise to be registered by the New Jersey Commerce and Economic Growth Commission.

“Women-owned business enterprise” or “WBE” means a business that is certified by the New Jersey Commerce and Economic Growth Commission as a women-owned business enterprise.

**19:32-5.2 Statement of intent**

The Authority adopts this subchapter in furtherance of the mandate of the Act, which directs adherence to affirmative action and set aside goals. In applying this subchapter, the EDA intends to provide maximum opportunity for equitable employment, and fair business opportunity, to the minority and female workers and MBE, WBE and SBE firms of the communities where EDA will be building school facilities projects. EDA expects all contractors that participate in the school construction program not only to comply with the law, but to effectuate the EDA’s intent in those communities.

**19:32-5.3 Application of affirmative action rules**

Every contractor involved in a construction contract is required to undertake a program designed to employ minority workers and female workers in accordance with the hiring goals established by the Office of Affirmative Action (see N.J.A.C. 17:27-7.3).

**19:32-5.4 Compliance**

(a) A contractor will be considered in compliance with this subchapter only if the contractor has made a good faith effort to meet the minority hiring goals and female hiring goals for each trade or craft employed on the school facilities project. The goals are expressed as percentages of the total hours worked on the school facilities project in each trade. The Authority will make these goals available as part of each construction contract. At a minimum, the contractor must take the following steps in this effort to meet the established hiring goals:

1. Notify the Authority and at least two minority referral organizations of the contractor’s labor needs, and request referrals of minority workers and female workers. The contractor shall also give such notice to the Superintendent of Schools of the school district in which the school facilities project is located. The contractor shall leave standing requests for referrals of minority workers and female workers with the local unions, and the Department of Labor’s local One-Stop Career Center;

2. Give notice of employment opportunities to all minority workers and female workers who have been listed with the contractor as awaiting available vacancies;

3. Employ qualified minority workers and female workers who have been listed with the contractor as candidates for available vacancies; and

4. Keep complete and accurate records of all requests for worker referrals and hours worked.

(b) The Authority's affirmative action officer may, in his or her discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by (a)1, 2, 3 and 4 above, as long as the affirmative action officer is satisfied that the contractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Office of Affirmative Action, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by N.J.A.C. 17:27-7.3, as amended and supplemented from time to time, and the contractor agrees that a good faith effort shall include compliance with the procedures set forth in N.J.A.C. 17:27-7.4(b), (c) and (d).

#### 19:32-5.5 Monitoring by the Authority

(a) The Authority shall employ an affirmative action officer, who shall be responsible for the Authority's implementation of this subchapter.

(b) The Authority shall engage the services of the Office of Affirmative Action, the staff of which will review contractor performance for compliance with this subchapter. Each contractor shall submit to the Authority's affirmative action officer, on a weekly basis, certified payroll records identifying the name, address, Social Security number, race, hourly wage rate, gross earnings of, and number of hours worked in each craft or trade by minority, female, and other workers. The officer shall make this information available to the Office of Affirmative Action, which will make field inspections of project sites, and may perform audits of records relating to construction activities on school facilities projects.

(c) Each contractor shall identify an officer or employee who will coordinate the affirmative action program and act as liaison to the Authority's affirmative action officer, and to the Office of Affirmative Action.

(d) Each contractor shall resolve any questions regarding this subchapter with the Authority's affirmative action officer prior to the execution of any construction contract for a school facilities project.

(e) The Authority and the Office of Affirmative Action may prioritize the monitoring of construction contracts based on available staff, cost, nature, timing and extent of the work to be performed under the contract, the number of workers needed to perform the contract, and any other relevant factors.

#### 19:32-5.6 Contract provisions

(a) Every construction contract must require that:

1. A percentage of each disbursement for the construction of the school facilities project will be retained by the Authority in accordance with the construction contract, and released when all contract requirements, including all affirmative action requirements, have been met;

2. The contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, or religion;

3. The contractor must make a good faith effort to employ minority workers and female workers at a level consistent with the applicable hiring goals, and should endeavor to support the intent of the Authority to hire minority and female workers living in Abbott districts;

4. The contractor must submit employment reports to the Authority on a weekly basis;

5. The contractor must submit such certificates to the Authority as are required by the construction contract;

6. The contractor shall comply with any applicable rules promulgated pursuant to P.L. 1975, c.127 as amended and supplemented from time to time, and with any applicable rules promulgated from time to time by the Department of Labor; and

7. The contractor shall comply with the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and all applicable rules thereto, including those pertaining to the ratio of apprentices to journeymen.

(b) Every school facilities project construction contract shall contain the non-discrimination in employment on public works projects provisions required by N.J.S.A. 10:2-1, including the following:

1. There may be deducted from the amount payable to the contractor by the Authority a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

2. The contract may be canceled or terminated by the Authority, and all money due or to become due under the contract may be forfeited, for any violation of the non-discrimination sections of the contract occurring after notice to the contractor of any prior violation of these sections of the contract.

#### 19:32-5.7 Failure to comply

(a) In the event the Authority or the Office of Affirmative Action determines that a contractor is not in compliance with this subchapter, the contractor will be notified of the steps the contractor must take to be considered in compliance.

(b) If the contractor fails to comply or otherwise respond after receipt of the aforesaid notice, the Authority:

1. May institute debarment proceedings to preclude a contractor from contracting on Authority projects or on school facilities projects (see N.J.A.C. 19:30-2);

2. May refer reported violations to the Attorney General for enforcement action under the "Law Against Discrimination"; and

3. Shall indicate the contractor's noncompliance with this subchapter in the contractor's performance evaluation.

#### 19:32-5.8 Training programs

(a) The Authority may apply up to one half of one percent of capital funds for approved school facilities projects to fund training for women and minority workers in life skills, pre-apprenticeship, and construction trades apprenticeship programs that are pertinent to school facilities projects construction.

(b) The Authority may designate the Department of Labor to administer and coordinate pre-apprenticeship and apprenticeship training programs and other construction related employment opportunities. The Department of Labor may retain vendors to provide the necessary services or may utilize the services of county vocational schools, community colleges, community-based organizations, private training entities, and Local Workforce Investment Boards. All such training providers must be located in New Jersey.

(c) Pre-apprenticeship training may include, but is not limited to, literacy training, basic skills instruction, related academic or remedial education programs, English as a Second Language, vocational training and other types of training that will prepare individuals for apprenticeships and occupations pertinent to school facilities project construction.

(d) The Authority shall work with the State Apprenticeship Policy Committee established under N.J.S.A. 34:15E-1 et seq. to assist with the design and implementation of a comprehensive plan to increase the numbers of women and minorities in the State's construction trades.

(e) All organizations providing training under this section must be approved by the New Jersey Department of Education, as provided by N.J.S.A. 18A:54-1 et seq. or 18A:69 et seq. All apprenticeship programs supported by the Authority must be registered with the New Jersey Department of Education and the U.S. Department of Labor's Bureau of Apprenticeship and Training.

(f) To the extent practicable, the services provided pursuant to this section shall be coordinated with apprenticeship training provided under N.J.S.A. 18A:7G-38.

(g) In addition to pre-apprenticeship and apprenticeship training, the Authority may authorize the use of training funds for the following purposes:

1. Outreach to and recruitment of potential trainees;
2. Ancillary expenses of trainees, such as transportation, child/ parental care, tools, work clothes and shoes;
3. Monitoring of training program participants and graduates; and
4. Retention support services.

(h) In establishing sites for its training programs, the Authority, through its State partners shall, wherever possible, exercise a preference for locations within Abbott school districts in order to maximize opportunities for unemployed and underemployed women and minorities in those communities most affected by the school construction program.

(i) The Authority, through its State partners, shall facilitate the placement of graduates of the programs described in (a) above in appropriate registered apprenticeship programs.

(j) The Authority, either directly or through its State partners, shall undertake outreach efforts to recruit trainees and inform Abbott district residents of upcoming construction job opportunities through:

1. Notices to school districts;
2. Public presentations to community based, and faith based organizations;
3. Local newspaper advertisements;
4. The Workforce Investment Boards; and
5. Other such means.

**19:32-5.9 Set asides and goals for MBE, WBE, and SBE contractors and consultants on school facilities projects**

(a) The Authority may require a contractor or consultant to make a good faith effort to subcontract up to seven percent of its contract value to MBEs, up to three percent of its contract value to WBEs and up to 15 percent of its contract value to SBEs. At the time of each school facilities project advertisement, the Authority shall announce the MBE, WBE and SBE requirements for the contract, and a contractor or consultant shall be required to make a good faith effort to comply fully with the subcontracting goals.

(b) The Authority may designate a school facilities construction or consultant contract to be awarded as an MBE, WBE or SBE contract, whenever there is a reasonable expectation that bids or proposals may be obtained from at least three qualified MBE, WBE or SBE firms capable of providing the desired services at a fair and reasonable price. The designation shall be made prior to advertisement for bids.

(c) When practicable, the Authority will issue several smaller contracts, in place of one large contract, in order to increase the ability of MBEs, WBEs and SBEs to bid on school facilities projects.

**19:32-5.10 Good faith efforts**

(a) The good faith efforts of contractors and consultants on school facilities projects shall include, but not be limited to, the following measures:

1. Sending solicitation letters to prequalified MBE, WBE, and SBE firms on a list that is available from the Authority;
2. Making follow-up telephone calls to firms solicited in (a) above, and keeping a log of such calls and responses;
3. Breaking the work into smaller subcontracts, to make it easier for MBE, WBE and SBE firms to compete;
4. Contacting community groups, including, but not limited to, groups listed by the Authority for this purpose, for assistance in identifying MBE, WBE, and SBE firms;

5. Placing advertisements in local newspapers, construction trade letters, magazines, or special publications aimed at MBE, WBE, and SBEs;

6. Negotiating in good faith with interested MBE, WBE, and SBE subcontractors, so as not to disqualify a prospective subcontractor without good cause;

7. Assisting potential subcontractor firms by acting as a reference for the subcontractor, or by referring the subcontractor to the surety agent or bank officer of the contractor or consultant to satisfy bonding, insurance, or credit requirements; and

8. Only requiring bonds of MBE, WBE, and SBE subcontractors, when bonds are required of other subcontractors.

**19:32-5.11 Subcontractor replacement on school facilities projects**

(a) A contractor or consultant shall not replace an MBE, WBE or SBE contractor, except where such contractor is in breach of its subcontract or for other just cause and without the Authority's prior written consent.

(b) A contractor or consultant shall not terminate for convenience an MBE, WBE or SBE subcontractor and then perform the work of the terminated subcontractor with its own forces or those of an affiliate without the Authority's prior written consent.

(c) A request for replacement shall be in writing, with complete justification for the request. The contractor or consultant must have the written approval of the Authority before such a replacement can be made, regardless of the reason for the replacement.

(d) The contractor or consultant shall make a good faith effort to find another MBE, WBE or SBE to perform at least the same amount of work as had been allocated to the original MBE, WBE or SBE subcontractor.

**19:32-5.12 Reporting requirements in school facilities projects**

(a) Each contractor and consultant shall designate an affirmative action officer, who shall be responsible for maintaining all records required by these procedures. For contractors, that obligation shall include the completion of the following forms, which must be filed with the Authority's affirmative action officer:

1. "Certified Payroll Report," indicating the race, gender and hours worked by each tradesperson during a pay period, to be certified by the contractor or consultant and filed within 10 days of the end of each pay period, on the form incorporated herein by reference as subchapter Appendix 1; and

2. "MBE/WBE/SBE Participation Report," to be filed with the Authority by the 10th day of each month in the form incorporated herein by reference as subchapter Appendix 2.

#### 19:32-5.13 Sanctions on school facilities projects

(a) The performance evaluation of a contractor shall be negatively affected by noncompliance with the hiring and subcontracting requirements set forth in its contract with the Authority and in this subchapter.

(b) The evaluation of proposals submitted by a consultant shall be negatively affected by the consultant's noncompliance with the subcontracting requirements set forth in prior contracts with the Authority and this subchapter.

(c) Because the Authority cannot and will not pay for contractual services that are not performed or contractual obligations that are not met, the Authority shall reduce the contractor's or consultant's compensation by a maximum of one and a half percent of the contract price if the contractor or consultant does not fully satisfy the subcontracting requirements set forth in the contract. This reduction in the contract price may be effectuated either by the withholding of all or part of future payments to the contractor or consultant or by a reduction in the amount of retainage otherwise due for release to the contractor or consultant upon contract.

#### 19:32-5.14 Consultant and contractor training

(a) The Authority may fund and provide training for MBE, WBE and SBE consultants and contractors, to enhance their ability to compete for awards of projects and bids on school facilities projects.

(b) Consultants and contractors that graduate from the Authority's training program described in this section shall

be eligible for additional support services which the Authority may develop through the New Jersey Development Authority or other similar State agency\*. These services may include, but are not limited to:

1. A mentoring assistance program;
2. A performance bond and financial guarantee program; and
3. A School Capital Access Program ("SCAP") for mobilization and working capital for the benefit of classified companies that:
  - i. Seek school facilities project contracts; and
  - ii. Meet the financial evaluation criteria of the Authority's financing programs, set forth at N.J.A.C. 19:31-3.4.

#### 19:32-5.15 Prompt payment of subcontractors

Contractors and consultants shall comply with the provisions of N.J.S.A. 52:32-40 and 52:32-41, concerning the prompt payment of subcontractors.

#### 19:32-5.16 Assessment of data from school facilities projects

The Authority shall utilize the data obtained from the reporting and data collection system to perform assessments of the overall status of the program. These assessments shall evaluate the extent to which overall goals have been met and shall register the impact of the programs.

#### 19:32-5.17 Additional representations

The Authority may require consultants and contractors to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority as are necessary to carry out the purposes of this subchapter.





Date \_\_\_\_\_  
 I, \_\_\_\_\_ (Name of signatory party) \_\_\_\_\_ (Title)  
 do hereby state and certify:  
 (1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ on the \_\_\_\_\_  
 (Contractor or subcontractor) (Building or Work)  
 \_\_\_\_\_; that \_\_\_\_\_  
 \_\_\_\_\_, 20\_\_\_\_ and \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ from the full  
 (Contractor or subcontractor)  
 weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. and Regulation N.J.A.C. 12:60 et seq. And the Payment of Wages Law, N.J.S.A. 34:11-4.1 et seq.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete: that the wage rate for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in good standing, in an apprenticeship program approved or certified by the Division of Vocational Education in the New Jersey Department of Education or by the Bureau of Apprenticeship Training in the United States Department of Labor

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS

In addition to the basic hourly wage rate to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4C below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted

in Section 4(C) below

(c) FRINGE BENEFITS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS

PLEASE SPECIFY THE TYPE OF BENEFIT PROVIDED AND NOTE THE TOTAL COST PER HOUR IN BLOCK 10 ON THE REVERSE SIDE\*

- 1) Medical or hospital coverage
- 2) Dental coverage
- 3) Pension or Retirement
- 4) Vacation, Holidays
- 5) Sick days
- 6) Life Insurance
- 7) Other (Explain)


\*TO CALCULATE THE COST PER HOUR, DIVIDE 2,000 HOURS INTO THE BENEFIT COST PER YEAR PER EMPLOYEE

(5) N.J.A.C. 12:6-2.1 and 6.1 The Public Works employers shall submit to the public body or lessor a certified payroll record each pay period within 10 days of the payment of wages

NAME AND TITLE	SIGNATURE

THE FALSIFICATION OF ANY OF THE ABOVE STATEMENT MAY SUBJECT THE CONTRACTOR OR THE SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. N.J.S.A. 34:11-56.25 ET SEQ. AND N.J.A.C. 12:60 ET SEQ. AND N.J.S.A. 34:11-4.1 ET SEQ.

