

**CHAPTER 34B****SECTION 13.e DELEGATION OF SCHOOL FACILITIES PROJECTS****Authority**

P.L. 2007, c.137, § 4k (N.J.S.A. 52:18A-238.k) (rulemaking authority).

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R.2012 d.106, effective May 21, 2012.  
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**Chapter Expiration Date**

Chapter 34B, Section 13.e Delegation of School Facilities Projects, expires on May 21, 2019.

**Chapter Historical Note**

Chapter 34B, Section 13.e Delegation of School Facilities Projects, was adopted as new rules by R.2012 d.106, effective May 21, 2012. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS****19:34B-1.1 Purpose and applicability of rules**

(a) These rules are proposed by the New Jersey Schools Development Authority (the "Development Authority," "Authority" or "SDA") to implement Section 13.e of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, as amended by section 24 of P.L. 2007, c. 137 (collectively, the "Act"). Section 13.e of the Act provides that the Development Authority shall promulgate rules by which the Authority shall determine the capacity of SDA school districts to manage a school facilities project or projects identified by the Authority. These rules outline the process and criteria for making such capacity determinations, providing for a two-step decision-making process: the first step for the purpose of evaluating a school district's abilities to manage the administrative, financial and other areas of responsibility relevant to capital facilities; and the second, for the purpose of assessing the capacity of the school district to manage the delegable portion of a particular school facilities project.

(b) When the Authority determines that a school district has the capacity to manage the delegable portions of a particular school facilities project, these rules provide for the Authority, the Commissioner and the school district to enter into a grant agreement to effectuate the delegation. Upon the execution of the grant agreement by the Authority, the rules provide that the Authority shall take the necessary steps to enter into an agreement with the school district for the assignment and assumption of any contracts (or portions thereof) that have been previously procured by the Authority to the extent that such assignment is necessary for the school district to manage the delegated portions of the school facilities project.

(c) If a school district is determined by the Authority not to have the capacity to manage a project or projects, these rules further provide that the Authority shall provide the school district with a proposed training program and technical assistance in an effort to improve the school district's management capacity so as to increase the likelihood that the school district will achieve the capacity to manage the delegable portions of school facilities projects.

(d) These rules shall apply to SDA school districts that have been deemed by the Commissioner to be eligible to be considered by the Authority to manage a school facilities project or projects, in accordance with section 13.e of the Act.

### 19:34B-1.2 Definitions

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

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137.

"Amendment" means a written modification to a contract executed between a consultant and either the Authority or the SDA school district.

"Approved costs" means costs of the school facilities project as indicated in the final eligible cost determination made by the Department in the final project report, inclusive of the cost of construction as informed by the receipt of bids for the construction contract, as well as any other costs that are reflected in the project charter and approved by the Authority in the grant agreement.

"Authorization-to-proceed" means a written notice to the school district from the Authority directing the school district to commence performance of its responsibilities pursuant to the grant agreement, or permitting the district to proceed with a particular action, if written authorization from the SDA is required before commencement of such action.

"Authorized officer" means with respect to the school district, any person or persons authorized pursuant to a resolution of the governing body of the school district to perform any act or execute any document relating to the grant and the grant agreement including the school business administrator; and with respect to the Development Authority, any person or persons authorized to perform any act or execute any document relating to the grant and the grant agreement.

"Board" means the members of the Authority as outlined in N.J.S.A. 52:18A-237.

"Capital plan" means the Authority's Board-approved distribution of statutorily-allocated funding among specific, identified, current and future school facilities projects, and

adequate reserves to address unforeseen conditions and emergent conditions. The school facilities projects included in the capital plan are selected and sequenced based on an assessment of the educational priority needs and long-term capital project requirements of SDA districts, and other compelling state interests, in an effort to address such needs and requirements in a timely and cost-effective fashion within the limitations of the Authority's finite funding allocation.

"Change(s) in the work" means a change in the work or the construction contract, including, but not limited to, an increase or decrease in the scope of work, or an acceleration of time for the performance of the work, or a change in the sequence in which the work is to be performed.

"Checklist" means a form to be provided by the Authority and to be completed by the school district at a milestone or milestones during the district's management of the delegated portions of a school facilities project to be submitted to the Authority for review and approval prior to receiving an authorization-to-proceed and/or certain disbursements of the grant.

"Commencement date" means the date on which the grant agreement has been fully executed by all the parties thereto and the school district has delivered, to the satisfaction of the Authority, the documentation required by the grant agreement.

"Completion date" means the date specified in the construction contract for completion of the school facilities project which may be changed by the Authority, upon the written request of the school district to the Authority and upon the Authority's written approval in its sole discretion.

"Construction contract" means the agreement between the contractor and either the Authority or the SDA school district, together with the general conditions, supplementary conditions, plans, specifications, scope of work, the request for qualifications and/or the request for proposals, instructions to bidders and addenda, change orders, other amendments and all exhibits, appendices and documents attached to or referenced in any of the foregoing materials, which governs the construction, including the procurement of goods and services, of all or any portion of the school facilities project, and any documents attached thereto and amendments thereof contract. There may be one or more construction contracts for the school facilities project.

"Construction manager" or "CM" means the person or firm engaged by the Authority or the SDA school district to provide construction management services, including oversight and reporting services in connection with the construction of a school facilities project.

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

execution by the Authority. Such terms and conditions shall include:

1. Delivery by the district to the Authority of a certified copy of a resolution of the district board authorizing the execution and delivery of the agreement for assignment and assumption; and
2. Delivery by the district to the Authority of a certificate executed by the school business administrator or other authorized officer as to the following:
  - i. All adoptions and approvals required to be given by the district or by any other governmental entity with respect to the agreement for assignment and assumption have been obtained;
  - ii. The district has full legal right, power and authority to enter into the agreement for assignment and assumption to consummate the transactions contemplated thereby; and
  - iii. The agreement for assignment and assumption has been duly authorized, executed and delivered by the district, and constitutes a valid and binding agreement upon the district enforceable in accordance with its terms.

#### **19:34B-4.2 Assignment of specific contracts and Authority execution**

(a) Upon the offer of the grant agreement, the Authority shall take all necessary steps to assign the construction administration and project close out portion of the design consultant contract to the SDA school district, in accordance with the grant agreement and N.J.A.C. 19:34B-4.1, upon the Authority's approval of the completed bid specifications.

(b) If the Authority has engaged a construction manager for the project, the Authority shall, at the time of offer of the grant agreement, take all necessary steps to assign the construction manager contract to the SDA school district, in accordance with the grant agreement and N.J.A.C. 19:34B-4.1.

(c) Upon receipt of the executed agreement(s) for assignment and assumption from the school district in accordance with N.J.A.C. 19:34B-4.1(b), the Authority shall execute the agreement for assignment and assumption, thereby granting and assigning to the school district all liabilities, duties and obligations of the Authority arising out of or relating to the assigned contract or portion thereof, from the date of the agreement for assignment and assumption forward.

## **SUBCHAPTER 5. DISBURSEMENTS AND ADJUSTMENTS OF THE GRANT**

### **19:34B-5.1 Grant amount**

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

(b) At the time of execution of the grant agreement by the district, the grant amount shall equal the State share of the costs of the delegated portions of the school facilities project, as informed by the CWE calculated by the Authority. The grant amount shall thereafter be adjusted:

1. In accordance with, and upon approval of the final eligible costs, if the grant agreement is for delegation of construction; or

2. Upon the revision of the CWE in accordance with the award of a contract for demolition and/or construction management.

(c) The grant may be further adjusted in accordance with N.J.A.C. 19:34B-5.2.

(d) The grant shall be used only to pay for approved costs as specified in the grant agreement and this chapter.

### **19:34B-5.2 Adjustments to the grant**

(a) During the term of the grant agreement, the grant may be adjusted to reflect any changes in, or increased costs of, the school facilities project that have been approved by the Authority, and the final grant amount shall equal the grant amount determined in accordance with N.J.S.A. 19:34B-5.1(b), plus the costs of any additional amounts approved by the Authority pursuant to this section.

(b) If, during demolition services or the construction of the school facilities project, a school district determines that a change in the work or an increase in costs is required, or additional services are required, the following shall apply:

1. Any proposed or contemplated change in the work or increase in services, regardless of the cost, shall be submitted to the Authority for review and prior approval before commencement or execution of any work constituting a change in the work, or commencement of any additional services.

2. Any proposed or contemplated change in the work, regardless of the cost, which affects the number, configuration, size, location or use of the educational spaces, or the square footage of the project, shall be submitted to the Department for approval in accordance with Department rules with simultaneous notification to the Authority.

(c) Only upon receipt of a written authorization from the Authority to proceed with a change in the work or with additional services, may the school district authorize the contracted party to proceed with additional services pursuant to an amendment (if the contracted party is a consultant) or to proceed with a change order for a change in the work (if the contracted party is a contractor). Disbursement of grant funds for any additional services or change in the work performed by a consultant or contractor prior to Authority approval of such additional services or change in the work shall be at the risk of the district and the contracting party.

(d) After receipt by the Authority of the final project report, and the calculation of final eligible costs, the school district shall be responsible for:

1. The local share, if applicable;
2. The costs associated with any changes to the scope of the school facilities project, unless the school district provides evidence satisfactory to the Authority that the scope change or the amendment and/or change in the work underlying such scope change was the result of factors that were beyond the control of the school district; and
3. The costs associated with any unauthorized changes in the work, any unauthorized additional services, and any changes in the scope of the project that are not approved by both the Department and the Authority.

### 19:34B-5.3 Disbursements

(a) Disbursement of grant funds shall be made as set forth in N.J.A.C. 19:34B-5.4(d). Total disbursements shall not exceed the grant amount.

(b) Prior to the Authority's initial disbursement of grant funds, the school district shall establish an account with the State of New Jersey Cash Management Fund, created pursuant to N.J.S.A. 52:18A-90.4, for the deposit of grant disbursements made by the Authority pursuant to N.J.A.C. 19:34B-5.3(d). The school district shall be prohibited from withdrawing, encumbering or otherwise spending the interest earnings on this account, and shall transmit all interest earned on the account to the Authority on an annual basis and upon final completion of the school facilities project.

(c) No disbursement of grant funds shall be made until the Authority receives the following documentation in support of the disbursement request, which shall include:

1. Invoices with a complete description of the costs incurred;

2. Payment vouchers signed by an authorized officer of the district relating to payment of funds from the prior disbursement;

3. Submission of acceptable documentation of required insurance coverages; and

4. Completion to the satisfaction of the Authority of certifications or checklists as required by the grant agreement.

(d) The following is the disbursement schedule as may be amended from time to time by the Authority:

1. The first disbursement of the grant in the amount of 15 percent of the grant shall be made simultaneous with the execution of the grant agreement.

2. Following the first disbursement, the Authority shall make disbursements to the school district on a monthly basis, upon submission to the satisfaction of the Authority of a request for disbursement, accompanied by documentation satisfactory to the Authority, as set forth in (c) above.

(e) Upon final completion, the school district shall prepare and submit to the Authority, for review and approval, a request for disbursement together with the final completion checklist in the form attached to the grant agreement. Upon approval, the Authority shall disburse the balance of the funds due and owing under the grant agreement.

(f) The Authority shall not be under any obligation to make disbursements of the grant unless:

1. The grant agreement has been duly executed and delivered by the parties thereto;

2. No event of default or noncompliance, nor any event which with the passage of time or service of notice would constitute an event of default or noncompliance, shall have occurred and shall be continuing at the time of the request for disbursement; and

3. All of the conditions precedent to the request for disbursement, as required by the grant agreement, have been discharged completely and to the full satisfaction of the Authority.

### 19:34B-5.4 Closeout procedures

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

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