

CHAPTER 34A

SECTION 13(A) DELEGATION AGREEMENT

Authority

P.L. 2000, c. 72, §§5, 13(a) and 26(b), as amended, and P.L. 2007, c. 137, specifically, §§20, 24 and 36.

Source and Effective Date

R.2009 d.14, effective December 8, 2008.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 34A, Section 13(A) Delegation Agreement, expires on December 8, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 34A, Section 13(a) Delegation Agreement, was adopted as new rules by R.2003 d.299, effective July 21, 2003. See: 35 N.J.R. 586(a), 35 N.J.R. 3394(a).

Chapter 34A, Section 13(A) Delegation Agreement, was readopted as R.2009 d.14, effective December 8, 2008. As a part of R.2009 d.14, Subchapter 2, Delegation to the District of the Design and Construction or Acquisition and Installation of the School Facilities Project, was renamed Delegation to the District of the Design and Construction or Acquisition and Installation of the Capital Maintenance Project, effective January 5, 2009. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 19:34A-1.1 Purpose and applicability of rules
- 19:34A-1.2 Definitions
- 19:34A-1.3 Administration and performance of grant agreements
- 19:34A-1.4 Noncompliance
- 19:34A-1.5 Remedies for events of default and noncompliance
- 19:34A-1.6 Automatic termination
- 19:34A-1.7 Termination by mutual agreement
- 19:34A-1.8 Waiver
- 19:34A-1.9 Appeals

SUBCHAPTER 2. DELEGATION TO THE DISTRICT OF THE DESIGN AND CONSTRUCTION OR ACQUISITION AND INSTALLATION OF THE CAPITAL MAINTENANCE PROJECT

- 19:34A-2.1 Applicability
- 19:34A-2.2 Eligibility criteria for delegation
- 19:34A-2.3 Execution and other conditions for delegation
- 19:34A-2.4 Initiation of delegation and engagement of the design consultant
- 19:34A-2.5 Design of the capital maintenance project
- 19:34A-2.6 Construction or acquisition and installation of the capital maintenance project

SUBCHAPTER 3. GRANT AMOUNT AND DISBURSEMENT OF THE GRANT

- 19:34A-3.1 Grant amount
- 19:34A-3.2 Disbursement schedule
- 19:34A-3.3 Disbursement documentation and procedures
- 19:34A-3.4 Closeout procedures

SUBCHAPTER 4. CONTRACT AWARD AND COMPLIANCE

- 19:34A-4.1 General provisions
- 19:34A-4.2 Contract award and compliance
- 19:34A-4.3 Fraud and other unlawful or corrupt practices
- 19:34A-4.4 Debarment
- 19:34A-4.5 Performance evaluation policy and procedure
- 19:34A-4.6 Disclosure and publicity
- 19:34A-4.7 Access and record retention

SUBCHAPTER 1. GENERAL PROVISIONS

19:34A-1.1 Purpose and applicability of rules

(a) These rules are promulgated by the New Jersey Schools Development Authority (the "Authority"), to implement section 13(a) of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-13(a), as amended, and P.L. 2007, c. 137 (the "Act"). The Act provides for, among other things, the Authority to undertake all of the school facilities projects in the SDA school districts and to undertake and fund certain preconstruction activities, pursuant to N.J.A.C. 6A:26-3.9 and 19:34. Section 13(a) of the Act provides that in the case of a capital maintenance project, the Authority may, in its discretion, authorize a district to undertake the project and shall enter into a grant agreement with the district for the payment of the State share. Prior to August 6, 2007, such grants were made pursuant to a 13(a) grant agreement executed between the Corporation and an Abbott district, or other district required to use the Corporation, by which the Corporation funds the State share including the costs of pre-development activities in connection with a proposed school facilities project with estimated costs under the section 13(a) delegation limit delegated by the Corporation to be undertaken by the district pursuant to section 13(a) of the Act and this section.

(b) The rules in this chapter implementing section 13(a) of the Act shall apply to SDA school districts and districts other than SDA school districts required to the use the predecessor to the Authority, pursuant to P.L. 2000, c. 72.

Amended by R.2009 d.14, effective January 5, 2009.
See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

Rewrote the section.

19:34A-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:

"Agreement" or "grant agreement" means the section 13(a) delegation agreement (and all attachments thereto) between the Authority and the SDA school district.

“Amendment” means a written modification to a contract executed between the SDA school district and a consultant.

“Approved costs” means costs of the capital maintenance project which are eligible to be paid from the proceeds of the grant and either have been paid or shall be paid by the SDA school district.

“Authority” or “Development Authority” or “SDA” means the New Jersey Schools Development Authority, an entity which undertakes and funds school facilities projects under the Act and which is an entity formed pursuant to P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation.

“Authorization-to-proceed” means a notice to the district from the Authority directing the district to commence performance of its responsibilities pursuant to the agreement. There may be separate authorizations-to-proceed as the capital maintenance project progresses and according to the procurement, contract award, or other action authorized.

“Authorized officer” means 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 agreement including the school business administrator; and with respect to the Authority, any person or persons authorized to perform any act or execute any document relating to the grant and the agreement.

“Capital maintenance project” means a school facilities project intended to extend the useful life of a school facility, including up-grades and replacements of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems.

“Change order” or “CO” means a written order, directing or authorizing a change in the work, to a construction contract, which is executed by an authorized school district official and the contractor, and includes all adjustments, if any, to the compensation and time warranted by the change in the work. For purposes of this definition, a “change in work” is a change in the capital maintenance project, the work or the contract documents, including, but not limited to, an increase or decrease in the work to be performed by the contractor or an acceleration of time for the performance of such work, or a change in the sequence in which such work is being performed.

“Checklist” means a form to be provided by the Authority and to be completed by the district at a milestone or milestones in the delegation of the capital maintenance 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 agreement has been fully executed by all the parties thereto and the

district has delivered, to the satisfaction of the Authority, the documentation required by the agreement.

“Completion date” means the date specified by the district for completion of the capital maintenance project which may be changed by the district upon notice to the Authority.

“Construction contract” means the agreement between the SDA school district and the contractor governing the construction, including the procurement of goods and services, of all or a portion of the capital maintenance project, and any documents attached thereto and amendments thereof. There may be one or more construction contracts for the capital maintenance project.

“Construction phase” means that phase of the capital maintenance project in which the capital maintenance project is undertaken by a contractor or contractors or in which the acquisition and installation of the capital maintenance project occurs.

“Consultant” means a consultant, including a design consultant, engaged by the SDA school district for the capital maintenance project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. There may be one or more consultants engaged by the SDA school district for the capital maintenance project.

“Contract” means any agreement between a contracted party and the SDA school district for the capital maintenance project. The term “contract” includes the design consultant contract, the construction contract and any other agreements between the district and its consultants, the district and its contractors, contractors and their subconsultants and subcontractors, and consultants and their subconsultants and subcontractors.

“Contracted party” means the consultants, contractors, and their subconsultants and subcontractors and any other party providing material or services to the SDA school district in connection with the capital maintenance project.

“Contractor” means those persons or firms engaged by the SDA school district to undertake the construction or the acquisition and installation of the capital maintenance project. There may be either a single “general” contractor who has overall contractual responsibility for delivering all of the construction services needed to complete the capital maintenance project or there may be multiple contractors who have responsibility for delivering particular aspects of the capital maintenance project.