

**CHAPTER 37**  
**PROCEDURES FOR UNDERTAKING UNDER**  
**55 PERCENT DISTRICTS' SCHOOL**  
**FACILITIES PROJECTS**

**Authority**

P.L. 2000, c.72, §§ 5, 12 and 26(b).

**Source and Effective Date**

R.2004 d.66, effective January 14, 2004.  
 See: 36 N.J.R. 1122(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 37, Procedures for Undertaking Under 55 Percent Districts' School Facilities Projects, expires on July 13, 2005. See: 37 N.J.R. 235(a).

**Chapter Historical Note**

Chapter 37, Procedures for Undertaking Under 55 Percent Districts' School Facilities Projects, was adopted as special new rules by R.2004 d.66, effective January 14, 2004. See: Source and Effective Date.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**19:37-1.1 Purpose and applicability of rules**

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 procedures for the Corporation to undertake certain school facilities projects of under 55 percent district aid districts that elect to have the Corporation rather than the district undertake the project and for under 55 percent district aid districts that, having successfully appealed after failed referenda to have the Commissioner of Education authorize the issuance of local share of the costs of a school facilities project, are required to have the Corporation undertake the project included in the appeal. These rules do not cover the procedures for under 55 percent district aid districts that neither elect nor are required to have the Corporation undertake their school facilities projects.

**19:37-1.2 Definitions**

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

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, Sections 1 through 30 and 57 through 71.

"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-required district" means an Abbott district, a Level II school district, or a district with a district aid percentage of 55 percent or more.

"Commissioner" means the Commissioner of Education or designee.

“Construction cost estimate” means the estimated cost to construct the school facilities project and includes the cost of construction of the school facilities project.

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

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

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

“Corporation” means the New Jersey Schools Construction Corporation, a subsidiary of the Authority effective October 1, 2002 to carry out the Authority’s responsibilities under the Act, except the power to incur indebtedness.

“Department” means the New Jersey Department of Education.

“Design consultant” means an architect or engineer or other consultant that undertakes design work and/or construction administration services in connection with a school facilities project.

“Design work” means design work performed by a design consultant in preparation of a school facilities project, pursuant to N.J.S.A. 18A:7G-5, and may include design work in connection with land acquisition, site analysis, acquisition of a temporary facility, the preparation of the drawings required for submission of a school facilities project application, final educational adequacy review, and construction documents.

“District” or “school district” means a local or regional school district established pursuant to Chapter 8 or 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, and a State-operated school district established pursuant to P.L. 1987, c.399 (N.J.S.A. 18A:7A-34 et seq.).

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

“Environmental Site Report” means the report that the Corporation submits to the New Jersey Department of Environmental Protection (NJDEP) for purposes of the early environmental screening of potential school sites for Abbott Districts, pursuant to a Memorandum of Agreement between the Corporation and the NJDEP; the report that all districts will be required to submit to the NJDEP pursuant to N.J.A.C. 6A:26-7.1, as amended, and that under 55 percent districts will be required to submit to the NJDEP pursuant to this chapter.

“Final completion of a school facilities project” means:

1. That point in time when all requirements of all contracts for the school facilities project have been performed;
2. All items on the punch list have been performed;
3. All manuals, warranties and as-builts have been delivered;
4. Any and all liens have been released;
5. When a certificate of occupancy, continued use or completion or equivalent legal authorization to occupy has been issued; and
6. The district has provided evidence satisfactory to the Corporation that the school facilities projects is included in the district’s insurance coverage in the amount of no less than the fair market value of the covered property.

“Final educational adequacy” means the review and approval of design work by the Department that is required, pursuant to N.J.A.C. 6A:26-5.4, for a school facilities project that required a review for educational adequacy, pursuant to N.J.A.C. 6A:26-5.1. The criteria for educational adequacy are the number, configuration, size, location, and use of educational spaces within a school facility.

“Final eligible costs” means for a school facilities project constructed by the Corporation or delegated to a district pursuant to section 13(a) of the Act, the final eligible costs of the school facilities project as determined by the Commissioner, in consultation with the Corporation, pursuant to section 5 of the Act, and N.J.A.C. 6A:26-3.5.

"Final project report" means the report that the Department transmits to the Corporation following the determination of final eligible costs and containing all of the information about the school facilities project contained in the preliminary project report and the additional information required by N.J.A.C. 6A:26-3.5(i).

"Ground lease" means a lease of land only with the Corporation as the ground lessee, entitled to access and occupy district owned land to improve the land for the benefit of the ground lessor district by the undertaking of the school facilities project.

"Local share" means, in the case of a school facilities project to be constructed by the Corporation, the total costs less the State share as determined pursuant to section 5 of the Act.

"Other allowable costs" means the cost of temporary facilities, site remediation, site development, acquisition of land or other real property interests necessary to effectuate the school facilities project, fees for the services of design professionals, including architects, engineers, construction managers and other design consultants, legal fees, financing costs and the administrative costs of the Corporation or the district incurred in connection with the school facilities project.

"Pre-application activities" means the activities that must be undertaken by an under 55 percent district prior to submitting a school facilities project application to the Department for approval and calculation of preliminary eligible costs. Such costs include site analysis, acquisition of land, remediation and site development, feasibility studies, design work, and acquisition of temporary facilities, as set forth in the Act.

"Pre-application costs" means the costs incurred by an under 55 percent district for the activities that must be undertaken prior to submitting a school facilities project application to the Department for approval and calculation of preliminary eligible costs. Such costs include those of site analysis, acquisition of land, remediation and site development, feasibility studies, design work, and acquisition of temporary facilities, as set forth in the Act. Pre-application costs are a subset of the other allowable costs of the school facilities project, as defined in the Act.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7, which shall be deemed to include the costs of construction and other allowable costs.

"Pre-qualification" means the process of reviewing information and experience to determine the pre-qualification classification of firms to undertake Corporation or district professional consulting services contracts for school facilities projects.

"Pre-qualification classification" means the discipline/specialty and the pre-qualification rating is assigned to a professional services consultant by the Corporation.

"Project site" means the site, including land and improvements, where a school facilities project is located.

"Right of entry" means the right to enter and/or occupy a project site owned by a district or a party other than the Corporation to undertake and complete the school facilities project and engage in activities related to the school facilities project for a period after substantial completion of the school facilities project, and the right to enter and/or occupy the project site for an additional period required for the resolution of litigation, claims or audit findings in connection with the school facilities project.

"School facilities project" means the acquisition, demolition, construction, repair, alteration, modernization, renovation, reconstruction, or maintenance of all or any part of a school facility, and shall include fixtures, furnishings, and equipment, and shall include, but is not limited to, site acquisition, site development, the services of design professionals, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

"Section 13(a) delegation agreement" means the grant agreement between the Corporation and an Abbott district or another district required to use the Corporation by which the Corporation funds a district to undertake the school facilities project, including pre-development activities, if applicable, with eligible costs not greater than \$500,000, pursuant to section 13(a) of the Act.

"Section 13(b) local share agreement" means the agreement between the district and the Corporation reflecting the terms and conditions by which the district provides the local share, if any, of the costs of a school facilities project to the Corporation before the Corporation commences acquisition or construction of the school facilities project, pursuant to N.J.S.A. 18A:7G-13(b).

"Section 13(c) implementation agreement" means the agreement that the district enters into with the Corporation and the Department, under section 13(c) of the Act, to implement the arrangements established for school facilities projects which are to be constructed by the Corporation and financed pursuant to section 13 of the Act. The section 13(c) implementation agreement contains the terms and conditions determined by the parties to be necessary to effectuate the project.

"Site feasibility work" means the environmental due diligence on a site to be acquired or used for school purposes, including, but not limited to, the land acquisition requirements of N.J.A.C. 6A:26-7.1 and the environmental site report, and subject to Corporation review of NJDEP comments on the environmental site report, may consist of additional studies and reports.

“State share” means the State’s proportionate share of the final eligible costs of a school facilities project as determined pursuant to section 5 of the Act.

“Substantial completion” means that point in time when all of the following have occurred:

1. Essential requirements of the contracts for the school facilities project have been fully performed so that the purpose of the contracts is accomplished;
2. The punch list has been created;
3. There are no important material or omissions or technical defects or deficiencies regarding the school facilities project;
4. A temporary certificate of occupancy, continued use or completion or equivalent legal authorization to occupy has been issued;
5. The school facilities project is ready for occupancy in accordance with its intended purpose; and
6. The district has provided evidence satisfactory to the Corporation that upon delivery of the certificate of substantial completion to the district, the school facilities project will be included in the district’s insurance coverage in the amount of no less than the fair market value of the covered property.

“Under 55 percent appealed district” means a district with a district aid percentage of under 55 which after failed referenda successfully appealed to the Commissioner to authorize the issuance of local share and whose school facilities projects relating to the appeal shall be undertaken by the Corporation, if not delegated to the district under a section 13(a) delegation agreement, all pursuant to section 12 of the Act.

“Under 55 percent electing district” means a district with a district aid percentage of under 55 which after the Department approved the preliminary eligible costs of a school facilities project elected to have the Corporation undertake the project instead of the district undertaking it, pursuant to section 5 of the Act.

(b) Words and terms implementing the Act but not defined in this section shall have the meanings defined in N.J.A.C. 6A:26-1.2.

### 19:37-1.3 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 their release as provided by State law.

(b) Press releases and other public dissemination of information by the school district concerning the school facilities project shall acknowledge Department approval and Corporation providing financial assistance and undertaking of the project.

### 19:37-1.4 Access and record retention

(a) The Corporation, the Authority, the Department, the New Jersey Department of Community Affairs, the Unit of Fiscal Integrity within the Office of the Attorney General, the New Jersey Department of Labor, and their duly authorized agents may, at their discretion and costs, investigate, audit, examine and inspect the activities, documents, records and accounts, pertaining to the school facilities project, of the district.

(b) The Corporation shall make available records and accounts pertaining to the school facilities project undertaken by the Corporation upon the request by the Unit of Fiscal Integrity within the Office of the Attorney General.

(c) The district shall keep those records and accounts and shall require all contracted parties to keep those records and accounts for the school facilities project as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following final completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

(d) The Corporation shall keep those records and accounts and shall require all parties with whom it has contracted to keep those records and accounts for the school facilities project as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following final completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

### 19:37-1.5 Contract award and compliance

(a) Until such time as the Corporation undertakes the school facilities project, the district shall design the school facilities project pursuant to the plans and specifications and as approved by the Department pursuant to N.J.S.A. 18A:7G-5.

(b) Until such time as the Corporation undertakes the school facilities project, the district shall continually monitor the performance of the school facilities project to be assured that time schedules are being met.

(c) In the event of default of any contracted party under any contract, the district shall reasonably exhaust the remedies against the defaulted contracted party.

(d) The district shall obtain and maintain all licenses, certifications, authorizations, permits, or any documents required by all governmental authorities whenever 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, against any contracted party or any change in the status of any license, permit, or other authorization required for the school facilities project.