

## CHAPTER 34A

## SECTION 13(A) DELEGATION AGREEMENT

## Authority

P.L. 2000, c. 72, §§ 5, 13(a) and 26(b).

## Source and Effective Date

R.2003 d.299, effective July 21, 2003.  
See: 35 N.J.R. 586(a), 35 N.J.R. 3394(a).

## Chapter Expiration Date

Chapter 34A, Section 13(a) Delegation Agreement, expires on July 21, 2008.

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## SUBCHAPTER 1. GENERAL PROVISIONS

## 19:34A-1.1 Purpose and applicability of rules

(a) These rules are promulgated by the New Jersey Schools Construction Corporation (the "Corporation"), a subsidiary of the New Jersey Economic Development Authority (the "Authority"), to implement section 13(a) of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G-13(a)) (the "Act"). The Act provides for, among other things, the Authority to undertake all of the school facilities projects in the Abbott districts, Level II districts, and districts with a district aid percentage equal to or greater than 55 percent and to fund certain pre-development activities under the auspices of the Authority pursuant to N.J.A.C. 6A:26-3.9 and 19:34. Section 13(a) of the Act provides that when the final eligible costs of a school facilities project are less than or equal to the section 13(a) delegation limit, 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. The Corporation is a subsidiary of the Authority, created on August 13, 2002 pursuant to N.J.S.A. 34:1B-159, to carry out the Authority's responsibilities under the Act, except the power to incur indebtedness.

(b) The rules in this chapter implementing section 13(a) of the Act shall apply to Abbott districts, 55 percent and over districts, and Level II districts.

## 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 "Section 13(a) delegation agreement" means the section 13(a) delegation agreement (and all attachments thereto) between the Corporation and the district.

"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.

"Authorization-to-proceed" means a notice to the District from the Corporation directing the district to commence performance of its responsibilities pursuant to the agreement. There may be separate authorizations-to-proceed as the school facilities 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 Corporation, any person or persons autho-

rized to perform any act or execute any document relating to the grant and the agreement.

"Change order" means a written order, directing or authorizing some change, in whatever degree to a construction contract or design consultant contract, including, but not limited to, an increase or decrease in the scope of work to be performed by the contractor or the design consultant, as the case may be, or an acceleration of time for the performance of such work, or for 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 a milestone or milestones in the delegation of the school facilities project to be submitted to the Corporation 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 Corporation, the documentation required by the agreement.

"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 the agreement between the district and the contractor governing the construction, including the procurement of goods and services, of all or a portion of the school facilities project, and any documents attached thereto and amendments thereof. There may be one or more construction contracts for the school facilities project.

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

"Consultant" means a consultant, including a design consultant, engaged by the district for the 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 locally 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 district for the school facilities project.

"Contract" means any contract between a contracted party and the district for the school facilities 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 district in connection with the school facilities project.

"Contractor" means those persons or firms engaged by the district 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.

"Current working estimate" or "CWE" means the estimated cost to complete the school facilities project and includes the cost of design and construction or the acquisition and installation of the school facilities project. The Corporation shall establish an initial CWE upon delegation by the Corporation of the school facilities project to the district. The CWE shall be updated, as needed, throughout the pre-development phase, the design phase, and the construction phase.

"DCA" means the New Jersey Department of Community Affairs.

"Department" means the New Jersey Department of Education.

"Department rules" means rules issued by the Commissioner and/or the State Board of Education that govern the financing, construction and maintenance of the school facilities project, as may be in effect as of the date of the agreement and thereafter.

"Design consultant" means the architect or engineer or other consultant selected by the district to provide design services and/or construction administration services in connection with the school facilities project, pursuant to the design consultant contract.

"Design phase" means that phase of the school facilities project in which the design of the school facilities project is undertaken by the design consultant. The design phase may commence upon issuance by the Department of an approval of pre-development activities or, as applicable, upon issuance by the Department of the preliminary project report and ends upon commencement of the construction phase.

"Design work" means design work performed by a design consultant to design the school facilities project so that it may be bid out for construction. If the delegation by the Corporation to the district of the school facilities project commences upon issuance by the Department of a pre-development approval, design work shall include approved pre-development design work.