

Full text of adoption follows:

SUBCHAPTER 3. MARITIME PILOTING LICENSING

16:64-3.9 Grades of licenses and grade advancement

(a)-(d) (No change.)

(e) For all pilots who obtain a certificate of appointment from the Commission pursuant to N.J.A.C. 16:64-3.7(a) on or after October 1, 2001, the pilot licensed for a specific grade shall not pilot any vessel of draft or registered gross tonnage greater than that indicated below. The registered gross tonnage of a vessel shall be the highest tonnage published in Lloyd's Register of Ships. A pilot whose license is not of a grade that would allow assignment to the deepest vessel in a tow shall not be assigned to the towing vessels.

1. (No change.)

2. Grade 6: A Grade 6 pilot shall complete a minimum of one year length of service in Grade 6. The draft may not exceed 33 feet and the registered gross tonnage may not exceed 26,000.

3. Grade 5A: A Grade 5A pilot shall complete a minimum of a six-month length of service in Grade 5A. The draft may not exceed 36 feet and the registered gross tonnage may not exceed 33,000.

4. Grade 5B: A Grade 5B pilot shall complete a minimum of a six-month length of service in Grade 5B. The draft may not exceed 36 feet and the registered gross tonnage may not exceed 36,000.

5. Grade 5: A Grade 5 pilot shall complete a minimum of one year length of service in Grade 5. The draft may not exceed 39 feet and the registered gross tonnage may not exceed 42,000.

Recodify existing 5.-8. as 6.-9. (No change in text.)

**OTHER AGENCIES**

**(a)**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**Administrative Rules**

**Fees**

**Authority Assistance Programs**

**Direct Loan Program; Main Street Business**

**Assistance Program**

**Adopted Amendments: N.J.A.C. 19:30-6.2 and 6.3; 19:31-3.1 and 6.2**

Proposed: February 21, 2012 at 44 N.J.R. 433(a).

Adopted: April 24, 2012 by New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: April 24, 2012 as R.2012 d.101, **without change**.

Authority: N.J.S.A. 34:1B-1 et seq.

Effective Date: May 21, 2012.

Expiration Date: November 9, 2017.

**Summary of Public Comment and Agency Response:**

**No comments were received.**

**Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments are not subject to any Federal requirements or standards.

Full text of the adoption follows:

CHAPTER 30  
ADMINISTRATIVE RULES

SUBCHAPTER 6. FEES

19:30-6.2 Commitment fees

(a) A non-refundable commitment fee of .875 percent of a direct loan amount is charged with the acceptance by an applicant of a direct loan commitment from the Authority, except for any other financing under the

Premier Lenders Program, wherein a non-refundable commitment fee of \$750.00 shall be charged with the acceptance by an applicant.

(b)-(g) (No change.)

19:30-6.3 Closing fees

(a) (No change.)

(b) For guaranteed Authority-issued bonds or guaranteed financing under the Premier Lenders Program, the guarantee fee, to be paid at closing, shall not exceed 50 basis points as determined by the initial amount of the guaranteed portion of the financing in order that the fee percentage will correspond to the percentage guarantee required (for example, a 25 percent guarantee would incur a guarantee fee of 25 basis points, a 50 percent guarantee would incur a guarantee fee of 50 basis points) multiplied by the number of years the guarantee is to be in effect. This fee is in addition to the fee described in (a) above if the Authority's guarantee relates to repayment of a bond issued by the Authority.

(c) (No change.)

(d) For direct loans from the Authority, the fee, to be paid at closing, is .875 percent of the loan amount. For direct loans under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund, the fee to be paid at closing is .75 percent of the loan amount. For direct loans under the Small Business Fund, the fee to be paid at closing is .5 percent of the loan amount. For direct loans under N.J.S.A. 34:1B-47 et seq., the fee to be paid at closing is one-half of one percent of the total amount of the direct loan.

(e)-(i) (No change.)

CHAPTER 31  
AUTHORITY ASSISTANCE PROGRAMS

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) (No change.)

(b) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of \$1,250,000 for fixed asset financing and \$750,000 for working capital.

1.-6. (No change.)

7. For the Loans to Lenders component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$750,000, except that Loans to Lenders may be used to develop grocery stores and supermarkets with a maximum loan amount of \$3 million, provided that no more than \$4 million will be used for this purpose. For the pre-development assistance component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$50,000 per project.

(c)-(m) (No change.)

SUBCHAPTER 6. MAIN STREET BUSINESS ASSISTANCE PROGRAM

19:31-6.2 Terms of financial assistance

(a) Under the Main Street Business Assistance Program, the Authority may provide direct loan, loan participation and/or guarantee products and line of credit guarantee products.

1.-2. (No change.)

3. For the line of credit product, the maximum amount will be \$500,000, not to exceed 50 percent of the total transaction.

(b)-(d) (No change.)

**(b)**

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

**Section 13.e Delegation of School Facilities Projects**

**Adopted New Rules: N.J.A.C. 19:34B**

Proposed: October 18, 2010 at 42 N.J.R. 2380(a).

Notice of Proposed Substantial Changes Upon Adoption to Proposed New Rules: September 6, 2011 at 43 N.J.R. 2288(a).

Adopted: April 4, 2012 by the New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.

Filed: April 4, 2012 as R.2012 d.106, **with substantial changes to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-4.10.**

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

Effective Date: May 21, 2012.

Expiration Date: May 21, 2019.

**Summary of Public Comments and Agency Responses:**

The original rule proposal was submitted by the New Jersey School Development Authority ("Authority" or "SDA") for publication in the October 18, 2010 New Jersey Register. Upon publication and public notice, numerous comments were received during the initial 60-day comment period following the publication of the original rule proposal. Those comments are summarized below, grouped in separate sections depending upon whether the comment prompted a modification to the original rule proposal or addressed a provision that was subsequently modified in response to another comment. Additionally, the Authority received one additional public comment upon publication of the Notice of Proposed Substantial Changes Upon Adoption to Proposed New Rule, which is included, along with the Authority's response thereto, in a separate section below.

**1. Comments Received During Initial Comment Period, Giving Rise to Substantial Changes in Proposal upon Adoption, or Affecting Proposal Provisions that Were Modified in Response to Other Comments**

In response to some of the comments received during the initial public comment period after promulgation of the original rule proposal, the Authority proposed to make substantive changes to the proposal, subject to additional notice and public comment, in accordance with newly-promulgated regulatory procedures codified at N.J.S.A. 52:14B-4.10. The proposed substantial changes upon adoption, and the comments prompting them, were promulgated in a Notice of Proposed Substantial Changes to Proposed New Rules, published in the September 6, 2011 New Jersey Register, and are summarized below. Comments were received from:

1. David Sciarra, Esq., and Elizabeth Athos, Esq., Education Law Center, Newark, New Jersey;

2. John N. Fauta, Superintendent, West New York Board of Education; and

3. Charles T. Epps, Jr. Ed. D., Superintendent, Jersey City Public Schools.

The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The commenter urged that for the enumerated remedies exercisable by the Authority under proposed N.J.A.C. 19:34B-1.5 for noncompliance or default (suspension or termination of the grant agreement, or withholding of grant disbursements or other remedies), the Authority should provide a defined timeline for exercise of such remedies, so as to allow the district time to effect potential cure of the causes triggering the remedies. The commenter further urged that the Authority provide two notices of any such action, and suggested a period of 60 or 90 days of notice before exercising any such remedies. The commenter also asserted that "noncompliance" was not defined in the rules. (2)

RESPONSE: With respect to the definition of "noncompliance," the Authority notes that N.J.A.C. 19:34B-1.4 describes "noncompliance with this chapter" as any of the enumerated events of default contained therein, or any failure of the school district to comply with the Act, the proposed Chapter 34B, or any "law, regulation, or rule applicable to the grant agreement." The Authority further notes that the proposed rules provide for a two-notice process for termination, suspension, or withholding of grant disbursements, in that the initial notice of noncompliance is followed by a subsequent notice of the remedy elected by the Authority.

With respect to the notice process, the Authority recognizes that the process could be made clearer, and agrees that inclusion of a specified notice period and defined timetable for exercise of the cited remedies is appropriate; however, the Authority does not agree that the 60- to 90-day notice periods suggested are appropriate. The Authority proposes changes to the language of proposed N.J.A.C. 19:34B-1.5(a)1, 2, and 3 that will clarify the process by which an initial notice of noncompliance will issue with a 30-day minimum notice period for correction of the noncompliance, which period may be extended upon request to the Authority, and if corrective action is not taken or is not effective within the notice period, or any extension thereof, the Authority will issue a subsequent notice of the remedy it elects to undertake, which will provide for an additional 15 days' notice (in the case of grant disbursement withholding) or 30 days' notice (in the case of suspension or termination of the grant agreement) before such actions can take effect. In addition, the Authority proposes to modify the language of this section to indicate that all notices of remedy under N.J.A.C. 19:34B-1.5(a)2 through 5, whether for termination, suspension or withholding of grant funds, will indicate the Authority's decision to undertake the remedy and the reasons for the action, as well as the effective date of the action. This generalized notice language will replace language formerly proposed as N.J.A.C. 19:34B-1.5(a)4i to provide specific notice information for termination notices. The changes summarized above have been incorporated into the proposed rule text in the notice of substantial changes upon adoption, and are formally adopted through this notice of adoption.

2. COMMENT: The commenter objects that the regulatory provisions regarding statutorily-mandated training at N.J.A.C. 19:34B-2.3(a)3 and 2.4(d)5 fail to implement the language and intent of the statute, in that they fail to indicate that the training programs be developed "in consultation with the commissioner" of the Department of Education, and because the proposed rules indicate that such training will be made available to districts that have been determined to lack the capacity to manage the delegable aspects of school facilities projects. (1)

RESPONSE: The Authority appreciates the commenter's concern and has determined that amendment of the proposed regulations at N.J.A.C. 19:34B-2.3(a)3 and 2.4(d)5 is warranted to clarify that all training programs developed by the Authority pursuant to N.J.S.A. 18A:7G-13(e) shall be developed in consultation with the Department of Education.

With respect to the second portion of the comment, the Authority notes that its regulations validly implement the statutory language, which only requires that the Authority offer training to those districts "deemed to lack the capacity to manage a school facility project or projects. No further changes will be made to the proposal in response to this comment.

3. COMMENT: A commenter objected that the proposed regulations afford inadequate independent review and dispute resolution in the event of district disagreement with Authority determinations. The commenter asserted that all critical determinations of the Authority under the proposed regulations should be subject to appeal. The commenter further asserted that in all appeals from determinations that constitute contested cases under the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., districts must be afforded an opportunity for a hearing before an independent administrative law judge at the Office of Administrative Law. (1)

4. COMMENT: The commenter questioned, in connection with Authority determinations under the regulations regarding termination of a grant agreement under N.J.A.C. 19:34B-1.7, and requests for waivers or releases under N.J.A.C. 19:34B-1.8, whether such determinations represent appealable final agency actions, or whether administrative appeals from such determinations are permitted by the proposed rules. (3)

RESPONSE TO COMMENTS 3 AND 4: The Authority appreciates the commenters' concerns, and agrees that clarification of the process for appeals from Authority determinations under these regulations is warranted. To that end, the Authority has determined to amend the language of the proposed rules at N.J.A.C. 19:34B-2.5 to provide for both informal administrative hearings for challenges to Authority determinations and formal hearings that may be referred to the Office of Administrative Law, as appropriate for contested cases, under the APA.

5. COMMENT: The commenter asserts that a maximum time frame should be established for all approvals that must be granted by the authority pursuant to N.J.A.C. 19:34B-3.3 and 3.4 in order to authorize

the district to proceed with engagement of a contractor for demolition or construction services. (2)

6. COMMENT: The commenter asserts that the proposed rule as drafted does not provide timelines for the various determinations of the Authority, the Authority Board, and the Department of Education under N.J.A.C. 19:34B-3.3 and 3.4 to ensure that it is possible to complete the necessary approvals within what the commenter describes as the "60-day period during which public bidders are barred from modifying, withdrawing or canceling their bids." (3)

RESPONSE TO COMMENTS 5 AND 6: With respect to the 60-day time period described in Comment 6, the Authority interprets that to be a reference to N.J.S.A. 18A:18A-36, which prescribes a 60-day period during which a district must award a contract or reject all bids, unless, for those bidders who consent to an extension, the district requests additional time for consideration of bids before expiration of the original period. While the Authority will endeavor to complete all necessary reviews and secure all necessary approvals within the 60-day time frame, districts should be aware that these reviews and approvals may not be completed within that 60-day period, and thus any bid solicitation for a contract on a delegated project should advise bidders that an extension of the statutory period is contemplated as possible.

The Authority proposes substantive changes to N.J.A.C. 19:34B-3.3 and 3.4 upon adoption to clarify the nature of the approvals required, and to reflect the possibility that the district will be required to request an extension of the 60-day period for contract award under N.J.S.A. 18A:18A-36. These changes include the addition of language to N.J.A.C. 19:34B-3.3(b) to indicate that the creation of a project charter may be required as a part of the approval process, and to clarify that if bids received by a district for demolition work require a revision of the Current Working Estimate (CWE), then the grant amount may also require modification. Further changes include addition of language at N.J.A.C. 19:34B-3.3(c) to reflect the need to submit any proposed charter or charter revision to the Board of the Authority, and to indicate that the Authority will endeavor to complete its reviews and approvals and issue a notice to proceed to the district within 60 days, but that if additional time is needed, the Authority will advise the district within the 60-day period so that the district may request that bidders agree to an extension of the time for consideration of bids.

Additional changes are proposed to N.J.A.C. 19:34B-3.3(a) and 3.4(a) to reflect that, because of the nature and complexity of approvals required for delegation of projects, districts should include in their bid packages a notice to bidders that an extension of time for the consideration of bids under N.J.S.A. 18A:18A-36 may be required. Additional language is proposed for N.J.A.C. 19:34B-3.4(e) to reiterate that the Authority will endeavor to complete its reviews and approvals and issue a notice to proceed to the district within 60 days, but that if additional time is needed the Authority will advise the district within the 60-day period so that the district may request that bidders agree to an extension of the time for consideration of bids.

7. COMMENT: The commenter questions which items comprising the bid documents to be utilized under N.J.A.C. 19:34B-3.3 and 3.4 (including contracts, proposal, and other forms and certifications) are to be developed by the District, and which items are to be based on standard Authority contracts or forms. (3)

RESPONSE: The Authority appreciates the commenter's request, but will not develop the template for bid documents until the regulatory framework for the process has been finalized and adopted. No changes to the proposal will be made in response to this comment.

8. COMMENT: The commenter asserts that under the proposed N.J.A.C. 19:34B-6.5, and N.J.A.C. 19:34B-6.6 governing remediation services as part of a construction contract, and as part of a demolition contract, respectively, the Licensed Site Remediation Professional retained by the Authority would supervise all remediation work performed by contractors managed by the district, but the district is responsible for all permits, reporting and compliance. The commenter expressed concern that in order to be responsible for all such permits, reporting and compliance, the district would need to retain its own Site Remediation Professional to perform the reporting, monitoring, certification and tracking tasks for which the district is responsible, suggesting a duplication of effort by the district and Authority.

RESPONSE: The Authority appreciates the commenter's concerns, but responds that it is anticipated that the Licensed Site Remediation Professional retained by the Authority would provide reporting, monitoring, certification, and tracking services to the district during the construction or demolition period in connection with any remediation work performed by the district. However, should the remediation of the Project Site involve the imposition of long term stewardship obligations on the owner during occupancy of the school facility after construction, then the district, as owner of the property, would be responsible for retaining its own Licensed Site Remediation Professional to fulfill any sampling, reporting or other requirements of such long term stewardship obligations imposed on an owner of property. The Authority proposes substantial changes to N.J.A.C. 19:34B-6.5 and 6.6 to reflect that the Authority's provision of the services of a Licensed Site Remediation Professional ends with the completion of construction and deed transfer to the district, if the school facility is constructed on a site owned by the Authority, or completion of construction and occupancy by the district, if the school site is already owned by the district, and that at that point, the district is responsible to engage its own Licensed Site Remediation Professional for the fulfillment of any long-term stewardship obligations required as part of the remediation of the Project Site.

## 2. Comments Received During Initial Comment Period, Not Giving Rise to Changes in the Rule Proposal

Additionally, in response to the October 18, 2010 publication of the initial proposal, the Authority received a number of comments which did not themselves give rise to modifications to the rule proposal. As previously noted, such comments were received from:

1. David Sciarra, Esq., and Elizabeth Athos, Esq., Education Law Center, Newark, New Jersey;

2. John N. Fauta, Superintendent, West New York Board of Education; and

3. Charles T. Epps, Jr. Ed. D., Superintendent, Jersey City Public Schools.

A summary is provided below of such comments and the Authority's responses thereto, and the comments have been sequentially numbered to continue from the comments reproduced in the section above, to provide clarity. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

9. COMMENT: Two commenters noted that the Authority's rule proposal does not address delegation by the Authority of design and development or land acquisition phases to districts, and limits the delegable portions of a school facilities project to construction administration, construction, and/or demolition, and they questioned why the design, development, and land acquisition functions were not addressed by the rules. (2, 3)

10. COMMENT: The commenter questioned whether the rules will later be expanded to include the design, development, and land acquisition functions as delegable portions of projects. (3)

11. COMMENT: The commenter queried why SDA districts would not be permitted to manage all portions of a school facilities project under the same requirements that apply to regular operating districts if they are found to have the appropriate capacity. (3)

12. COMMENT: The commenter objected to the Authority's proposal to restrict the type of project activities that may be delegated to districts, and asserted that the limitation of delegable portions of school facilities projects to construction, construction administration and demolition is in violation of the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-13.e(2). (1)

RESPONSE TO COMMENTS 9 THROUGH 12: The Authority acknowledges that the rules do not permit the delegation of design and development functions or land acquisition functions to a district. The Authority believes that these functions should not be delegated to SDA districts, because these functions have fundamental effects on defining the scope and cost of a school facilities project, and therefore should remain in the control of the Authority for projects whose eligible costs are fully funded by the Authority. The Authority believes that its retention of control over design, development, and land acquisition for projects in SDA districts is appropriate and distinguishable from the Authority's role in management and funding of the projects of regular

operating districts, which have a shared financial responsibility for school facilities projects.

The Authority respectfully disagrees with the contention that Educational Facilities Construction and Financing Act requires that all aspects of a school facilities project, including design, development, and land acquisition functions, be delegated to SDA districts. N.J.S.A. 18A:7G-13.a provides that “in the case of a capital maintenance project, the development authority may, **in its discretion**, authorize an SDA district to undertake the design, acquisition, construction and all other appropriate actions necessary to complete the capital maintenance project.” (emphasis added). In addition to providing for the delegation of capital maintenance projects in the discretion of the Authority, N.J.S.A. 18A:7G-13.a further provides that the Authority “**may also** authorize an SDA district to undertake the design, acquisition, construction and all other appropriate actions necessary to complete any other school facilities project” (emphasis added). The use of the permissive “may also” in the statute indicates that the same discretion exercised by the Authority in determining whether to delegate capital maintenance projects is also exercised by the Authority with respect to the delegation of school facilities projects, and such discretion naturally extends to the determination of which aspects of a school facilities project the Authority may identify for delegation. While the statute permits delegation of a broad range of functions including design, acquisition, and construction for a schools facility project, the statute does not compel the delegation of all such functions, as the delegation determination remains a discretionary process. Accordingly, no changes to the proposal will be made in response to these comments.

13. COMMENT: The commenter asserted that if the Authority retains control over portions of the project, while delegating others, the mixed responsibilities between the Authority and the district could lead to subsequent issues in overlapping areas, such as effects of demolition and remediation activities on later construction activities, or design issues affecting later demolition or construction. The commenter voiced concern that issues created in portions of the project under Authority management could affect the portions of the project under district management and possibly “lead to change orders that are no fault of the district’s management.”

RESPONSE: The Authority appreciates the commenter’s concern, and recognizes that, as part of the Authority’s role in reviewing and approving any change order requests on a delegated project, the Authority will consider the cause and nature of any proposed change order in approving or rejecting such change order, and if the change order results from an effect of actions taken during a phase of the project managed by the Authority, and is not due to the actions of the district, that fact will be noted. No changes to the proposal will be made in response to this comment.

14. COMMENT: The commenter objected to proposed N.J.A.C. 19:34B-1.7, which permits termination of the grant agreement if the Authority determines that such termination is in “the best interests of the school facilities project,” asserting that the section is vague in that the “best interests” standard is not defined, is arbitrary and exceeds the scope of the Authority’s statutory authority, and is excessive in light of the other categories of noncompliance that give rise to a right to terminate. (1)

15. COMMENT: The commenter asserted that the “best interests” standard of N.J.A.C. 19:34B-1.7 is not defined, and asked what criteria (such as financial criteria) would be used by the Authority in making a determination that termination of the grant agreement is in the best interests of the school facilities project. (3)

RESPONSE TO COMMENTS 14 AND 15: The Authority respectfully disagrees with these comments. The Authority believes that a provision allowing for termination of the delegation in the best interests of the school facilities project is necessary and prudent, to prevent or curtail potential waste or abuse. With respect to the contention that the “best interests” standard for termination is vague or undefined, the Authority notes that in proposed N.J.A.C. 19:34B-1.7(a)1, a “best interests” termination specifically requires notice to the Department and the school district that includes the precise reasons for the termination. Thus, any such termination will be supported and informed by the particular factual scenario giving rise to the termination decision.

Furthermore, in response to the contention that a termination of the delegation grant agreement exceeds statutory authority, the Authority notes that N.J.S.A. 18A:7G-13.a provides for the Authority to exercise discretion in delegating aspects of capital maintenance projects and other school facilities projects, and this same discretion permits the Authority to evaluate whether, in the context of the particular factual circumstances of a delegated project, a delegation agreement should be terminated in the best interests of advancing the project. No changes to the proposal will be made in response to these comments.

16. COMMENT: The commenter requests that the form of the application referenced in N.J.A.C. 19:34B-2.3(a), for determining district capacity to manage a school facilities project, be made available for review in conjunction with this rule proposal. (2)

RESPONSE: The Authority appreciates the commenter’s request, but, in order to ensure accuracy and certainty, the Authority will develop the form of application once the regulatory framework for the process has been finalized and adopted. The Authority notes, however, that the contents of the application are summarized at N.J.A.C. 19:34B-2.2(c), and the form of application will conform to the general outlines of N.J.A.C. 19:34B-2.2(c). No changes to the proposal will be made in response to this comment.

17. COMMENT: The commenter asserts that the process by which New Jersey Department of Education will determine the district’s eligibility for consideration by the Authority be outlined and defined by reasonable timelines for expeditious action. (3)

RESPONSE: The Authority notes that the commenter’s concern is not responsive to the rules proposed by the Authority, but is more appropriately directed to the Department of Education with regard to the rules proposed by that agency for the delegation process under N.J.S.A. 18A-7G-13.e. No changes to the proposal will be made in response to this comment.

18. COMMENT: The commenter objects to the two-step process proposed by the Authority, first for determination of district capacity to manage school facilities projects generally, and then for determination of capacity for a particular project. The commenter asserts that the two-step process exceeds the statutory authority granted to the Authority. (1)

RESPONSE: The Authority disagrees with this comment, and believes that the two-step process is statutorily valid. N.J.S.A. 18A:7G-13.e provides that the Authority shall “determine the capacity of an SDA district . . . to manage a school facilities project **or projects** identified by the development authority” (emphasis added). That statute further provides that, “In making the determination, the development authority shall consider the experience of the SDA district, the size, complexity, and cost of the project, time constraints, and other relevant factors.” The two-step process articulated by these rules anticipates the possibility that a district may seek delegation of multiple projects through separate applications, and thus the second step of the process considers whether a district maintains the capacity to manage an additional school facilities project if the district is already managing aspects of a delegated project. The two-step process developed by the Authority is warranted as performance of obligations under an initial delegation could subsequently affect a district’s capacity to undertake additional delegations. A single-step process may not be able to correctly evaluate in advance a district’s capacity to manage multiple delegations. The possibility of multiple delegations is properly countenanced as an “other relevant factor” pursuant to N.J.S.A. 18A:7G-13.e, and thus the two-step process is justified under the statute. No changes to the proposal will be made in response to this comment.

19. COMMENT: The commenter requests that the evaluation of district capacity described in N.J.A.C. 19:34B-2.3 be combined with the evaluation of district eligibility for project delegation of N.J.A.C. 19:34B-2.4, or the evaluation of N.J.A.C. 19:34B-2.4 be eliminated in favor of a one-step process that determines district capacity and results in a determination of capacity specifying the type and cost/size of projects which a district is deemed capable of managing. (3)

RESPONSE: The Authority believes that the two-step process for evaluation of a district’s capability and eligibility for a specific project is warranted and necessary. This two-step process is intended to be applicable for the district’s first application for project delegation, but the district capacity determination need not be repeated for subsequent

applications, if made while the prior determination of district capacity is still valid, usually a period of three years. For subsequent project delegation applications, if a district's previous capacity determination is still valid, the district would then proceed to the project-specific eligibility determination under N.J.A.C. 19:34B-2.4. This project-specific evaluation is necessary to evaluate any unique characteristics of the second project, or to address any changes in the district's circumstances (including staff changes or changes in staff responsibilities) since the prior project eligibility application, that might affect the district's ability to manage the second project. This is especially true if the second application for delegation would mean that the district, if successful, would be managing multiple ongoing delegated projects. No changes to the proposal will be made in response to this comment.

20. COMMENT: With respect to the provision regarding district capacity assessment, the commenter requests that the "evaluation criteria documents" be made available for review along with this rule proposal. (2)

RESPONSE: The Authority interprets the commenter's request as a request for the application form to be used in the evaluation of district capacity. For response, please refer to the Response to Comment 16 above. The Authority notes that the evaluation criteria for the district capacity determination are outlined in N.J.A.C. 19:34B-2.3. No changes to the proposal will be made in response to this comment.

21. COMMENT: Two commenters insisted that the regulations should provide timelines for the Authority's determinations of district capacity under N.J.A.C. 19:34B-2.3, and project eligibility under N.J.A.C. 19:34B-2.4, and one of the commenters further suggested that a 30-day time period is appropriate for such determinations. (1, 3)

RESPONSE: The Authority disagrees with these comments. N.J.S.A. 18A:7G-13.e does not impose time limits for the Authority's determinations under that statute. The determination of district capacity for delegation is a fact-sensitive and complex matter, and the Authority asserts that standardized time frames for determination are therefore not appropriate. No changes to the proposal will be made in response to these comments.

22. COMMENT: The commenter inquires whether capital maintenance projects and emergent projects will "continue to be determined by the provisions of Section 13A." (3)

RESPONSE: The Authority notes in response that capital maintenance projects and emergent projects that are delegated to districts under N.J.S.A. 18A:7G-13a will not be governed by these rules implementing N.J.S.A. 18A:7G-13.e. No changes to the proposal will be made in response to this comment.

23. COMMENT: The commenter asks whether, in reference to N.J.A.C. 19:34B-4.2, governing assignment of specific contracts, the Authority will be developing a different contract than the one it currently uses for design consultants, and inquires when that contract will be made available for comments. (2)

RESPONSE: The Authority anticipates revision of its existing design consultant agreement to address the unique aspects of delegated projects. However, the Authority prefers to make such revisions once the regulatory framework for the delegation process has been finalized and adopted. The Authority will make the template document available once it has been adapted for the delegation process. No changes to the proposal will be made in response to this comment.

24. COMMENT: The commenter asks, in the case of a district that has engaged a district architect, whether such district architect can be engaged for a delegated school facilities project without the need for procuring a new architect through the Authority. (2)

RESPONSE: The Authority understands the commenter's question to ask whether the Authority can utilize an architect currently engaged by a district for the design of a school facilities project subject to delegation to a district. Because the design portions of a project are not delegated to a district under the proposed rules, the Authority will hold the contract for design services, and therefore must procure such design services contract pursuant to its own rules, under N.J.A.C. 19:38C. A design consultant who is engaged as a district architect may be eligible to participate in an NJSDA procurement for design services, as long as the design consultant is appropriately prequalified, but the design consultant will still have to compete in an NJSDA procurement process in order to be selected as the

architect for a project subject to delegation to a district. No changes to the proposal will be made in response to this comment.

25. COMMENT: The commenter asks whether N.J.A.C. 19:34B-4.2(c) regarding the Authority's assignment of contracts to districts, and its language providing that "all liabilities, duties and obligations of the Authority shall be assigned to the school district," acts to prohibit the inclusion of an indemnification provision providing for indemnification of the district by the Authority. (3)

RESPONSE: The Authority understands the commenter to ask whether indemnification of the district is prohibited by the cited language. The Authority responds that it, like many State agencies, lacks statutory authorization to indemnify third parties, and it is this statutory inability to offer indemnification, not the particular language of the cited regulation, that prevents the Authority from including indemnification provisions in an assigned agreement. No changes to the proposal will be made in response to this comment.

26. COMMENT: The commenter asserts that the proposed N.J.A.C. 19:34B-5.2, governing adjustments to the grant, should specify timelines for Authority review and approval, in order to minimize delays during the construction of projects. (3)

RESPONSE: The Authority appreciates the commenter's concern, but notes that because the nature of the proposed changes in project scope may vary from instance to instance, and cannot be anticipated at this time, a proposed timeline for review and approval of such fact-sensitive items cannot be provided. No changes to the proposal will be made in response to this comment.

27. COMMENT: The commenter asserts that the provisions of N.J.A.C. 19:34B-6.1, which describes "general requirements for district procurements," forces districts in their management responsibilities to act as "proxies of the SDA rather than as autonomous agents," and asks whether the additional requirements of the section are necessary in light of the provisions of the Public School Procurement Law and other regulations that control procurement in regular operating districts. (3)

RESPONSE: The Authority disagrees with the comment and believes that the requirements of the rule are necessary to address the unique nature of delegation of school construction projects under N.J.S.A. 18A:7G-13.e. No changes to the proposal will be made in response to this comment.

28. COMMENT: The commenter asks whether it is necessary for a district to use the Authority's form of construction manager agreement as required under N.J.A.C. 19:34B-6.4, or whether the district to use their standard forms of agreement with certain SDA-required provisions included. (3)

RESPONSE: The Authority appreciates the commenter's question and responds that if a district desires to modify its standard agreement to include SDA-required language rather than utilize the Authority's standard form, such a situation would be an opportunity to apply for a waiver under N.J.A.C. 19:34B-1.8, with respect to the provisions of N.J.A.C. 19:34B-6.4. No changes to the proposal will be made in response to this comment.

29. COMMENT: The commenter asks whether, in a case where the district employs its own construction manager/clerk of the works with the proper experience to manage the project, will the district be able to recover these costs through the grant, and further asks whether the construction manager will have to be an SDA-approved construction manager if they are a direct employee of the district. (2)

RESPONSE: The Authority understands the commenter's question to ask whether the Authority would compensate a district for the salary, benefits, and other employment costs allocable to a district employee if the district proposed such employee as a "construction manager" in lieu of the procurement of a construction management firm. It is not anticipated that the district would be compensated for its use of staff in the management of the school facilities project. Further, the construction manager contemplated by the Authority under these rules is required to be prequalified by the Authority, which requires prior prequalification by the Department of Treasury, Division of Property Management and Contracts for the type of services and aggregate limit suiting the size of the project in question. The Authority is currently unaware of any single-person entity that has secured Authority prequalification as a construction

manager. No changes to the proposal will be made in response to this comment.

30. COMMENT: The commenter asks whether, in districts where the building code officials have the proper classification to review school facilities for code compliance, the district can submit plans to their own building department or would the Division of Community Affairs have jurisdiction. (2)

RESPONSE: The Authority understands the commenter's question to be premised upon a situation in which the district procures and manages the design process. Because the proposed rules provide that the Authority does not delegate the design portion of a school facilities project, the commenter's question is moot. No changes to the proposal will be made in response to this comment.

### 3. Comments Received upon Publication of Notice of Proposed Substantial Changes Upon Adoption to Proposed New Rule

The Authority received one comment letter during the comment period for the Notice of Proposed Substantial Changes Upon Adoption to Proposed Rule, from Elizabeth Athos, Esq. of the Education Law Center, Newark, New Jersey, on November 5, 2011. That letter reiterates comments previously submitted by that entity. A summary of the comments included in that letter, and the Authority's response thereto, follows. The comments are sequentially numbered to continue from the section above, for clarity:

31. COMMENT: The new comment reiterates the previously expressed concern that the rule proposal, even as modified by the proposed substantial changes upon adoption, does not address delegation by the Authority of design and development or land acquisition phases to districts, and limits the delegable portions of a school facilities project to construction administration, construction and/or demolition.

RESPONSE: Please refer to the Authority's Response to Comments 9 through 12, in Section 2 above. No changes to the proposal will be made in response to this comment.

32. COMMENT: The new comment reiterates the previously expressed objection to the two-step capacity determination process proposed by the Authority, first for determination of district capacity to manage school facilities projects generally, and then for determination of capacity for a particular project. The commenter asserts that the two-step process is unduly burdensome and exceeds the statutory authority granted to the Authority.

RESPONSE: Please refer to the Authority's Response to Comment 18, in Section 2 above. No changes to the proposal will be made in response to this comment.

33. COMMENT: The new comment reiterates the previously expressed objection to proposed N.J.A.C. 19:34B-1.7, which permits termination of the grant agreement if the Authority determines that such termination is in "the best interests of the school facilities project," asserting that the section is vague in that the "best interests" standard is not defined, is arbitrary, vague, and exceeds the scope of the Authority's statutory authority.

RESPONSE: Please refer to the Authority's Response to Comments 14 and 15, in Section 2 above. No changes to the proposal will be made in response to this comment.

#### Federal Standards Statement

The adopted new rules implement a State statute, specifically section 13.e of 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. There are no Federal standards or requirements applicable to these rules. A Federal standards analysis, therefore, is not required.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## CHAPTER 34B

### SECTION 13.e DELEGATION OF SCHOOL FACILITIES PROJECTS

#### 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.

“Consultant” means a consultant, including a design consultant, engaged 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 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 the school facilities project.

“Contract” means any contract relating to the school facilities project between a contracted party on the one hand, and the SDA school district or the Authority on the other hand.

“Contract price” means the amount stated in the construction contract, as it may be adjusted in accordance with terms of the construction

contract, representing the total amount payable by the Authority or the SDA school district to the contractor for the performance of the work.

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

“Contractor” means those persons or firms engaged by the Authority or the SDA school district for construction of the school facilities project in accordance with the construction contract.

“Current working estimate” or “CWE” means the estimated cost to complete the delegated portion of the schools facility project, as calculated by the Authority. The Authority shall utilize the CWE to determine the grant amount when offering the grant agreement to the district. The CWE shall be updated, as needed, and upon receipt of bids for the delegated portion of the school facilities project.

“DCA” means the New Jersey Department of Community Affairs.

“Delegable portions of a school facilities project” means the portions of a school facilities project that are eligible for delegation to an SDA school district, which are limited to some or all of the following:

1. Construction administration;
2. Construction; and/or
3. Demolition services.

“Demolition services” means the removal of asbestos and hazardous building materials, such as lighting fixtures, and thermostats containing mercury, air conditioning units containing chlorofluorocarbons (CFCs) and light ballasts containing PCBs, followed by the razing of existing structures and removal of building foundations not beneficial to the construction of the proposed school facilities project, disposal of demolition debris and the backfill of the demolition area with fill suitable for unrestricted residential use, and the removal of underground storage tanks and associated remediation of any soil impacted by a discharge from the tank.

“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 grant agreement and thereafter.

“Development Authority,” “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 the entity formed pursuant to P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation.

“Disbursement” means a release of a portion of the grant to the SDA school district to pay for approved costs.

“District assessment committee” means a committee comprised of Authority staff, including, but not limited to, personnel with expertise in the areas of strategic planning, facilities project planning, budgeting, real estate services and procurement activities, with responsibility for evaluating and assessing an SDA school district’s ability to manage school facilities projects.

“Event of default” means any event specified in N.J.A.C. 19:34B-1.4.

“Excess costs” means the additional costs of the school facilities project, if any, which shall be borne by the SDA school district.

“Final completion” means that point in time on the school facilities project when the project is 100 percent complete and:

1. All requirements of the construction contract have been completed;
2. All items on the punch list have been performed; and
3. A certificate of occupancy, or a certificate of acceptance, as applicable, has been issued by DCA.

“Final eligible costs” means the calculation of costs as determined pursuant to N.J.S.A. 18A:7G-5.h(2) and N.J.A.C. 6A:26-3.5, and for purposes of the grant agreement, shall be set forth in the final project report.

“Final grant amount” means the final amount of the grant as determined by the Authority, in accordance with N.J.A.C. 19:34B-5.1.

“Final project report” means the report prepared by the Department pursuant to N.J.A.C. 6A:26-3.5(i) which contains all of the information included in the preliminary project report and, in addition, includes: the final eligible costs, the excess costs, if any, the State share and the local share.

“Grant” means the funds to be provided to the SDA school district by the Authority to pay for the approved costs subject to the terms and conditions of the grant agreement.

“Grant agreement” means the agreement (and all attachments thereto) by and among the Authority, the Commissioner of Education and an SDA school district setting forth the contractual terms and conditions under which the Authority funds the State share in connection with the portion of a school facilities project delegated by the Authority to an SDA school district pursuant to this chapter.

“Key district personnel” means those individuals identified by the SDA school district with overall district management responsibility for functions including, but not limited to, administrative, financial and facilities oversight, who shall serve as the principal contacts for the Authority’s district assessment committee.

“Key project management personnel” means those individuals identified by the SDA school district, including school district staff and professional consultants, with management responsibility for administration of maintenance and school facilities, who shall serve as the principal contacts for the Authority’s project assessment committee.

“Licensed site remediation professional” means an individual who is licensed pursuant to section 7 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-7), by the Site Remediation Professional Licensing Board established pursuant to section 3 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-3), or by the Department of Environmental Protection pursuant to section 12 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-12).

“Local share” means the total costs of the school facilities project less the State share as determined pursuant to section 5 of the Act.

“Long range facility plan” or “LRFP” means the plan required to be submitted to the Commissioner by a district pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2.

“Lot and block designation” means the identification of the boundaries and location of a parcel of land by reference to the parcel’s unique lot and block numbers as that parcel is represented on the currently applicable municipal tax assessment map.

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

“Other capital projects” means all projects or portions thereof that are not eligible for State support under the Act, as defined in N.J.A.C. 6A:26.

“Project assessment committee” means the committee, comprised of staff of the Authority, with expertise in the area of project management and project controls, including budgeting and scheduling and grants administration, which evaluates the ability of a school district to manage the delegable portions of a particular school facilities project.

“Project charter” means the document that sets forth the scope, budget and schedule of a school facilities project, which is approved by the Board of the Authority and updated from time to time during the course of the school facilities project with Board approval.

“PSCL” means the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., together with all applicable rules and guidance issued by DCA and the Department in connection with N.J.S.A. 18A:18A-1.

“Punch list” means the contract document used to organize the completion of a school facilities project. The punch list is created by the design consultant for a project and includes a list of the incomplete or defective work to be performed or remedied by the contractor in order to complete the school facilities project.

“Remedial Action Work Plan” or “RAWP” means the written documentation prepared and certified by licensed site remediation professionals to satisfy New Jersey Technical Requirements for Site Remediation (N.J.A.C. 7:26E-6.2). The RAWP will include, among other things, a summary of findings and recommendations generated by any Remedial Investigation Report, an identification of areas of concern, and a detailed description of the remedial action to be conducted and the remedial technology to be employed on the project site.

“Required maintenance” means the specific maintenance activities required for system warranty purposes which are approved for repairs and replacements for the purpose of keeping a school facility open and safe for use or in its original condition, including repairs and replacements to a school facility’s heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition, as more particularly set forth in N.J.A.C. 6A:26-1.2.

“Routine maintenance” means contracted custodial or janitorial services, expenditures for the cleaning of a school facility or its fixtures, the care and upkeep of grounds or parking lots, and the cleaning of, or repairs and replacements to, movable furnishings or equipment, as set forth in N.J.A.C. 6A:26-1.2.

“School district” or “SDA school district” means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260 § 39.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any 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, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

“School facility” means and includes any structure, building or facility used wholly or in part for educational purposes by a school district and facilities that physically support such structures, buildings and facilities such as district wastewater treatment facilities, power generating facilities, steam generating facilities, but shall exclude other facilities.

“Section 13D Maintenance Agreement” means the Educational Facilities Construction and Financing Act Section 13D Maintenance Agreement between the school district and the Authority which provides for the maintenance of school facilities projects by the district commencing upon substantial completion of a project.

“State Comptroller” means the Office of State Comptroller, created pursuant to P.L. 2007, c. 52, in, but not of, the State Department of Treasury, which is responsible for financial auditing; performance and management reviews; and contract procurement reviews, of the Executive Branch of State government, independent State authorities, public institutions of higher education, units of local government and boards of education.

“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 (N.J.S.A. 18A:7G-5). For the SDA districts, the “State share” equals 100 percent of the final eligible costs of a school facilities project.

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

1. All essential requirements of the construction contract have been performed so that the purpose of the construction contract is accomplished;
2. A Temporary Certificate of Occupancy has been issued by the DCA;
3. The punch list has been created;
4. There are no material omissions or technical defects or deficiencies, as identified by the Authority; and
5. The school facilities project is 100 percent ready for occupancy in accordance with its intended use.

“Tax lot” means a particular parcel of land, the location and boundaries of which are identified by reference to the parcel’s unique lot and block numbers as that parcel is represented on the currently applicable municipal tax assessment map.

“Termination” means the cancellation of the grant agreement by the Authority as a result of:

1. An event of default or other noncompliance;
2. The failure by the school district to obtain the local share (if applicable) within one year of the Department determination of final eligible costs;
3. Mutual consent of the parties; or
4. Upon the Authority’s determination that termination is in the best interests of the school facilities project.

“Total costs” means the actual total amount spent on the school facilities project.

“Work” means all work performed by the contractor and its subcontractors and suppliers, including providing all material, equipment, tools and labor, necessary to complete the construction of the school facilities project, as described in and reasonably inferred from the construction contract.

(b) Words and terms implementing the Act but not defined in this section shall have the meanings defined in N.J.A.C. 19:34 and 19:34A.

#### 19:34B-1.3 Administration and performance of grant agreements

The school district is responsible for the administration and success of the delegated portion of the school facilities project. The provision of a grant by the Authority shall not in any way be deemed to imply that the Authority shall have any responsibility for the administration or success of that portion of the school facilities project that has been delegated. Although school districts are encouraged to seek the advice and opinion of the Authority on problems that may arise regarding the delegated portion of the school facilities project, the giving of such advice by the Authority shall not shift the responsibility for final decisions from the school district to the Authority, nor render the Authority responsible for such advice. Moneys awarded pursuant to this chapter shall be used in conformance with the Act, this chapter and the provisions of the grant agreement to achieve the grant objectives and to insure that the purposes set forth in the Act are fully executed.

#### 19:34B-1.4 Noncompliance and default

(a) Any of the following events shall constitute an event of default under the grant agreement and noncompliance with this chapter:

1. Failure by the school district to observe and perform any duty, covenant, condition or agreement on its part to be observed or performed under the grant agreement, which failure shall continue for a period of 30 days after receipt of written notice specifying such failure and requesting that it be remedied is given to the district by the Authority, unless the Authority shall agree in writing to any extension of such time prior to its expiration, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Authority may not unreasonably withhold its consent to an extension of such time up to 120 days from delivery of the written notice referred to above or if corrective action is instituted by the district within the applicable period and diligently pursued until the event of default is corrected;

2. Any representation made by or on behalf of the school district contained in the agreement, or in any instruction furnished in compliance with or with reference to the grant agreement or the grant, is false or misleading in any material respect;

3. A determination made by the Authority that:

i. The grant was obtained by fraud; or  
ii. Gross abuse or corrupt practices have occurred in the administration and/or management of the delegated portions of the school facilities project by the district;

4. A failure to commence construction of the school facilities project within 18 months after the commencement date, subject to unavoidable delays (for example, delays due to wars, floods, hurricanes, tornadoes, acts of terrorism, earthquakes, and other acts of God);

5. A failure to reach final completion of the school facilities project on or before the completion date, subject to unavoidable delays (for example, delays due to wars, floods, hurricanes, tornadoes, acts of terrorism, earthquakes, and other acts of God);

6. The district's use of grant moneys for costs that are not approved costs;

7. The suspension or cessation of work on the delegated portion of the school facilities project without good cause as agreed to by the Authority. The term "good cause" shall include, but not be limited to, circumstances beyond the control of the district or any of the contracted parties such as wars, floods, hurricanes, tornadoes, acts of terrorism, earthquakes, and other acts of God;

8. The district's award or issuance of a contract, or payment of an invoice for work performed by a contractor, subcontractor, consultant or subconsultant who has not been prequalified by the Authority, if such prequalification would be required for the performance of similar work on an Authority-managed school facilities project;

9. The disbursement of grant moneys by the district to a firm which is debarred, suspended or disqualified from State or Authority contracting or to a firm which has not been prequalified;

10. The district's failure to permit the Authority, DCA, the Department or the State Comptroller immediate entry to or inspection of, the school facilities project, the project site, or project files or related files located at

the site or at district offices, or at another location within the control of the district; or

11. The district's utilization of grant funds to pay for additional work, increased scope or changes to the work without appropriate approval or authorization by the Authority, and/or the Department.

(b) In addition to (a) above, other non-compliance events may include any failure on the part of the school district to comply with any provision of the Act, this chapter, or any law, regulation, or rule applicable to the grant agreement.

#### 19:34B-1.5 Remedies for events of default and noncompliance

(a) In addition to any other remedies as may be provided by law or by the grant agreement, in the event of noncompliance with any provisions of the Act, any condition of the grant agreement, \*[an event of default,]\* or any requirement of this chapter, or upon the occurrence of an event of default, the Authority, after taking the action in (a)1 below, may take any of the actions or combinations thereof set forth in (a)2 through 5 below\*[:]\*\*. **The notice provided to the school district under (a)2 through 5 below shall notify the school district of the Authority's determination to exercise its right to take such action, and shall provide the reasons for such action, together with the date on which the selected action shall take effect.\***

1. Issue a notice of noncompliance in writing to the school district stating **\*the nature of the noncompliance or default, and further stating\*** that if corrective action is not taken within **\*[the requisite]\* \*30 days, or such longer\* time period **\*as may be\* specified\*[:]\* **\*in the notice;\*** or if the **\*corrective\* action is inadequate **\*or ineffective to correct the noncompliance issue\*** as determined by the Authority, the Authority may take **\*[any]\* **\*one or more\* of the actions **\*[or combinations]\* contained in (a)2 through 5 below\*. A district may request in writing additional time for corrective action beyond the period specified in the notice, and the Authority, in its discretion, may consent to such extension of time\*;************

2. Withhold **\*grant disbursements or any portion thereof\***, upon **\*15 days\* written notice to the school district\*], grant disbursements or any portion thereof]\* **\*providing the reason(s) for the withholding\*;****

3. Suspend\*], upon written notice to the school district,]\* the grant agreement and withhold further payments thereunder and prohibit the school district from incurring additional obligations of grant funds pending corrective action by the school district **\*upon 30 days written notice to the school district\*;**

4. Terminate\*], upon written notice to the Department and the SDA school district,]\* the grant agreement and/or rescind the grant monies **\*upon 30 days written notice to the Department and the SDA school district\*.**

\*[i. The Authority shall promptly notify the Department and the school district, in writing, of its determination to terminate the grant agreement and the reasons for the termination, together with the date on which the termination shall take effect.]\*

\*[ii.]\* Upon termination of the grant agreement, the Authority may demand that an amount equal to the grant received by the school district be immediately returned to the Authority and the school district shall waive payment by the Authority of the undistributed balance, and upon notice to the school district, the amount of the grant disbursed by the Authority shall be immediately due and payable by the school district together with any costs to the Authority resulting from an event of default by the district; and/or

5. In addition to any withholding, suspension or termination action, the Authority retains the right to pursue any and all other remedies as may be available under State law as warranted.

(b) At the option of the Authority, in its sole discretion, the Authority may, without prejudice to any other rights or remedies, take an assignment from the district of any of the contracts with contracted parties, in order to complete the delegated portion of the school facilities project, and the school district shall take whatever actions are necessary in order to ensure the proper assignment to the Authority of such contracts.

(c) In the event of termination of the grant agreement, the Authority shall determine the method and direction for proceeding with the project, in the best interests of the project and the public interest.

(d) The school district shall, on demand, pay to the Authority the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonable costs of in-house counsel and legal staff) incurred by the Authority in the collection of the repayment of the grant or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements, of the district upon an event of default or non-compliance with this chapter.

#### 19:34B-1.6 Termination by mutual agreement

The Authority, the Department or the SDA school district may terminate the grant agreement when the parties agree that the continued delegation to the district under the grant agreement would not produce beneficial results commensurate with the further expenditure of funds. The Authority and the district shall agree upon the conditions for termination including the date on which the termination shall take effect. The closeout provisions specified in N.J.A.C. 19:34B-5.4 shall apply in the event of a termination by mutual agreement. In the event of termination of the grant agreement, the Authority shall determine the method and direction for proceeding with the project, in the best interests of the project and the public interest.

#### 19:34B-1.7 Termination in the best interest of the school facilities project

(a) If the Authority determines that it is in the best interests of the school facilities project to terminate the grant agreement, the following shall apply:

1. The Authority shall promptly notify the Department and the school district, in writing, of its determination to terminate the grant agreement and the reasons for the termination, together with the date on which the termination shall take effect; and

2. At the option of the Authority, in its sole discretion, the Authority may, without prejudice to any other rights or remedies, take an assignment of any of the contracts in order to complete the school facilities project, and the school district shall take whatever actions are necessary in order to ensure the proper assignment to the Authority of such contracts.

(b) In the event of termination of the grant agreement, the Authority shall determine the method and direction for proceeding with the project, in the best interests of the project and the public interest.

#### 19:34B-1.8 Waiver

Any school district desiring a waiver or release from the express provisions of any of the rules in this chapter may submit a written request to the Authority. Waivers may be granted by the Authority, only when the Authority determines that such a waiver would not contravene the provisions of the Act and upon a finding that, in granting the waiver, the Authority will be promoting the statutory purposes expressed in the Act.

### SUBCHAPTER 2. SCHOOL DISTRICT CAPACITY DETERMINATION

#### 19:34B-2.1 Applicability

This subchapter establishes the Authority's procedures and criteria for evaluating the project management, administrative and financial expertise of an SDA school district to successfully manage school facilities projects; and for assessing the ability of such districts to manage the delegable portion(s) of a particular school facilities project, pursuant to N.J.S.A. 18A:7G-13.e.

#### 19:34B-2.2 Request for SDA determination of school district capacity

(a) A school district that wishes to manage construction and/or demolition services associated with a school facilities project or projects contained in its LRF shall apply, on a form provided by the Authority, for the Authority's determination of the school district's ability to manage delegable portions of a school facilities project or projects. The Authority will not make a determination regarding a school district's capacity until the Authority receives from the school district a transmittal from the Department determining that the school district is eligible to be considered by the Authority to manage its school facilities projects, or portions thereof.

(b) The application for the determination of district capacity shall be accompanied by a resolution adopted by the board of education of the school district requesting the district capacity determination.

(c) The application shall require the school district to provide information about the experience and qualifications of its key district personnel, and about the district's experience with the management of capital improvement projects, routine and required maintenance tasks or projects, and/or school facilities projects. The application shall include, in addition to any specific information requested:

1. Identification of the management personnel of the school district, and provision of an organizational chart which sets forth the position(s) within the school district of such management personnel;

2. Identification of key district personnel and the experience and qualifications of same;

3. A description of the routine and required maintenance at the school and district level, and, if applicable, maintenance required in accordance with any Section 13D Maintenance Agreement;

4. A description of the experience of the school district over the previous five years, in managing the planning, procurement activities, contract management, budgeting and scheduling necessary for required maintenance, school facilities projects, any previous or ongoing grant projects funded by the Authority, and other capital projects; and

5. Any other criteria deemed relevant by the Authority to an assessment of the school district's capacity.

#### 19:34B-2.3 Evaluation of district capacity

(a) The Authority's district assessment committee shall evaluate the school district's application to determine whether the school district possesses the ability to manage school facilities projects.

1. With respect to the committee's evaluation of whether the school district possesses the requisite capacity, such determinations shall be based upon the following factors:

i. The current capacity of the school district to administer fundamental district responsibilities relevant to capital facilities, including, but not limited to, maintenance, planning, procurement, construction, budgeting, accounting, scheduling, and any other similar essential responsibilities;

ii. The qualifications of key district personnel to administer the fundamental district responsibilities as outlined above, as determined by the Authority in its sole discretion;

iii. The school district's performance of routine maintenance and required maintenance on school facilities projects in accordance with operations and maintenance manuals, warranties and guarantees so as to fully achieve the useful life of all components of school facilities projects, including the district's demonstrated compliance with the maintenance obligations of any Section 13D Maintenance Agreement;

iv. The school district's performance with respect to the administration or management of any Authority-funded grant projects, if applicable;

v. The Department's rating with respect to the school district's performance on the operations management component of the Department's Quality Single Accountability Continuum District Performance Review for Facilities Operations specific to school facilities; and

vi. Any other factor deemed relevant by the Authority to an assessment of the school district's capacity.

2. Each member of the district assessment committee shall review the application for determination of district capacity based on the applicable evaluation criteria. The committee may require a meeting with the school district to obtain additional technical and/or organizational information.

3. If the district assessment committee determines that the school district does not have the necessary capacity to manage the delegable portions of school facilities projects, the application shall be denied, and the school district will be promptly notified in writing of the reasons for the denial. The Authority shall thereafter\*, **in conjunction with the Commissioner,\*** devise and offer a proposed training program if the reason for the denial is of the type that can be remedied with training. Such training program shall be designed to provide the district with technical assistance intended to address any identified deficiencies and/or increase the district's capacity to manage school facilities projects. The proposed training program may include, but is not limited to, training in the following areas:

- i. Financial, accounting, and budgeting;
- ii. Planning;
- iii. Procurement and/or prequalification;
- iv. Evaluation of architectural plans;
- v. Construction management;
- vi. Documentation of best practices; and/or
- vii. Governance and compliance.

4. If the school district is determined by the district assessment committee to possess the requisite capacity, the district will be so notified in writing and the Authority will transmit a project delegation application to the school district to complete and submit to the Authority.

(b) The Authority shall review applications for school district capacity assessments from interested school districts in the order in which completed applications are received by the Authority, unless the Authority determines that scheduling concerns or project needs require expedited review of a district's application.

(c) In making the determination that a school district possesses the necessary capacity to manage school facilities projects, the SDA may, in its sole discretion, determine that the scope of responsibilities delegable to the school district may include the procurement and/or management of the following:

1. Construction management and administration;
2. Construction; and/or
3. Demolition services.

(d) In the event that the Authority determines that a particular school facilities project shall be procured and managed as a design-build project, such determination shall preclude delegation of the project, with the exception of procurement or management of demolition services.

(e) In the event that the Authority determines that a school district has the necessary district capacity to manage school facilities projects, such determination shall remain effective for a period of three years from date of notification by the Authority unless the Authority, in its sole discretion, determines that a reassessment is warranted. The school district shall provide written notice to the Authority of any key district personnel changes within seven days of their effective date which may result in a determination by the Authority that a reassessment is required.

#### 19:34B-2.4 Evaluation of district eligibility for project delegation

(a) In the event a school district is determined to have the capacity to manage school facilities projects, it may apply to the Authority for the Authority's delegation of the delegable portions of a particular school facilities project that is within the Authority's current capital plan.

(b) The following conditions shall be satisfied before the Authority will consider whether to delegate portions of a particular school facilities project:

1. The district, as determined by the Authority, possesses the requisite capacity to manage delegable portions of school facilities projects, as determined pursuant to N.J.A.C. 19:34B-2.3(c).

2. The Department has approved the educational specifications for the school facilities project.

3. The SDA school district has submitted an application to the Authority, on a form provided by the Authority, for the delegation of portions of a particular school facilities project, which shall be accompanied by a resolution adopted by the board of education of the school district requesting the delegation.

(c) The project delegation application shall require the school district to provide information about the experience and qualifications of the key project management personnel for the proposed project, and about the district's experience with the management of similar capital projects or school facilities projects, as well as information regarding the current resources and capacity of the district as affected by any current or ongoing school facilities projects. The application shall set forth, in addition to the specific information requested:

1. Any change(s) in key district personnel effective since the Authority's determination of district capacity pursuant to N.J.A.C. 19:34B-2.3(a)4;

2. The school district's key project management personnel and their experience and qualifications;

3. The experience of the school district and its key project management personnel on school facilities projects and/or other capital projects similar in scope, size and complexity;

4. The existing school facilities projects currently under management by the school district for which a certificate of final completion has not been issued, the personnel staffing each such project, and any other information concerning those projects and whether the school district can accommodate and effectively manage the project activities proposed for delegation in addition to the existing projects being managed; and

5. Any other criteria deemed relevant by the Authority to an assessment of the school district's capacity to manage the proposed delegation.

(d) The Authority's project assessment committee shall evaluate a school district's application to determine whether the school district possesses the ability to manage the delegable portions of a particular school facilities project.

1. With respect to the committee's evaluation of whether the school district possesses the ability to manage the delegable portions of a particular school facilities project, its determination shall be based upon the following factors:

i. The project's size, scope and complexity, including, but not limited to, environmental remediation, scheduling, project phasing, construction management and any other project-related responsibilities that the Authority determines in its sole discretion to be relevant to its capacity determination;

ii. The current ability of the school district to manage the delegable portions of the particular school facilities project, considering the district's commitment of staff or resources to existing school facilities projects then under district management;

iii. The experience and qualifications of key project management personnel to manage the delegable portions of a particular school facilities project;

iv. The delegation, as determined by the Authority in its sole discretion, is in the best interests of the school facilities project; and

v. Any other factor deemed relevant by the Authority to an assessment of the school district's capacity to manage the proposed delegation.

2. Each member of the project assessment committee shall review and evaluate the application submitted pursuant to this section and in accordance with the evaluation criteria in (d)1 above. The committee may require a meeting with an applicant SDA school district to review additional clarifying technical and/or organizational information.

3. If the project assessment committee determines that an SDA school district lacks the capacity to manage the delegable portions of a particular school facilities project, the district's application shall be denied, and the Authority will promptly notify the school district in writing of the reasons for its denial. The Authority will thereafter\*, **in conjunction with the Commissioner,\*** devise and offer the SDA school district a proposed training program, if the reason for the denial is of the type that can be remedied with training. Such training program shall be designed to provide the district with technical assistance intended to address any identified deficiencies and/or increase the district's capacity to manage facilities projects of the type for which it sought delegation, but was denied. The proposed training program may include, but is not limited to, training in the following areas:

- i. Financial, accounting, and budgeting;
- ii. Planning;
- iii. Procurement and/or prequalification;
- iv. Evaluation of architectural plans;
- v. Construction management;
- vi. Documentation of best practices; and/or
- vii. Governance and compliance.

4. If the Authority's project assessment committee determines that a school district has the capacity to manage the delegable portions of a particular facilities project, the school district shall be notified of such in writing and detail the portions of the school facilities project that have been approved for delegation.

#### 19:34B-2.5 Requests for reconsideration and appeal

(a) Requests for reconsideration arising from decisions of the Authority pursuant to N.J.A.C. 19:34B-2.3 and 2.4 **\*and any other**

**determination of the Authority under this chapter\***, shall be made in writing within 30 days of the receipt of the Authority's decision, and an opportunity shall be given for an informal hearing on the papers, in person or via telephone with an Authority hearing officer or panel designated to review the matter. The determination of the Authority, based on the recommendation of the hearing officer or panel, shall be presented in a written decision **\*within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a longer time is required.**

1. **Informal hearings will be held, where feasible, within 14 business days of the receipt of the request.**

2. **Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer, or his or her designee.**

3. **In an informal hearing, the Authority may, in instances where public exigency exists, modify or amend the time frames or any other requirements provided in this section. In these instances, the Authority shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.**

(b) **In the event of an adverse decision after an informal hearing under (a) above, or if a district determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in N.J.S.A. 52:14B-2(b), a district may request a formal hearing, within 60 days of the written decision resulting from the informal hearing or within 90 days of the determination of the Authority if an informal hearing is not sought.**

(c) **Upon filing of the initial pleading in a contested case, the Board of the Authority may by resolution either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

\*[(b)]\* **\*(d)\*** Every determination by the Authority of a dispute or controversy arising from this chapter, constituting final agency action by the Board, shall be embodied in a written decision which shall set forth findings of fact and conclusions of law.

### SUBCHAPTER 3. EXECUTION OF GRANT AGREEMENT

#### 19:34B-3.1 Applicability

This subchapter establishes the eligibility requirements and procedures and requirements of the Authority governing the execution of grant agreements pursuant to section 13.e of the Act. Any school district applying for a grant shall at a minimum conform with the requirements of this subchapter, as applicable.

#### 19:34B-3.2 District execution of grant agreement and other conditions for delegation

(a) After the Authority has determined that a school district has the capacity to manage the delegated portions of a school facilities project, the Authority shall offer the grant agreement to the school district. The grant amount at the time of the offering of the grant agreement shall be based upon the CWE, pursuant to N.J.A.C. 19:34B-5.1.

(b) The school district shall execute the grant agreement within such period of time and pursuant to such terms and conditions as the Authority may determine in its sole discretion and return the grant agreement together with all applicable attachments to the Authority for execution by the Authority. Such terms and conditions shall include:

1. Delivery by the school district to the Authority of a certified copy of a resolution of the district board authorizing the execution and delivery of the agreement and proof of the district board's delegation of authority to the school business administrator or other authorized officer for supervision of the delegated portions of the school facilities project;

2. Delivery by the school district to the Authority of confirmation that the district has obtained approval of its long-range facilities plan pursuant to N.J.A.C. 6A:26-2.3; and

3. Delivery by the school 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 school district or by any other governmental entity with respect to the agreement have been obtained;

ii. The school district has full legal right, power and authority to enter into the agreement to consummate the transactions contemplated thereby; and

iii. The grant agreement has been duly authorized, executed and delivered by the school district, and constitutes a valid and binding agreement of the district enforceable in accordance with its terms.

(c) The school district shall not assign the grant agreement or its rights to disbursements of the grant. The Authority may, at any time and in its sole option, assign the grant agreement to another instrumentality of the State.

#### 19:34B-3.3 Authority execution of grant agreement for delegated demolition activities

(a) Upon the Authority's written approval of the bid specifications for demolition services for the school facilities project, which shall be drafted for procurement as a single overall contract (not multi-prime) under paragraph 2 of N.J.S.A. 18A:18A-18(b) of the PSCL, and upon the Authority's approval of the CWE for such demolition services, the Authority shall give the school district written authorization to seek bid proposals for demolition services in accordance with the PSCL. The school district shall include in its bid documents the statement that its ability to enter into a contract shall be contingent upon the receipt of an executed grant agreement from the Authority, **\*and a statement that an extension of the time period for consideration of bids under N.J.S.A. 18A:18A-36 may be required,\*** and shall include in the demolition services contract all of the requirements of N.J.A.C. 19:34B-6.3, as indicated. Once the bid proposals for the demolition services contract are received, the school district shall, within two business days of the receipt of bids, forward the bid proposals to the Authority for review.

(b) Upon the district's receipt of bids for the demolition services portion of the school facilities projects, and the subsequent forwarding of such bids to the Authority, the Authority shall use the bids received to revise its CWE for the delegated demolition services portion of the school facilities project, **\*if warranted,\*** and shall modify the grant amount accordingly **\*if the CWE has been modified. The Authority shall prepare a proposed charter for the school facilities project if one has not already been approved by the Board of the Authority\*.**

(c) After the Authority revises the CWE for demolition services\*[, and following]\* **\*based on the bids, Authority staff shall submit any proposed or revised charter for the project to the Authority Board for approval, if there is no approved charter, or if the existing charter must be modified as a result of a CWE revision. Following\* approval of the project charter by the Board of the Authority, the Authority shall execute the grant agreement and issue a written authorization to the district to proceed with the engagement of a contractor for the demolition services portion of the school facilities project, in accordance with N.J.A.C. 19:34B-6. \*The Authority shall endeavor to complete all reviews and approvals under this section, and to issue to the district an authorization to proceed, if approved, within 60 days of the district's receipt of bids. If the Authority determines that additional time is needed to secure the necessary reviews and approvals, the Authority shall notify the district before expiration of the 60-day period, so that the district may request that bidders agree to extend the time for consideration of bids for an additional period.\***

#### 19:34B-3.4 Authority execution of grant agreement for delegated construction activities

(a) Upon the Authority's written approval of the bid specifications for construction of the school facilities project, which shall be drafted for procurement as a single overall contract (not multi-prime) under paragraph 2 of N.J.S.A. 18A:18A-18(b) of the PSCL, and upon the Authority's approval of the CWE, the Authority shall give the school district written authorization to seek bid proposals for construction in accordance with the PSCL. The school district shall include in its bid documents the statement that its ability to enter into a contract shall be contingent upon the receipt of an executed grant agreement from the Authority, **\*and a statement that an extension of the time period for**

**consideration of bids under N.J.S.A. 18A:18A-36 may be required,\*** and shall include in construction contract all of the requirements of N.J.A.C. 19:34B-6.3, as indicated. Once the bid proposals for the construction contract are received, the school district shall, within two business days of the receipt of bids, forward the bid proposals to the Authority for review.

(b) Upon the district's receipt of bids for the construction phase of the school facilities projects, and the subsequent forwarding of such bids to the Authority, the Authority shall use the bids received to formulate its recommendation of final eligible costs of the school facilities project, which recommendation shall be submitted to the Department for determination of final eligible costs, pursuant to N.J.A.C. 6A:26-3.5.

(c) For school facilities projects without a local share, after the Authority receives a final project report evidencing final eligible costs, and following approval of the project charter by the Board of the Authority, the Authority shall execute the grant agreement and issue a written authorization to the district to proceed with the engagement of a contractor for the construction of the school facilities project, in accordance with N.J.A.C. 19:34B-6.

(d) In the event that a school facilities project subject to delegation includes excess costs or other costs that must be borne by the district as a local share, the Authority shall not execute the grant agreement until the district provides the following evidence that the local share has been approved in accordance with the provisions for the approval of capital projects pursuant to N.J.S.A. 18A:22-1 et seq., 18A:24-1 et seq., and 18A:7A-46.1 et seq., as applicable to the district pursuant to N.J.S.A. 18A:7G-11 and N.J.A.C. 6A:26-3.7.

1. If the local share is funded all or in part through the issuance of school bonds, a certified copy of the referendum that the school district submitted to the voters for approval of the local share evidencing proof of voter approval of the local share; or

2. If the local share is funded through sources other than school bonds, such as the capital reserve account or lease purchase, the school district shall obtain approval of local share in accordance with N.J.A.C. 6A:26-3.7 and any statutory and regulatory authorities specifically governing that source of local share, such as N.J.S.A. 18A:20-4.2(f) and 18A:7G-31, and N.J.A.C. 6A:26-8.1 and 10.

3. Upon receipt by the Authority of evidence of approval of the local share, the Authority shall execute the grant agreement and the Authority and the school district shall proceed in accordance with (c) above.

4. If the school district fails to submit evidence that the local share has been approved, the Authority shall not issue an authorization-to-proceed with engagement of a contractor and the school district shall not proceed with the engagement of a contractor or the commencement of construction. The Authority's approval to delegate portions of the school facilities project shall be rescinded if a district fails to obtain approval of the local share while the winning construction bid upon which the final eligible costs are based is still valid.

5. In the event a district fails to obtain approval of the local share and the Authority's approval is rescinded, and, further, in the event that the district fails to evidence diligent and good faith efforts to obtain the local share, the district shall be obligated to refund to the Authority any moneys disbursed to the district under the agreement.

**\*(e) The Authority shall endeavor to complete all reviews and approvals under this section, and to issue to the district an authorization to proceed, if approved, within 60 days of the district's receipt of bids. If the Authority determines that additional time is needed to secure the necessary reviews and approvals, the Authority shall notify the district before expiration of the 60-day period, so that the district may request that bidders agree to extend the time for consideration of bids for an additional period.\***

#### SUBCHAPTER 4. ASSIGNMENT OF CONTRACTS

##### 19:34B-4.1 Conditions for assignment

(a) Upon the offer of the grant agreement, the Authority shall take all necessary steps to assign the contracts or portions of contracts relating to those aspects of the school facilities project that the Authority has determined to delegate to the school district. In furtherance of such

assignments, the Authority shall provide the school district with the following:

1. An assignment and assumption agreement for the contracts or portions thereof pertaining to the delegated aspects of the school facilities project;

2. A copy of all other contractual documents, between the Authority and the design consultant, construction contractor(s), the construction manager and any other contracted party;

3. All design documents for the school facilities project; and

4. Any other documentation determined by the Authority to be necessary for the assignment.

(b) The school district shall execute the agreement(s) for assignment and assumption within such period of time and pursuant to such terms and conditions as the Authority may determine in its sole discretion, and return the agreement together with all applicable attachments to the Authority for 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.

2. Any proceeds of school bonds issued by the district for the purposes of funding the local share of the school facilities project which remain unspent upon completion of the school facilities project shall be used by the district to reduce the outstanding principal amount of the school bonds either through redeeming bonds at the earliest call date or applying such proceeds to payment of principal as principal becomes due. In no event shall such proceeds be utilized to pay the interest expense on the school bonds issued for any school facilities project.

3. The district shall refund to the Authority any grant funds spent on any costs which were disallowed by the Authority as not being approved costs. Such refund shall be made within 30 days of the request by the Authority.

4. The district shall remit to the Authority any remaining interest earned pursuant to N.J.A.C. 19:34B-5.3(b) upon final completion of the school facilities project.

5. If a final audit has not been performed on behalf of the district prior to closeout of the school facilities project, the Authority retains the right to recover any appropriate amount after full consideration of any recommendation on disallowed costs resulting from the final audit.

6. The Authority may require additional information from the district or its consultants and contractors and/or retain any grant amount not disbursed until closeout is completed.

### SUBCHAPTER 6. PROCUREMENT AND AWARD OF CONTRACTS BY DISTRICT

#### 19:34B-6.1 General requirements for district procurements

(a) Upon the Authority's issuance to the school district of an authorization to proceed with the engagement of a contractor or consultant, the district shall proceed to engage the contractor or consultant to undertake work or services for the school facilities project. Payment by the district for any work or services performed by a contractor or consultant prior to the Authority's written approval for the engagement of the contractor or consultant shall be at the risk of the district and the contractor or consultant.

(b) The district shall procure and award all contracts for the school facilities project in accordance with N.J.S.A. 52:15C-10 and the PSCL and the rules issued pursuant thereto. The district shall utilize the bid specifications prepared by the Authority in the procurement of contracts for the school facilities project, as well as any contract documents or contract provisions required by the Authority as indicated in these regulations or the grant agreement.

(c) The district shall provide notices to the State Comptroller pursuant to the requirements of N.J.S.A. 52:15C-10 concerning the timing of the procurement process relative to the award of contracts.

(d) When procuring contracts pursuant to a delegable portion of a school facilities project, the district shall designate a portion of the contract amount to be set aside for award to subcontractors who qualify as small business enterprises, in accordance with the PSCL, N.J.S.A. 18A:18-52(c) and 18A:18-53, and the Set Aside Act, N.J.S.A. 52:32-17 et seq. This set-aside goal shall be attained by including language in the contract requiring the contracted party to award a 25 percent portion of the contract amount to subcontractors or subconsultants constituting "small businesses" or "small business enterprises" as defined by N.J.S.A. 18A:18-51(d), N.J.S.A. 52:32-19 and N.J.A.C. 17:14-1.2. The 25 percent portion of the contract shall be allocated among several subcontractors of various levels in accordance with the requirements of N.J.A.C. 17:14-4.1(a). The district shall require the contracted party to make a good faith effort to comply with the set-aside requirement, and the contracted party's compliance with this set-aside requirement shall be monitored by the Authority for good faith compliance.

#### 19:34B-6.2 Prohibition of award to debarred or suspended contractors and consultants

(a) The district and its consultants or contractors shall not enter into a contract for work with any person or firm that has been debarred, suspended or disqualified from State, Authority or Federal government contracting.

(b) The district shall insert in all contracts with all contracted parties, and all contractors and consultants shall insert into all of their contracts with all subcontractors and subconsultants, a clause stating that the contracted party, its subcontractors or subconsultants may be debarred, suspended or disqualified from contracting and/or working on the approved school facilities project if the contracted party commits any of the acts listed in N.J.A.C. 17:19-3 or any applicable regulation issued by the Authority.

(c) The district's bid specification for any work or services on an approved school facilities project shall require all bidders to submit a sworn statement by the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's, the Authority's or the Federal government's list of debarred, suspended or disqualified bidders as a result of action taken by any State or Federal agency, as the case may be. Bid specifications for the approved school facilities project shall state that the district shall immediately notify the Authority in writing whenever it appears that a bidder is on the Treasurer's, the Authority's or the Federal government's list. The Authority reserves the right in such circumstances to immediately suspend such bidder from contracting and/or engaging in work or services on the approved school facilities project and to take such other action as it deems appropriate pursuant to N.J.A.C. 17:19-3 or any applicable regulation issued by the Authority.

#### 19:34B-6.3 General requirements for district contracts

(a) All contractors and consultants with whom the district contracts, and their subcontractors and subconsultants, must be prequalified by the Authority if such prequalification would be required for the performance of similar work on an Authority-managed school facilities project.

(b) The district shall submit proof to the Authority 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.

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

(d) 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 NJEDA

bonds from Federal gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended.

(e) The following requirements shall apply to contracts awarded by the district in connection with the school facilities project:

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 Development Authority. Neither the State, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, nor any of their departments, agencies, board members or employees is or will be a party to this contract or subcontract or any lower tier contract or subcontract, with the exception of the New Jersey Schools Development Authority, which shall only become a party to this contract upon a legally executed assignment of the contract to the SDA. This contract or subcontract is subject to the requirements contained in N.J.A.C. 19:34B and the contractor (subcontractor) (consultant) (subconsultant) agrees to comply with those requirements."

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 contract is assignable by the district to the Authority.

3. The district shall include a provision in each contract awarded by the district in connection with the school facilities project which states that the contract is terminable for convenience as well as for cause.

4. The district shall include a provision in each contract awarded by the district in connection with the school facilities project which requires the contracted party to 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 the performance of the contracts in accordance with an affirmative action program approved by the State Treasurer. The district shall require its contracted parties to submit affirmative action workforce documentation to the Authority, in the form and manner specified by the grant agreement, for monitoring of the contracted party's compliance with state affirmative action workforce compliance goals under N.J.A.C. 17:27-7.3. The district shall further permit, and require its contracted parties to permit, the Authority's representatives to have access to the project site in order to allow Authority to inspect and monitor the contracted party's compliance with the affirmative action workforce compliance goals. The NJSDA's authority to monitor workforce compliance is in accordance with the NJSDA's independent monitoring and enforcement authority for school facility projects in SDA Districts under N.J.S.A. 52:18A-240 and the Act, as recognized by the Division of Contract Compliance and Equal Employment Opportunity in the Department of Treasury.

5. The district shall include a provision in each contract awarded by the district in connection with the school facilities project which requires the contracted party to enter into certifications at the times and in the manner specified by the Authority in the grant agreement. Such certifications may include a certification by a consultant or a contractor upon award of contract, or certifications upon substantial or final completion of the work or services under a given contract.

6. The district shall include in all contracts for construction or demolition services provisions requiring that the contractor and its subcontractors, 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, and shall not permit a contractor to hire a subcontractor, to perform any construction work or demolition services if such contractor or subcontractor is listed or is on record in the Office of the Commissioner, Department of Labor and Workforce Development, as having failed to pay prevailing wages in accordance with the provisions of the New Jersey Prevailing Wage Act.

7. Any construction contract or demolition services contract funded in whole or in part by a Federal grant or appropriation requiring compliance with the Davis-Bacon Act, 40 U.S.C. §§ 3141 through 3148, and the regulations promulgated thereunder (the "Davis-Bacon Act"), including construction or demolition contracts funded through the issuance of Qualified School Construction Bonds under the American Recovery and Reinvestment Act of 2009 (see 26 U.S.C. § 54F), shall require compliance with and shall include provisions as required by the Davis-

Bacon Act. The district shall be responsible to monitor and assure compliance with applicable Davis-Bacon Act requirements.

(f) The Authority 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.

#### 19:34B-6.4 District procurement of construction manager

(a) In the event that the Authority has not engaged a construction manager for the project prior to the execution of the grant agreement, and upon the Authority's issuance to the school district of an authorization to proceed with the procurement of a construction manager, the district shall seek to procure a construction manager pursuant to the terms of the PSCL.

(b) The construction manager with whom the district contracts, and its subconsultants, must be prequalified by the Authority if such prequalification would be required for the performance of similar services on an Authority-managed school facilities project.

(c) The school district shall include in its bid documents the statement that its ability to enter into a contract shall be contingent upon the receipt of an executed grant agreement from the Authority.

(d) The district shall procure and engage the construction manager utilizing the form of construction manager agreement prepared by the Authority. The district shall forward to the Authority all proposals received from prospective construction manager firms for review and approval. Upon approval by the Authority of the district's selection of a construction manager, and upon the Authority's approval of the proposed fee for the construction manager as an approved cost, the grant shall be adjusted to include the amount of the construction manager's fee.

#### 19:34B-6.5 Remediation services as part of construction contract

(a) The Authority shall perform any necessary remediation to prepare a site for construction. The Authority may also delegate to the district, in accordance with N.J.A.C. 19:34B-2.3, certain remediation services or activities that are necessary to be undertaken during the construction of the school facilities project. All such remediation services or activities delegated to the district **\*and occurring during the construction of the school facilities project\*** shall be performed under the supervision of a Licensed Site Remediation Professional retained by the Authority, and shall be consistent with the Remedial Action Work Plan for the property. **\*Remediation activities that are necessary as part of long-term stewardship obligations of the district as owner of the project site, and which occur after the completion of construction and either the Authority's transfer of occupancy to the district or after the transfer of the project site property to the district, shall be performed under the supervision of a Licensed Site Remediation Professional retained by the district.\***

(b) If the Authority determines to delegate remediation services to the district as part of the construction contract, the district shall comply with any and all local, State, and Federal standards or requirements for the performance of such activities, and shall be responsible for obtaining all reports and any required governmental approvals and/or permits.

(c) The district shall be responsible for, and shall require its contractors to be responsible for, documenting and tracking the nature and costs of any remediation services performed by contractors or consultants engaged or managed by the district. Such remediation services shall be documented and tracked separately from other construction activities and costs, and shall be tracked with reference to the lot and block designation of the parcels on which such remediation activities occur. Where remediation activities extend beyond the boundaries of a single tax lot, the costs of such activities shall be apportioned between the affected tax lots, and documented and tracked accordingly.

#### 19:34B-6.6 Remediation services as part of demolition services contract

(a) Upon the Authority's determination, in accordance with N.J.A.C. 19:34B-2.3, to delegate demolition services, if the services delegated include the removal of an underground storage tank, the Authority may either undertake or delegate to the district the associated remediation of soil impacted by a discharge from the tank. All such remediation services or activities **\*delegated to the district and occurring during**

**demolition activities in advance of construction of the school facilities project\*** shall be performed under the supervision of a Licensed Site Remediation Professional retained by the Authority, and shall be consistent with the Remedial Action Work Plan for the property. **\*Remediation activities that are necessary as part of long-term stewardship obligations of the district as owner of the project site, and which occur after the completion of construction and either the Authority's transfer of occupancy to the district or after the transfer of the project site property to the district, shall be performed under the supervision of a Licensed Site Remediation Professional retained by the district.\***

(b) If the Authority determines to delegate remediation services to the district as part of the demolition services contract, the district shall comply with any and all local, State, and Federal standards or requirements for the performance of such activities, and shall be responsible for obtaining all reports and any required governmental approvals and/or permits.

(c) The district shall be responsible for, and shall require its contractors to be responsible for, documenting and tracking the nature and costs of any remediation services performed by contractors or consultants engaged or managed by the district. Such remediation services shall be documented and tracked separately from other construction activities and costs, and shall be tracked with reference to the lot and block designation of the parcels on which such remediation activities occur. Where remediation activities extend beyond the boundaries of a single tax lot, the costs of such activities shall be apportioned between the affected tax lots and documented and tracked accordingly.

### SUBCHAPTER 7. DISTRICT MANAGEMENT OF THE DELEGATED PORTION OF THE SCHOOL FACILITIES PROJECT

#### 19:34B-7.1 General requirements

(a) The district shall, with all due diligence, proceed to manage the delegated portion of the school facilities project in accordance with the plans and specifications, as applicable. The school facilities project shall be constructed in conformity with the New Jersey Uniform Construction Code, N.J.A.C. 5:23, and the Department's rules governing educational facility planning standards at N.J.A.C. 6A:26-6.2.

(b) The district shall continually monitor the performance of the delegated portion of the school facilities project to ensure that time schedules and the grant budget are being met and that the completion of the delegated portion of the school facilities project will occur in a timely, efficient and cost-effective manner.

(c) The district shall supply to the Authority certain certifications in the form and at the times specified in and required by the grant agreement. Such certifications may include, without limitation: certifications by the school business administrator upon either award of a contract or substantial or final completion of the construction contract or both; tax certifications by the district as may be required by the Authority or the NJEDA to ensure the tax-exempt status of NJEDA bonds; and such other certifications as may be specified in the grant agreement.

(d) In the event that a contracted party defaults 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 defaulted contracted party and against each such surety for the performance of such contracts.

#### 19:34B-7.2 Avoidance and redress of fraud and other unlawful or corrupt practices

(a) The district shall administer monies pursuant to this chapter, the grant agreement and any contracts entered into in connection with a school facilities project free from bribery, graft and corrupt practices. The district has the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The Authority shall have the right to pursue administrative or other legally available remedies in the event it suspects the occurrence of such conduct.

(b) The district shall diligently pursue judicial and administrative remedies and take any other appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The

district shall immediately notify the Authority and the State Comptroller in writing when any such allegation or evidence comes to its attention and shall periodically advise the Authority and the State Comptroller in writing of the status and ultimate disposition of any related matter.

19:34B-7.3 Performance evaluation policy and procedure

The Authority may establish and maintain a consultant and contractor performance evaluation policy and procedure. The performance of any consultants and contractors engaged by the school district for the delegated portion of the school facilities project shall be evaluated by the district at the times and in the form and manner specified by the Authority. This evaluation shall consider, among other things, the consultant's and contractor's ability to deliver and complete the school facilities project within the specified time frame established by the construction contract, within the final eligible costs and local share, if any, as determined by the Department, and consistent with the requirements of the contracts.

19:34B-7.4 Disclosure and publicity

(a) Submissions received by the Authority 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 Authority financial assistance when such assistance is provided.

19:34B-7.5 Access and record retention

(a) The Authority and the district shall make available records and accounts pertaining to school facilities projects undertaken by the school district to the State Comptroller and the State Auditor in their investigations, examinations and inspections of the activities related to the financing and undertaking of school facilities projects. The Authority shall also cooperate, upon request, in sharing information with other entities.

(b) The school district shall keep those records and accounts and shall require all contracted parties to keep those records and accounts for the school facilities project activities 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 substantial completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

(c) The Authority 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 completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.