

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Section 13(a) Delegation Agreement

Proposed Readoption with Amendments: N.J.A.C. 19:34A

Proposed Repeals: N.J.A.C. 19:34A-1.6 and 4.5

Authorized By: New Jersey Schools Development Authority, Charles B. McKenna, Chief Executive Officer.

Authority: P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238.k; 52:18A-240) (rulemaking authority), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), and P.L. 2007, c. 137, (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-022.

Submit written comments via mail, e-mail, or facsimile by April 1, 2016, to:

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The agency proposal follows:

Summary

The New Jersey Schools Development Authority (SDA) proposes to readopt with amendments and repeals N.J.A.C. 19:34A, Section 13(a) Delegation Agreement.

Chapter 34A, which implements Section 13(a) of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), (the “Act”), governs the SDA’s discretionary delegation of capital maintenance projects to school districts pursuant to a Section 13(a) delegation agreement. Chapter 34A was previously readopted by the SDA with amendments and repeals on December 8, 2008, and is scheduled to expire on June 5, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2).

Chapter 34A provides the conditions, eligibility criteria, and process for capital maintenance projects to be delegated to an SDA school district by the Authority, pursuant to N.J.S.A. 18A:7G-13(a). This chapter sets forth the requirements for grant disbursements to fund such delegated capital maintenance projects, and addresses grant oversight. The process spans the initiation of delegation to the final completion and closeout of a capital maintenance project and is intended to balance the goal of expediting the funding and construction of capital maintenance projects with prudent oversight of the State share expended.

The SDA has reviewed Chapter 34A and has determined that, with the addition of the proposed amendments and repeals described herein, this chapter remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated: to provide a mechanism by which the SDA can, in its discretion, delegate to SDA school districts the ability to perform capital maintenance projects funded by an SDA grant pursuant to a Section 13(a) delegation agreement.

As the SDA has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

A summary of the proposed substantive amendments follows.

Subchapter 1. General Provisions

N.J.A.C. 19:34A-1.1 Purpose and applicability of rules

This section, regarding the purpose and applicability of this chapter, has been proposed for readoption with amendments. This section sets forth that the rules are promulgated to implement N.J.S.A. 18A:17G-13.a, which provides that the Authority may, in its discretion, authorize an SDA school district to undertake a capital maintenance project funded through a grant agreement with the district for the payment of the State share. Proposed amendments include deletion of references to the former statutory limit on the costs for delegated capital maintenance projects, which limit was abolished by P.L. 2007, c. 137, and an amendment to delete reference to “districts other than SDA school districts required to use the predecessor to the Authority, pursuant to P.L. 2000, c. 72” to perform school facilities projects, as P.L. 2007, c. 137 also restricted the applicability of the delegation of capital maintenance projects to SDA school districts.

N.J.A.C. 19:34A-1.2 Definitions

This section sets forth the meaning of the words and terms used throughout this chapter. Amendments to the section include changes to previously defined terms and the deletion of terms and definitions rendered obsolete by statutory changes reflected in the proposed amendments, as set forth below.

The following term definitions are proposed for modification:

“Authority,” which refers to the Schools Development Authority, is proposed for modification to refer to the SDA’s origination statute as codified. The definition is further amended to include a brief description of the mission of the SDA as an entity “statutorily charged with undertaking and funding schools facilities projects, pursuant to the Act.”

“Section 13(a) delegation agreement” is proposed for modification to delete references to the former Section 13(a) delegation limit on the costs for delegated capital maintenance projects, which limit was eliminated by statutory amendments pursuant to P.L. 2007, c. 137.

“Termination” is proposed for modification to delete a reference to termination due to a district’s failure to secure the local share within a year of determination of final eligible costs, as this consideration is not applicable to SDA school districts which have no local share obligation.

The following term definitions are proposed for deletion:

“Local share” is proposed for deletion, as obsolete with reference to these rules, because the effect of legislative changes in P.L. 2007, c. 137 was to limitation the applicability of the delegation agreement rules to SDA school districts. Because the State share for school facilities projects in SDA school districts is 100 percent of the final eligible costs of such projects, SDA school districts do not have a local share obligation for school facilities projects under the Act, and the definition of local share and concerns for fulfillment of local share obligations for delegated capital maintenance projects are obsolete.

“Section 13(a) delegation limit” is proposed for deletion as obsolete, due to the elimination of the delegation limit by statutory amendments pursuant to P.L. 2007, c. 137.

N.J.A.C. 19:34A-1.3 Administration and performance of grant agreements

This section is proposed for re adoption without amendment. This section provides that the SDA school district, not the Development Authority, is responsible for the administration and success of the capital maintenance project.

N.J.A.C. 19:34A-1.4 Noncompliance

This section is proposed for re adoption without amendment. This section describes the events constituting an event of default, providing a cure process for some of these events, and further provides for broadly framed other non-compliance in addition to the events of default.

N.J.A.C. 19:34A-1.5 Remedies for events of default and noncompliance

This section is proposed for re adoption without amendment. This section provides that in addition to any other remedies as may be provided by law or by the section 13(a) delegation agreement, in the event of noncompliance, the SDA, after notice to the district, may take any of the actions or combinations of actions contained in this section: withholding of grant disbursements, suspension of the section 13(a) delegation agreement, termination, and any other remedies available under State law warranted. The section further provides that at the option of the SDA, the SDA may take an assignment of any of the contracts in order to complete the capital maintenance project, and the SDA school district shall on demand pay to the Authority reasonable fees and expenses incurred by the Authority in the collection of the repayment of the grant.

N.J.A.C. 19:34A-1.6 Automatic termination

This section is proposed for repeal. This section provides for automatic termination of a section 13(a) delegation agreement in the event the costs of a delegated capital maintenance project exceeded or were estimated to exceed the former section 13(a) delegation limit abolished by P.L. 2007, c. 137, or in the event a district could not timely secure approval of its local share contribution. Statutory changes in P.L. 2007, c. 137 limited capital maintenance delegation agreements and grants to SDA school districts, eliminating application to other non-SDA school districts that were previously required to utilize the Authority's predecessor entity the Schools Construction Corporation. Because the State share for school facilities projects in SDA school districts is 100 percent of the final eligible costs of such projects, SDA school districts do not have a local share obligation for school facilities projects under the Act, and this section's previous provisions terminating delegation agreements for costs in excess of the delegation limit and failure to timely fulfill local share obligations by delegated districts are obsolete.

N.J.A.C. 19:34A-1.7 Termination by mutual agreement

This section is proposed for re adoption without amendment. This section provides that the Authority and the school district may terminate the section 13(a) delegation agreement when both parties agree that the continuation of the capital maintenance project would not produce beneficial results commensurate with the further expenditure of funds.

N.J.A.C. 19:34A-1.8 Waiver

This section is proposed for re adoption without amendment. This section provides that 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, which may grant the waiver only when

the Authority determines that such waiver would not contravene the provisions of the Act and would instead promote the statutory purposes of the Act.

N.J.A.C. 19:34A-1.9 Appeals

This section is proposed for re adoption without amendment. This section provides for an appeals process that anticipates a request to SDA for a discretionary informal hearing on the papers, and subsequent appeal procedures in the instance of a contested case, involving a subsequent hearing before the Office of Administrative Law.

Subchapter 2. Delegation to the District of the Design and Construction or Acquisition and Installation of the Capital Maintenance Project

N.J.A.C. 19:34A-2.1 Applicability

This section is proposed for re adoption without amendment. This section provides that this subchapter establishes the Authority's procedures and requirements governing the eligibility determination of a section 13(a) delegation agreement as well as the circumstances ending the delegation.

N.J.A.C. 19:34A-2.2 Eligible criteria for delegation

This section is proposed for re adoption with amendments to delete reference to the now-abolished statutory limit on delegated capital maintenance projects. This section sets forth the eligibility criteria for delegation in three different circumstances: at the design phase after preconstruction approval, at the design phase after project approval, and prior to the construction phase for capital maintenance projects without a design phase.

N.J.A.C. 19:34A-2.3 Execution and other conditions for delegation

This section is proposed for re adoption without amendment. This section provides the terms and conditions for Authority execution of the section 13(a) delegation agreement, such as receipt by the Authority of a certified copy of a resolution and proof of the district board's delegation to the school business administrator or other authorized officer for supervision of the capital maintenance project, as well as the provision of a sign for indicating financing for the facilities project was made available to the district through the Authority.

N.J.A.C. 19:34A-2.4 Initial delegation and engagement of the design consultant

This section is proposed for re adoption without amendment. This section addresses the initial delegation in three different circumstances: at the design phase after preconstruction approval, at the design phase after project approval, and prior to the construction phase for capital maintenance projects without a design phase. It also addresses the requirements for district engagement of a design consultant for capital maintenance projects in the first and second of the aforementioned delegation phases.

N.J.A.C. 19:34A-2.5 Design of the capital maintenance project

This section is proposed for re adoption with amendments to eliminate references to the “local share” which is obsolete in light of the limitation of the rules to SDA school districts, which are entitled to 100 percent State share funding of school facilities projects. An amendment is proposed to delete the reference to “as part of the local share” in subparagraph (b)2iii, regarding the district’s option to redesign to eliminate excess project costs, or to pay “as part of the local share” additional project costs caused by factors within the control of the district. Further amendments are proposed to delete language in subsection (c). and subsections (d) through (g) in

their entirety, regarding capital maintenance projects with a local share obligation, in light of the fact that the application of this Chapter has been limited to capital maintenance delegations for SDA school districts only, and such school facilities projects do not have a local share obligation.

This section addresses the stages in the delegation from the time the Department issues a preliminary project report, to the submission of detailed plans and specifications and final eligible costs recommendations to the Department, to the district's approval of local share of the final eligible costs (if applicable), to the authorization-to-proceed to the construction phase.

N.J.A.C. 19:34A-2.6 Construction or acquisition and installation of the capital maintenance project

This section is proposed for re Adoption with amendments. This section sets forth the Authority requirements for the district to proceed with the construction of the capital maintenance project, including the submission for review and approval by the Authority of a construction phase checklist, a contractor certification, acceptable documentation of insurance coverage, and an adjustment of the CWE. Proposed amendments include deletion of the subparagraph (e)4i reference to a local share obligation, in light of the fact that statutory amendments pursuant to P.L. 2007, c. 137 limited the application of this chapter to capital maintenance delegations for SDA school districts, which are entitled to 100 percent State share funding for eligible costs of school facilities projects under the Act, including delegated capital maintenance projects, and thus do not have a local share obligation for such projects. Additional amendments clarify that the SDA school district is responsible for submitting change orders affecting educational spaces to DOE for approval, and for submitting change orders exceeding five percent of the grant to the Authority for approval.

Subchapter 3. Grant Amount and Disbursement of the Grant

N.J.A.C. 19:34A-3.1 Grant amount

This section is proposed for re adoption without amendment. This section addresses the 100 percent funding of design work prior to a determination of final eligible costs, the application of such amounts towards the State share, the requirements of approved and reasonable costs, adjustments to the grant amount and the funding of change orders.

N.J.A.C. 19:34A-3.2 Disbursement schedule

This section is proposed for re adoption without amendment. This section addresses the schedule and the conditions upon which the Authority is obligated to disburse.

N.J.A.C. 19:34A-3.3 Disbursement documentation and procedures

This section is proposed for re adoption without amendment. This section addresses the documentation required for disbursement (invoice, voucher, insurance coverage, certification, and/or checklists), the requirements for disbursement upon final completion, and the conditions upon which the Authority is obligated to disburse funds.

N.J.A.C. 19:34A-3.4 Closeout procedures

This section, which addresses the process of achieving close out of a delegated capital maintenance project, is proposed for re adoption with an amendment to delete reference to unexpended bond funds raised in support of a local share, due to the inapplicability of local share obligations for SDA school districts, which are now the only type of school districts subject to delegation of capital maintenance projects. As previously noted, upon limitation of the

delegation agreement regulations to SDA school districts, which are entitled to 100 percent State share funding of school facilities projects, the references in the regulations to local share obligations have become obsolete. This section provides that closeout shall occur when all applicable administrative actions and all required work have been completed by the district.

Subchapter 4. Contract Award and Compliance

N.J.A.C. 19:34A-4.1 General provisions

This section is proposed for readoption without amendment. This section requires a school district to design and construct a capital maintenance project pursuant to the plans and specifications and as approved by the Department. This section also addresses changes in the capital maintenance project impacting educational adequacy and the approval needed for change orders and consultant amendments.

N.J.A.C. 19:34A-4.2 Contract award and compliance

This section is proposed for readoption without amendment. This section addresses the district's broad range of responsibilities in awarding contracts for the capital maintenance project, supervising design and construction, monitoring performance to ensure efficient and effective completion, exhausting remedies in the event of default, and taking action involving the contracted party deemed by the district to be reasonably necessary. This section requires the district to obtain and maintain licenses and certifications required by governmental authorities, to award contracts in accordance with the Public School Contracts Law, and to have construction contracts include provisions regarding compliance with the New Jersey Prevailing Wage Act, the New Jersey Law Against Discrimination, and the Law establishing the Office of the State Comptroller. This section incorporates the School Ethics Law by reference, and also contains

other conflict of interest provisions requiring reporting by the district. This section further addresses the maintenance plan of a capital maintenance project, proof of insurance, district responsibilities regarding the tax-exempt status of bonds issued by the NJEDA, a variety of required district certifications, bid guarantees, performance bonds, and general language providing that the Authority may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purposes and intent of the Act.

This section conforms with the Authority's contractor and consultant prequalification rules, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Corporation, found at N.J.A.C. 19:38A. This section further requires that the district comply with the requirements of N.J.S.A. 52:15C-10 concerning the notices to the State Comptroller and the timing of the procurement process relative to the award of contracts.

N.J.A.C. 19:34A-4.3 Fraud and other unlawful and corrupt practices

This section is proposed for readoption without amendment. This section addresses the district's responsibilities in administering moneys pursuant to this chapter, the section 13(a) delegation agreement and any contracts entered into in connection with the capital maintenance project free from bribery, graft, and corrupt practices. This section also provides that the district must take appropriate remedial actions with respect to any allegations or evidence of such illegality or corrupt practices.

N.J.A.C. 19:34A-4.4 Debarment

This section is proposed for readoption with an amendment in subsection (a) to change an existing reference to a "preconstruction project" into a reference to a "capital maintenance

project”. This section provides that the district and its consultants or contractors shall not enter into a contract for work on a preconstruction activity or capital maintenance project with any person or firm that has been debarred, suspended or disqualified from State, NJEDA, Authority or Federal government contracting. This section also sets forth requirements for statements in contracts and bid specifications relating to debarment, suspension or disqualification from contracting. Addressed as well is the district's affirmative obligation to notify the Authority in writing whenever it has knowledge that any contracted party, subconsultants or subcontractor is on the debarment or suspension list maintained by the Authority, the Department of the Treasury, NJEDA, or the Federal government.

N.J.A.C. 19:34A-4.5 Performance evaluation policy and procedure

This section is proposed for repeal, as the Authority is not required by N.J.S.A. 18A:7G-36 (the statute mandating performance evaluations of contractors on school facilities projects undertaken by the Authority) to perform performance evaluations for projects undertaken by districts pursuant to an Authority grant.

N.J.A.C. 19:34A-4.6 Disclosure and publicity

This section is proposed for readoption without amendment. This section provides that submissions received by the Authority shall constitute government records and that public dissemination of information by the district concerning the capital maintenance project shall acknowledge the Authority's financial support.

N.J.A.C. 19:34A-4.7 Access and record retention

This section is proposed for re adoption without amendment. This section provides that the governmental entities with oversight responsibilities concerning the schools construction program shall have broad access to records pertaining to capital maintenance activities retained by the districts. This section also provides that the district must also include in all contracts a provision requiring contracted parties to permit the Authority and other governmental units to investigate, audit, examine, and inspect these records. This section additionally addresses record retention requirements for records relating capital maintenance projects that are funded through a 13(a) delegation agreement.

Social Impact

The rules proposed for re adoption with amendments and repeals will apply to SDA school districts that seek to manage and administer the performance of capital maintenance projects funded by an SDA grant and delegation of authority pursuant to a Section 13(a) delegation agreement.

The SDA believes that the rules proposed for re adoption with amendments and repeals will have a positive social impact and that no negative impact will result. The re adoption of these rules can be expected to positively impact the students, teachers, and parents served by SDA school districts because they provide guidance on the roles and responsibilities of the Authority and SDA school districts with respect to State funding and delegation of capital maintenance projects pursuant to a section 13(a) delegation agreement. The rules provide flexibility sought by both SDA school districts and the Authority for delegating capital maintenance projects pursuant to section 13(a) delegation agreements. This will enable SDA school districts to better meet health and safety facilities standards, and by successfully undertaking capital maintenance

projects, allow SDA school districts to build the capacity that will enable them to undertake other, more complex school facilities projects.

Economic Impact

The rules proposed for readoption with amendments and repeals address the Authority's discretionary delegation to SDA school districts of capital maintenance projects, pursuant to section 13(a) of the Act. The State share for section 13(a) delegated projects is funded with State contract bonds issued by the NJEDA pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. The rules proposed for readoption with amendments and repeals will have a positive economic impact on the long-term economic growth of the State of New Jersey because significant activity in the planning, construction, architecture, and engineering professions will directly result from these rules, providing obvious Statewide economic benefits in the short term.

Federal Standards Statement

The rules proposed for readoption with amendments and repeals implement State statutes, namely P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), and specifically N.J.S.A. 18A:7G-13.a. There are no Federal standards or requirements governing the subject matter of these rules in as much as the rules proposed for readoption with amendments and repeals apply only to SDA school districts that are authorized by SDA to manage and perform capital maintenance projects to be performed at school facilities within the State of New Jersey. A Federal standards analysis, therefore, is not required.

Jobs Impact

The rules proposed for readoption with amendments and repeals will support the creation of a number of new jobs in New Jersey as a result of facilitating the delegation of capital maintenance projects to SDA school districts pursuant to N.J.S.A. 18A:7G-13.a. Jobs will primarily be created in the construction and design sectors.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeals will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and repeals primarily impact New Jersey SDA school districts, but through implication, impose compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that may be engaged by districts to support or perform delegated capital maintenance projects. The types of small businesses that may be affected by the rules include consultants (for example, design consultants such as architects and engineers), contractors, and their subconsultants and subcontractors providing materials or services to the school district in connection with a school facilities project. Because of the scale of capital maintenance projects delegated to SDA school districts by the Authority, it is anticipated that the number of small businesses to which the rules will apply will be substantial. These rules, specifically N.J.A.C. 19:34A-4.7, impose records access and retention of records obligations that may affect contractors and consultants that are small businesses; the requirement that consultant and contractors be prequalified by the

Authority as a condition of Authority funding of a section 13(a) grant, and the contract award and compliance requirements set forth in N.J.A.C. 19:34A-4.2.

The majority of the aforementioned requirements are imposed by other laws and rules, in that the rules impose virtually no change to the way school districts procure goods and services. One exception is the record access and retention provisions (access to additional governmental entities, retention period of 10 years to correlate with the statute of limitations for architectural services claims). The costs entailed in the records provisions are not anticipated to be substantially more than the costs otherwise incurred for record retention. It is unlikely that a small business would have to employ professional services to comply with this requirement. The rules are designed to minimize any adverse economic impact on small businesses by making few changes in the ways school districts procure goods and services.

Housing Affordability Impact Analysis

The rules proposed for re adoption with amendments and repeals address the discretionary delegation of authority to SDA school districts for capital maintenance projects and administration of a grant program for funding the State share of such capital maintenance projects, and therefore will not have an impact on affordable housing or evoke a change in the average costs of housing in the State of New Jersey.

Smart Growth Development Impact Analysis

The rules proposed for re adoption with amendments and repeals will have an insignificant impact on smart growth development because it is extremely unlikely that the adoption of the rules would evoke a change in housing production in the State of New Jersey Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:34A.

Full text of the proposed amendments and repeals follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

19:34A-1.1 Purpose and applicability of rules

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

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

19:34A-1.2 Definitions

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

..

“Authority” [or “Development Authority”] or “SDA” means the New Jersey Schools Development Authority, an entity which undertakes and funds school facilities projects under the Act and which is an entity formed pursuant to **section 3 of P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq.**, as successor to the New Jersey Schools Construction Corporation. **The SDA is statutorily charged with undertaking and funding schools facilities projects pursuant to the Act.**

...

[“Local share” means the amount of funding to be provided by the district.]

..

“Section 13(a) delegation agreement” means the grant agreement between the Authority and an SDA school district by which the Authority funds the State share, including the costs of preconstruction activities in connection with a proposed capital maintenance project delegated by the Authority to be undertaken by an SDA school district, pursuant to section 13(a) of the Act and this chapter. [For grant agreements executed prior to August 6, 2007, “section 13(a)

delegation agreement” means the grant agreement between the Corporation and an Abbott district, or other district required to use the Corporation, by which the Corporation funds the State share including the costs of pre-development activities in connection with a proposed school facilities project with estimated costs under the section 13(a) delegation limit delegated by the Corporation to be undertaken by the district pursuant to section 13(a) of the Act and this chapter.

“Section 13(a) delegation limit” means the eligible costs limit, as set forth in section 13(a) of P.L. 2000, c. 72, for a school facilities project to be eligible for delegation by the Corporation to the district. The \$500,000 final eligible cost limit applies to section 13(a) grant agreements executed prior to August 6, 2007, when P.L. 2007, c. 137 abolished the cost limit.]

...

“Termination” means the cancellation of the section 13(a) delegation agreement by the Authority as a result of an event of default or other noncompliance[; in the event the district fails to obtain the local share (if applicable) within one year of the Department determination of final eligible costs;] or by mutual consent of the parties.

...

(b) (No change.)

19:34A-1.6 [Automatic termination] **(Reserved)**

[(a) A section 13(a) delegation agreement, which was executed prior to August 6, 2007, shall automatically terminate if:

1. The CWE at any time up to and including the determination of final eligible costs exceeds the section 13(a) delegation limit;

2. The preliminary eligible costs of the school facilities project, as determined by the Department, exceed the section 13(a) delegation limit;
3. The final eligible costs of the school facilities project, as determined by the Department, exceed section 13(a) delegation limit; or
4. The district fails to obtain approval of the local share, if applicable, within one year of the determination of final eligible costs of the school facilities project.]

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

19:34A-2.2 Eligibility criteria for delegation

(a) The following criteria shall apply regarding eligibility for delegation when determined upon issuance by the Department of a preconstruction approval of the preconstruction design work:

1.-2. (No change.)

3. The Department has approved the undertaking of preconstruction design work pursuant to N.J.A.C. 6A:26-3.9; **and**

[4. The initial CWE is not greater than the section 13(a) delegation limit, if the 13(a) delegation agreement was executed prior to August 6, 2007; and]

[5.] **4.** (No change in text.)

(b) If eligibility is determined upon issuance by the Department of a preliminary project report (that is, later in the design phase of the capital maintenance project or prior to the

construction phase for capital maintenance projects without a design phase), the criteria shall be the following:

1. (No change.)

2. The Department has approved the capital maintenance project and issued a preliminary project report to the Authority pursuant to N.J.S.A. 18A:7G-5 and N.J.A.C. 6A:26-3.3; **and**

[3. The Department has determined that the preliminary eligible costs of the school facilities project do not exceed the section 13(a) delegation limit, if the 13(a) delegation agreement was executed prior to August 6, 2007; and]

[4.] **3.** (No change in text.)

19:34A-2.5 Design of the capital maintenance project

(a) (No change.)

(b) When the detailed plans and specifications are completed, the district shall submit them to the Authority with an updated CWE, to review for consistency with the initial scope of work provided pursuant to N.J.A.C. 19:34A-2.3(a), if applicable, and for the Authority to make a final eligible cost recommendation for the capital maintenance project to the Department, pursuant to N.J.A.C. 6A:26-3.5. At the same time, or before or after the determination by the Department of final eligible costs, pursuant to N.J.A.C. 6A:26-3.5, the district shall submit the detailed plans and specifications to the Department for approval of final educational adequacy, if applicable, pursuant to N.J.A.C. 6A:26-5.4.

1. (No change.)

2. If the updated CWE is greater than the preliminary eligible costs:

i.-ii. (No change.)

iii. If the Authority determines that the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards, the district shall either make the appropriate changes to reduce costs or agree to pay such additional costs [as part of the local share].

(c) [For capital maintenance projects without a local share, after] **After** the Authority receives a final project report evidencing final eligible costs, the Authority shall issue an authorization-to-proceed with the construction phase, whereupon the district shall proceed with the procurement of contractors for the construction or the acquisition and installation of the capital maintenance project.

[(d) For capital maintenance projects with a local share, prior to the Authority issuing an authorization-to-proceed with the construction phase, the district shall provide 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, 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 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 agreement of not in excess of five years duration, the 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), 18A:7G-31, and N.J.A.C. 6A:26-8.1 and 10.

(e) Upon receipt by the Authority of evidence of approval of local share as required in (d) above, the Authority shall issue an authorization to proceed with the construction phase, whereupon the district shall proceed with the procurement of contractors for the construction or the acquisition and installation of the capital maintenance project.

(f) If the district fails to submit evidence that the local share has been approved, the Authority shall not issue an authorization-to-proceed. The agreement shall terminate automatically if a district fails to obtain approval of the local share within one year of the determination by the Department of final eligible costs of the capital maintenance project.

(g) In the event a district fails to obtain approval of the local share and the agreement terminates automatically, 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.]

19:34A-2.6 Construction or acquisition and installation of the capital maintenance project

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

(e) If, during the design and construction of the capital maintenance project, a district determines that an amendment or a change in the work of the design consultant, any other consultant and/or the contractor(s) is required, as applicable, the following shall apply:

1. Any change order, or amendment regardless of the amount, which affects the number, configuration, size, location, or use of the educational spaces, shall be submitted **by the district** to the Department for approval;

2. Any change order or amendment which exceeds five percent of the grant amount, in the singular or aggregate, shall be submitted **by the district** to the Authority for approval;

3. (No change.)

4. After receipt by the Authority of the final project report, the district shall be responsible for[=

i. The local share, if applicable; and

ii. The] **the** costs associated with changes to the scope of the capital maintenance project, unless the district provides evidence satisfactory to the Authority that the change order is necessitated by either an emergency consistent with N.J.S.A. 18A:18A-7 or unforeseeable physical conditions.

(f) (No change.)

SUBCHAPTER 3. GRANT AMOUNT AND DISBURSEMENT OF THE GRANT

19:34A-3.4 Closeout procedures

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

1. (No change.)

2. [Any proceeds of school bonds issued by the district for the purposes of funding the local share of the capital maintenance project which remain unspent upon completion of the capital maintenance 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 capital maintenance project.](**Reserved**)

3.-5. (No change.)

SUBCHAPTER 4.CONTRACT AWARD AND COMPLIANCE

19:34A-4.4 Debarment

(a) The district and its consultants or contractors shall not enter into a contract for work or an approved preconstruction activity or [preconstruction] **capital maintenance** project with any person or firm that has been debarred, suspended, or disqualified from State, NJEDA, Authority or Federal government contracting.

(b)-(c) (No change.)

19:34A-4.5 [Performance evaluation policy and procedure] (**Reserved**)

[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 district for the preconstruction activities and capital maintenance project shall be evaluated by the district at the times and in the manner specified by the Authority. This evaluation shall consider, among other things, the consultant's and contractor's ability to deliver and complete the capital maintenance project within the specified time frame established by the district, within the final eligible costs and local share, if any, as determined by the Department, and consistent with the requirements of the contracts.]