

## **Statutes Creating the NJSDA and Defining its Powers and Responsibilities**

**(from P.L. 2007, ch. 137)**

### **52:18A-235 Findings, declarations relative to construction and financing of public school facilities.**

The Legislature finds and declares that:

a. The Constitution of the State of New Jersey requires the Legislature to provide for the maintenance and support of a thorough and efficient system of free public schools and this legislative responsibility includes ensuring that students are educated in physical facilities that are safe, healthy, and conducive to learning.

b. Inadequacies in the quality, utility, and safety of educational facilities among school districts of this State, and particularly in Abbott districts, led to the enactment of the "Educational Facilities Construction and Financing Act," P.L.2000, c.72. That law authorized the New Jersey Economic Development Authority to undertake a comprehensive school construction and financing program, including the funding, designing, and constructing of school facilities for the Abbott districts and certain other types of districts.

c. The New Jersey Schools Construction Corporation was created in August 2002 as a subsidiary of the New Jersey Economic Development Authority pursuant to the provisions of section 16 of P.L.1997, c.150 (C.34:1B-159) and Executive Order No. 24 of 2002 to, among other things, focus, coordinate, and centralize the efforts to design and construct school facilities in the Abbott districts and certain other types of districts.

d. In February 2005, an investigation of the activities of the New Jersey Schools Construction Corporation was undertaken by the Inspector General. The Inspector General found that structural and operational problems at the corporation were impeding the progress of the school construction program and made recommendations for actions to improve the program.

e. The corporation initiated reform efforts to implement the recommendations of the Inspector General. While undertaking these reform efforts and continuing to undertake the design and construction of school facilities projects, it was determined that there would be insufficient funding available under the "Educational Facilities Construction and Financing Act" to complete all the school facilities projects in the Abbott districts. A joint effort by the New Jersey Schools Construction Corporation and the Department of Education resulted in a prioritization of projects to be completed with remaining funds.

f. Governor Jon S. Corzine issued Executive Order No. 3 of 2006 in February 2006 which created an Interagency Working Group on School Construction to study management reforms and legislative action necessary to improve the school construction program.

g. The Interagency Working Group on School Construction recommended statutory changes including the creation of a new school construction authority with a specific focus on Abbott district construction, a governance structure tailored to its mission, project implementation requirements to ensure that projects are undertaken consistent with educational priorities, land acquisition and procurement reforms to improve efficiencies, provide flexibility, and control costs, and a greater role and responsibility given to the Abbott districts in managing certain types of projects.

h. The initiatives provided herein implement the recommendations of the Interagency Working Group on School Construction with regard to the creation of a new school construction authority and the undertaking of projects for and by Abbott districts so as to ensure that the agency undertaking the school construction program has adequate internal controls, processes, and procedures to undertake additional school facilities projects; and the initiatives also provide opportunities for the Abbott districts, the public, and stakeholders to provide input during the various phases of the construction of school facilities projects.

L.2007, c.137, s.1.

### **52:18A-236 Definitions relative to construction and financing of public school facilities.**

As used in sections 1 through 13 of P.L.2007, c.137 (C.52:18A-235 through C.52:18A-247), unless a different meaning appears from the context:

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

"Development authority" means the New Jersey Schools Development Authority, established pursuant to section 3 of P.L.2007, c.137 (C.52:18A-237);

"District" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a school district under full State intervention pursuant to P.L.1987, c.399 (C.18A:7A-34 et al.);

"Local unit" means a county, municipality, board of education or any other political entity authorized to construct, operate and maintain a school facilities project and to borrow money for those purposes pursuant to law;

"Other facilities" means athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities including, but not limited to, grandstands and night field lights, greenhouses, facilities used for non-instructional or non-educational purposes, and any structure, building or facility used solely for school administration;

"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 also 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 district and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, but shall exclude other facilities.

L.2007, c.137, s.2.

**52:18A-237 "New Jersey Schools Development Authority."**

a. There is established in, but not of, the Department of the Treasury a public body corporate and politic, with corporate succession, to be known as the "New Jersey Schools Development Authority." The development authority shall constitute an instrumentality of the State exercising public and essential governmental functions, and the exercise by the development authority of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The development authority shall consist of the Commissioner of Education, the Commissioner of the Department of Community Affairs, the executive director of the Economic Development Authority, and the State Treasurer, who shall serve as ex officio members; and 11 public members appointed by the Governor with the advice and consent of the Senate. At least one of the public members shall have knowledge or expertise in the area of law enforcement and the remaining public members shall have knowledge or expertise in real estate development, construction management, finance, architectural or building design, or any other related field.

c. Each public member shall serve for a term of five years and shall hold office for the term of the member's appointment and until the member's successor shall have been appointed and qualified. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only. In the case of the first 11 public members appointed, three shall serve for a term of two years, three shall serve for a term of three years, three shall serve for a term of four years, and two shall serve for a term of five years.

d. Each member appointed by the Governor may be removed from office by the Governor, for cause, after a public hearing, and may be suspended by the Governor pending the completion of such hearing. Each member before entering upon his duties shall take and subscribe an oath to perform the duties of the office faithfully, impartially and justly to the best of his ability. A record of such oath shall be filed in the Office of the Secretary of State.

e. A chairperson shall be appointed by the Governor from the public members. The members of the development authority shall elect from their remaining number a vice-chairperson, a secretary, and a treasurer thereof. The development authority shall employ an executive director who shall be its chief executive officer. The powers of the development authority shall be vested in the members thereof in office from time to time and eight members of the development authority shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the development authority at any meeting thereof by the affirmative vote of at least eight members of the development authority. No vacancy in the membership of the development authority shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the development authority.

f. Each member of the development authority shall execute a bond to be conditioned upon the faithful performance of the duties of such member in such form and amount as may be prescribed by the Director of the Division of Budget and Accounting in the Department of the Treasury. Such bonds shall be filed in the Office of the Secretary of State. At all times thereafter the members and treasurer of the development authority shall maintain such bonds in full force and effect. All costs of such bonds shall be borne by the development authority.

g. The members of the development authority shall serve without compensation, but the development authority may reimburse its members for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law to the contrary, no officer or employee of the State shall be deemed to have forfeited or shall forfeit any office or employment or any benefits or emoluments thereof by reason of the acceptance of the office of ex officio member of the development authority or any services therein.

h. Each ex officio member of the development authority may designate an officer or employee of the member's department to represent the member at meetings of the development authority, and each such designee may lawfully vote and otherwise act on behalf of the member for whom the person constitutes the designee. Any such designation shall be in writing delivered to the development authority and shall continue in effect until revoked or amended by writing delivered to the development authority.

i. The development authority shall appoint from among its members an audit committee and such other committees as it deems necessary or conducive to the efficient management and operation of the development authority.

j. The development authority may be dissolved by act of the Legislature on condition that the development authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the development authority, all property, funds and assets thereof shall be vested in the State.

k. A true copy of the minutes of every meeting of the development authority shall be forthwith delivered by and under the certification of the secretary thereof to the Governor. No action taken at the meeting by the development authority shall have force or effect until 10 days, Saturdays, Sundays, and public holidays excepted, after the copy of the minutes shall have been so delivered, unless during such 10-day period the Governor shall approve the same in which case the action shall become effective upon such approval. If, in that 10-day period, the Governor returns a copy of the minutes with veto of any action taken by the development authority or any member thereof at the meeting, the action shall be null and void and of no effect.

l. The development authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and cause a copy thereof to be filed with the Secretary of State, the Director of the Division of Budget and Accounting in the Department of the Treasury, and the State Auditor.

m. The development authority shall submit to the Governor, the Joint Budget Oversight Committee, the President of the Senate and the Speaker of the General Assembly a biannual report pursuant to the provisions of section 24 of P.L.2000, c.72 (C.18A:7G-24).

n. The Director of the Division of Budget and Accounting in the Department of the Treasury and the director's legally authorized representatives are authorized and empowered from time to time to examine the accounts, books and records of the development authority including its receipts, disbursements, contracts, funds, investments and any other matters relating thereto and to its financial standing.

o. No member, officer, employee or agent of the development authority shall be interested, either directly or indirectly, in any school facilities project, or in any contract, sale, purchase, lease or transfer of real or personal property to which the development authority is a party.

L.2007, c.137, s.3.

### **52:18A-238 Powers of development authority.**

The development authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at pleasure;

c. To sue and be sued;

d. To acquire in the name of the development authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any school facilities project;

e. To enter into contracts with a person upon such terms and conditions as the development authority shall determine to be reasonable, including, but not limited to, for the planning, design, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of a school facilities project and the reimbursement thereof, and to pay or compromise any claims arising therefrom;

f. To sell, convey or lease to any person all or any portion of its property, for such consideration and upon such terms as the development authority may determine to be reasonable;

g. To mortgage, pledge or assign or otherwise encumber all or any portion of any property or revenues, whenever it shall find such action to be in furtherance of the purposes of P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.);

h. To grant options to purchase or renew a lease for any of its property on such terms as the development authority may determine to be reasonable;

i. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject

to the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and conditions thereof;

j. In connection with any application for assistance under P.L.2000, c.72 (C.18A:7G-1 et al.) or P.L.2007, c.137 (C.52:18A-235 et al.) or commitments therefor, to require and collect such fees and charges as the development authority shall determine to be reasonable;

k. To adopt, amend and repeal regulations to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.);

l. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

m. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

n. To purchase, acquire, attach, seize, accept or take title to any property by conveyance or by foreclosure, and sell, lease, manage or operate any property for a use specified in P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.);

o. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the development authority to carry out the purposes of P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.) and to fix and pay their compensation from funds available to the development authority therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

p. To do and perform any acts and things authorized by P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.) under, through or by means of its own officers, agents and employees, or by contract with any person;

q. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

r. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.);

s. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the development authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such property and the settlement of any claims arising therefrom;

t. To undertake school facilities projects and to enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the development authority to carry out any power expressly provided pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.) or P.L.2007, c.137 (C.52:18A-235 et al.), including, but not limited to, entering into contracts with the State

Treasurer, the New Jersey Economic Development Authority, the Commissioner of Education, districts, and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) or P.L.2007, c.137 (C.52:18A-235 et al.);

u. To enter into leases, rentals or other disposition of a real property interest in and of any school facilities project to or from any local unit pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.) or P.L.2007, c.137 (C.52:18A-235 et al.);

v. To make and contract to make loans or leases to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans or leases, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A235 et al.);

w. To charge to and collect from local units, the State, and any other person, any fees and charges in connection with the development authority's actions undertaken with respect to school facilities projects including, but not limited to, fees and charges for the development authority's administrative, organization, insurance, operating and other expenses incident to the planning, design, construction and placing into service and maintenance of school facilities projects.

2007, c.137, s.4.

#### **52:18A-239 Rules, regulations relative to payment of prevailing wage rate.**

a. The development authority shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to require that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract undertaken in connection with any of its school facilities projects. The development authority shall provide for the proper enforcement and administration of these rules and regulations.

b. A violation of the rules and regulations adopted pursuant to this section shall be deemed to be a violation of P.L.1963, c.150 (C.34:11-56.25 et seq.). The Commissioner of Labor and Workforce Development and any worker shall have the same powers of enforcement against violations of such rules and regulations as are provided by sections 11 through 16, inclusive, of P.L.1963, c.150 (C.34:11-56.35 through 34:11-56.40).

c. The rules and regulations concerning the prevailing wage rate in connection with school facilities projects which have been adopted by the New Jersey Schools Construction Corporation pursuant to the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) shall remain in full force and effect unless subsequently revised by the development authority following the enactment of P.L.2007, c.137 (C.52:18A-235 et al.).

L.2007, c.137, s.5.

#### **52:18A-240 Rules, regulations relative to affirmative action program.**

a. The development authority shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to establish an affirmative action program for the hiring of minority workers employed in the performance of construction contracts undertaken in

connection with any of its school facilities projects, and to expand the business opportunities of socially and economically disadvantaged contractors and vendors seeking to provide materials and services for those contracts, consistent with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.). The development authority shall provide for the proper enforcement and administration of these rules and regulations.

b. The development authority may allocate up to one-half of one percent of the annual value of its construction program to the financing of minority and women worker outreach and training programs pertinent to school facilities project construction.

c. The rules and regulations establishing an affirmative action program adopted by the New Jersey Schools Construction Corporation pursuant to the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) shall remain in full force and effect unless subsequently revised by the development authority following the enactment of P.L.2007, c.137 (C.52:18A-235 et al.).

L.2007, c.137, s.6.

**52:18A-241 Payment of incurred claims, damages, losses, liabilities or costs by development authority.**

In the exercise of powers granted by P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.) in connection with any school facilities project, any and all claims, damages, losses, liabilities or costs that the development authority may incur shall be payable only from the amounts made available to the development authority pursuant to P.L.2000, c.72 (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.). In connection with any agreement or contract entered into by the development authority relating to any school facilities project, there shall be no recovery against the development authority for punitive or consequential damages arising out of contract nor shall there be any recovery against the development authority for claims based upon implied warranties or upon contracts implied in law.

L.2007, c.137, s.7.

**52:18A-242 No modification by municipality of school facilities project; agreements with local government agencies.**

a. No municipality shall modify or change the drawings, plans or specifications for the construction, reconstruction, rehabilitation, alteration or improvement of any school facilities project of the development authority, or the construction, plumbing, heating, lighting or other mechanical branch of work necessary to complete the work in question, nor to require that any person, firm or corporation employed on any such work shall perform the work in any other or different manner than that provided by the drawings, plans and specifications, nor to require that any person, firm or corporation obtain any other or additional authority, approval, permit or certificate from the municipality in relation to the work being done, and the doing of the work by any person, firm or corporation in accordance with the terms of the drawings, plans, specifications or contracts shall not subject the person, firm or corporation to any liability or penalty, civil or criminal, other than as may be stated in the contracts or incidental to the proper enforcement thereof; nor shall any municipality require the development authority or any person, firm, partnership or corporation which leases or purchases the school facilities project for lease or purchase to a State agency, to obtain any other or

additional authority, approval, permit, certificate or certificate of occupancy from the municipality as a condition of owning, using, maintaining, operating or occupying any school facilities project acquired, constructed, reconstructed, rehabilitated, altered or improved by the development authority or by any subsidiary thereof. The foregoing provisions shall not preclude any municipality from exercising the right of inspection for the purpose of requiring compliance by any school facilities project with local requirements for operation and maintenance affecting the health, safety and welfare of the occupants thereof, provided that the compliance does not require changes, modifications or additions to the original construction of the school facilities project.

b. Each municipality in which any school facilities project of the development authority is located shall provide for the school facilities project, whether then owned by the development authority, any subsidiary, any State agency, or any person, firm, partnership or corporation, police, fire, sanitation, health protection and other municipal services of the same character and to the same extent as those provided for other residents of the municipality.

c. Notwithstanding the provisions of any law, rule or regulation to the contrary and except as otherwise provided by any federal law, the development authority shall be exempt from all connection, tapping, maintenance or capital improvement fees or charges in respect to each connection of any school facility project with a water or sewerage system operated by a political subdivision or agency of the State.

d. In carrying out any school facilities project, the development authority may enter into contractual agreements with local government agencies with respect to the furnishing of any community, municipal, or public facilities or services necessary or desirable for the school facilities project, and any local government agency may enter into these contractual agreements with the authority and do all things necessary to carry out its obligations.

L.2007, c.137, s.8.

### **52:18A-243 Preparation of separate plans and specifications, conditions; bids; awarding of contracts.**

a. In undertaking any school facilities projects where the cost of construction, reconstruction, rehabilitation or improvement will exceed \$25,000, the development authority may prepare, or cause to be prepared, separate plans and specifications for: (1) the plumbing and gas fitting and all work and materials kindred thereto, (2) the steam and hot water heating and ventilating apparatus, steam power plants and all work and materials kindred thereto, (3) the electrical work, (4) structural steel and miscellaneous iron work and materials, and (5) all general construction, which shall include all other work and materials required to complete the building.

Commencing in the fifth year after the year in which P.L.2007, c.137 (C.52:18A-235 et al.) takes effect, and every five years thereafter, the Governor, in consultation with the Department of the Treasury, shall adjust the amount set forth in this subsection or the amount resulting from any adjustment under this subsection in direct proportion to the rise or fall of the index rate as defined in this subsection, and shall round the adjustment to the nearest \$1,000. The Governor shall, no later than June 1 of every fifth year,

notify the development authority of the adjustment. The adjustment shall become effective on July 1 of the year in which it is made.

For the purposes of this subsection, "index rate" means the rate of annual percentage increase, rounded to the nearest half-percent, in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed and published quarterly by the United States Department of Commerce, Bureau of Economic Analysis.

b. The development authority shall advertise and receive (1) separate bids for each of the branches of work specified in subsection a. of this section; or (2) bids for all the work and materials required to complete the school facilities project to be included in a single overall contract, in which case there shall be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract for the furnishing of any of the work and materials specified in branches (1) through (4) in subsection a. of this section; or (3) both.

c. Contracts shall be awarded as follows: (1) if bids are received in accordance with paragraph (1) of subsection b. of this section, the development authority shall determine the responsible bidder for each branch whose bid, conforming to the invitation for bids, will be most advantageous to the development authority, price and other factors considered; (2) if bids are received in accordance with paragraph (2) of subsection b. of this section, the development authority shall determine the responsible bidder for the single overall contract whose bid, conforming to the invitation for bids, will be the most advantageous to the development authority, price and other factors considered; or (3) if bids are received in accordance with paragraph (3) of subsection b. of this section, the development authority shall award separate contracts for each branch of work specified in subsection a. of this section if the sum total of the amounts bid by the responsible bidders for each branch, as determined pursuant to paragraph (1) of this subsection, is less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection; but if the sum total of the amounts bid by the responsible bidder for each branch, as determined pursuant to paragraph (1) of this subsection is not less than the amount bid by the responsible bidder for all of the work and materials, as determined pursuant to paragraph (2) of this subsection, the development authority shall award a single over-all contract to the responsible bidder for all of the work and materials as determined pursuant to paragraph (2) of this subsection.

d. For the purposes of this section, "other factors" means the evaluation by the development authority of the ability of the single contractor or the abilities of the multiple contractors to complete the contract in accordance with its requirements and includes requirements relating to the experience and qualifications of the contractor or contractors and their key personnel in projects of similar type and complexity; the performance of the contractor or contractors on prior contracts with the development authority, the State, or districts; the experience and capability of the contractor or contractors and their key personnel in respect to any special technologies, techniques or expertise that the project may require; the contractor's understanding of the means and methods needed to complete the project on time and within budget; the timetable to complete the project; the contractor's plan for quality assurance and control; the contractor's demonstrated experience in regard to affirmative action; and other similar types of factors. The "other factors" to be considered in evaluating bids and the weights assigned to price and these "other factors" shall be determined by the development authority prior to the advertisement for bids for school facilities projects. In its

evaluation of bids, the consideration given to price by the development authority shall be at least equal to the consideration given to the combination of all "other factors."

e. The development authority shall require from all contractors to which it awards contracts pursuant to P.L.2000, (C.18A:7G-1 et al.) and P.L.2007, c.137 (C.52:18A-235 et al.), the delivery of a payment and performance bond issued in accordance with N.J.S.2A:44-143 et seq.

f. The development authority shall adopt regulations to implement this section which shall include, but not be limited to, the procedural requirements for: (1) the evaluation and weighting of price and "other factors" in the awarding of contracts; and (2) the appealing of a prequalification classification and rating, a bid rejection, and a contract award recommendation.

The rules and regulations promulgated by the New Jersey Schools Construction Corporation pursuant to the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.) shall remain in full force and effect unless subsequently revised by the development authority following the enactment of P.L.2007, c.137 (C.52:18A-235 et al.).

g. Each evaluation committee selected by the development authority to review and evaluate bids shall, at a minimum, contain a representative from the district in which the school facilities project is located if the district elects to participate.

h. All advertisements for bids shall be published in a legal newspaper and be posted on the development authority's website sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding but in no event less than 10 days prior to such date. Notice of revisions or addenda to advertisements or bid documents relating to bids shall be advertised on the development authority's website to best give notice to bidders no later than seven days, Saturdays, Sundays and holidays excepted, prior to the bid due date. The notice shall be provided to any person who has submitted a bid, in one of the following ways: (a) in writing by certified mail or (b) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or (c) by a delivery service that provides certification of delivery to the sender. Failure to advertise or provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the acceptance of bids and require the readvertisement for bids. Failure to obtain a receipt when good faith notice is sent or delivered to the address or telephone facsimile number on file with the development authority shall not be considered failure by the development authority to provide notice.

i. Any purchase, contract, or agreement may be made, negotiated, or awarded by the development authority without public bid or advertising when the public exigency so requires.

j. Any purchase, contract, or agreement may be made, negotiated, or awarded by the development authority without public bid or advertising when the authority has advertised for bids on two occasions and has received no bids on both occasions in response to its advertisements. Any purchase, contract, or agreement may be negotiated by the development authority after public bid or advertising when the authority receives only a single responsive bid, provided however that negotiation with that single responsive bidder shall be limited to price.

L.2007, c.137, s.9.

## **52:18A-244 Powers of development authority relative to undertaking school facilities project.**

a. If the development authority shall find it necessary in connection with the undertaking of any school facilities project to change the location of any portion of any public highway or road, it may contract with any government agency, or public or private corporation which may have jurisdiction over the public highway or road to cause the public highway or road to be constructed at such locations as the authority shall deem most favorable. The cost of the reconstruction and any damage incurred in changing the location of the highway shall be ascertained and paid by the development authority as part of the cost of the school facilities project. Any public highway affected by the construction of any school facilities project may be vacated or relocated by the development authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the development authority as a part of the cost of the school facilities project. In all undertakings authorized by this subsection, the development authority shall consult and obtain the approval of the Commissioner of the Department of Transportation.

b. The development authority and its authorized agents and employees may enter upon any lands, waters, and premises for the purpose of making surveys, soundings, drillings, and examinations as it may deem necessary or convenient for the purposes of this act, all in accordance with due process of law, and this entry shall not be deemed a trespass nor shall an entry for this purpose be deemed an entry under any condemnation proceedings which may be then pending. The development authority shall make reimbursement for any actual damages resulting to the lands, waters and premises as a result of these activities.

c. The development authority shall have the power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances, herein called "public utility facilities," or any public utility as defined in R.S.48:2-13, in, on, along, over or under any school facilities project. Whenever the development authority shall determine that it is necessary that any public utility facilities which now are, or hereafter may be, located in, on, along, over, or under any school facilities project shall be relocated in the school facilities project, or should be removed from the school facilities project, the public utility owning or operating the facilities shall relocate or remove them in accordance with the order of the development authority. The cost and expenses of the relocation or removal, including the cost of installing the facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish the relocation or removal, shall be ascertained and paid by the development authority as a part of the cost of the school facilities project. In case of any relocation or removal of facilities, the public utility owning or operating them, its successors or assigns, may maintain and operate the facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate the facilities in their former location or locations. In all undertakings authorized by this subsection the development authority shall consult and obtain the approval of the Board of Public Utilities.

L.2007, c.137, s.10.

**52:18A-245 Exercise of powers constitute performance of essential governmental function.**

The exercise of the powers granted by P.L.2007, c.137 (C.52:18A-235 et al.) and P.L.2000, c.72 (C.18A:7G-1 et al.) shall constitute the performance of an essential governmental function and the development authority shall not be required to pay any taxes or assessments upon or in respect of a school facilities project, or any property or moneys of the development authority, and the development authority, its school facilities projects, property, and moneys and any bonds and notes issued under the provisions of P.L.2007, c.137 (C.52:18A-235 et al.) and P.L.2000, c.72 (C.18A:7G-1 et al.), their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the State except for transfer, inheritance and estate taxes and by any political subdivision of the State.

L.2007, c.137, s.11.

**52:18A-246 Property exempt from levy, sale.**

All property of the development authority shall be exempt from levy and sale by virtue of an execution and no execution or other judicial process shall issue against the same nor shall any judgment against the development authority be a charge or lien upon its property.

L.2007, c.137, s.12.

**52:18A-247 Development Authority, references in law.**

a. The New Jersey Schools Construction Corporation established pursuant to section 16 of P.L.1997, c.150 (C.34:1B-159) and Executive Order No. 24 of 2002 is abolished and all its functions, powers, duties, and employees are transferred to the New Jersey Schools Development Authority in, but not of, the Department of the Treasury.

b. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the New Jersey Schools Construction Corporation, the same shall mean and refer to the New Jersey Schools Development Authority in, but not of, the Department of the Treasury.

c. This transfer shall be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

L.2007, c.137, s.13.