

NEW JERSEY ADMINISTRATIVE CODE  
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TITLE 19. OTHER AGENCIES  
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
CHAPTER 37. PROCEDURES FOR UNDERTAKING UNDER 55 PERCENT DISTRICTS' SCHOOL FACILITIES  
PROJECTS

*N.J.A.C. 19:37 (2015)*

Title 19, Chapter 37 -- Chapter Notes

CHAPTER AUTHORITY:

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

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2011 d.033, effective January 18, 2011.

See: *42 N.J.R. 1695(a)*, *43 N.J.R. 200(a)*.

CHAPTER EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 37, Procedures for Undertaking Under 55 Percent Districts' School Facilities Projects, expires on January 18, 2018. See: *43 N.J.R. 1203(a)*.

CHAPTER HISTORICAL NOTE:

Chapter 37, Procedures for Undertaking Under 55 Percent Districts' School Facilities Projects, was adopted as special new rules by R.2004 d.66, effective January 14, 2004. See: *36 N.J.R. 1122(a)*.

Chapter 37, Procedures for Undertaking Under 55 Percent Districts' School Facilities Projects, was readopted as R.2005 d.220, effective June 10, 2005. See: *37 N.J.R. 235(a)*, *37 N.J.R. 2558(a)*.

Chapter 37, Procedures for Undertaking Under 55 Percent Districts' School Facilities Projects, expired on December 7, 2010, and was adopted as new rules by R.2011 d.033, effective January 18, 2011. See: Source and Effective Date.

§ 19:37-1.1 Purpose and applicability of rules

This chapter is promulgated by the New Jersey Schools Development Authority (the "Authority"), a public body corporate and politic established in, but not of, the Department of the Treasury under P.L. 2007, c. 137 (*N.J.S.A. 52:18A-235 et seq.*), to implement the provisions of the Educational Facilities Financing and Construction Act, *N.J.S.A. 18A:7G-1 et seq.*, and to undertake certain school facilities projects of under 55 percent district aid districts that elect to have the Authority rather than the district undertake the project and for under 55 percent district aid districts that, having successfully appealed after failed referenda to have the Commissioner of Education authorize the issuance of local share of the costs of a school facilities project, are required to have the Authority undertake the project included in the appeal.

This chapter does not cover the procedures for under 55 percent district aid districts that neither elect nor are required to have the Authority undertake their school facilities projects.

#### § 19:37-1.2 Definitions

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

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

"Authority" or "SDA" means the New Jersey Schools Development Authority, an entity formed pursuant to P.L. 2007, c. 137 (*N.J.S.A. 52:18A-235 et seq.*), as successor to the New Jersey Schools Construction Corporation, which is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act. Specific actions of the Authority are made in conformance with the internal levels of operating authority, as approved by the Board of the Authority.

"Commissioner" means the Commissioner of Education or designee.

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

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

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

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

"Department" means the New Jersey Department of Education.

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

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

"District" or "school district" means a local or regional school district established pursuant to Chapter 8 or 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of Chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of Chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L. 1987, c.399 (*N.J.S.A. 18A:7A-34 et seq.*).

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

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

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

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

"Final completion of a school facilities project" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"SDA school district," which definition corresponds with the School Funding Reform Act of 2008, P.L. 2007, c. 260 (*N.J.S.A. 18A:7G-3*), as that legislation replaced the term "Abbott district" with the term "SDA school district."

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

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

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

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

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

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

1. Essential requirements of the contracts for the school facilities project have been fully performed so that the purpose of the contracts is accomplished;
2. The punch list has been created;
3. There are no important material or omissions or technical defects or deficiencies regarding the school facilities project;

4. A temporary certificate of occupancy, continued use or completion or equivalent legal authorization to occupy has been issued;

5. The school facilities project is ready for occupancy in accordance with its intended purpose; and

6. The district has provided evidence satisfactory to the Authority that upon delivery of the certificate of substantial completion to the district, the school facilities project will be included in the district's insurance coverage in the amount of no less than the fair market value of the covered property.

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

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

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

#### § 19:37-1.3 Disclosure and publicity

(a) Applications and submissions received by the 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 providing financial assistance and undertaking of the project.

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

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

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

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

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

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

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

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

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

(d) The district shall obtain and maintain all licenses, certifications, authorizations, permits, or any documents required by all governmental authorities whenever necessary. The district shall promptly notify the Authority and the Unit of Fiscal Integrity in writing of any disciplinary action against itself, or, if it has knowledge of, against any contracted party or any change in the status of any license, permit, or other authorization required for the school facilities project.

(e) Until such time as the Authority undertakes the school facilities project, the district shall award all consultant contracts for the school facilities project in accordance with the Public School Contracts Law, *N.J.S.A. 18A:18A-1* et seq. and the rules issued pursuant thereto.

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

#### § 19:37-1.6 Appeals

(a) Appeals arising from decisions of the Authority may be requested in writing, and an opportunity given for any informal hearing on the papers, in person or via telephone with Authority staff. Such written request for an informal hearing must be made within 30 days of the receipt of the Authority's decision.

(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, within 45 days of the written decision resulting from the informal hearing or the determination of the Authority if an informal hearing is not sought, a formal hearing.

(c) Upon filing of the initial pleading in a contested case, the Board of the Authority may by resolution either retain the matter to hear and decide the matter directly or transmit the matter for hearing before the Office of Administrative Law. Such hearing 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 Procedures Rules, *N.J.A.C. 1:1*.

(d) Every determination of a dispute or controversy arising from this chapter by the Authority, 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 pursuant to the applicable rules of the Office of Administrative Law.

#### § 19:37-2.1 Applicability

This subchapter establishes the Authority's general conditions for implementing a school facilities project for under 55 percent electing or appealed districts.

#### § 19:37-2.2 General conditions for implementing the school facilities project under section 13(c)

(a) The following criteria shall apply regarding eligibility for the Authority to undertake either an under 55 percent electing or appealed district school facilities project:

1. As more fully set forth in *N.J.A.C. 19:37-3* and *4*, either of the following has occurred:

i. The district has either notified the Department of its election to have the Authority undertake the school facilities project, pursuant to *N.J.A.C. 6A:26-3.3* and the Department has transmitted notice of the election to the Authority and issued a preliminary project report; or

ii. The Commissioner has found that the school facilities project is necessary for the provision of a thorough and efficient system of education in the district, and has transmitted documentation of the project to the Authority along with a

preliminary project report for purposes of Authority undertaking the school facilities project, pursuant to section 12 of the Act.

2. The district shall execute the section 13(c) implementation agreement within such period of time and pursuant to such terms and conditions as the Authority and the Department may determine, and return the section 13(c) implementation agreement together with all applicable attachments to the Authority for execution by the Authority and the Department.

3. Such terms and conditions shall include:

i. 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;

ii. Delivery by the district to the Authority of a certificate executed by the school business administrator or other authorized officer as to the following:

(1) All adoptions and approvals required to be given by the district or any other governmental authority with respect to the agreement have been obtained;

(2) The district has full legal right, power and authority to enter into the agreement to consummate the transactions contemplated thereby; and

(3) The agreement has been duly authorized, executed and delivered by the district, and constitutes a valid and binding agreement of the district enforceable in accordance with its terms;

iii. Upon determining that all conditions precedent to the execution of the section 13(c) implementation agreement have been satisfied, the Authority shall execute the agreement and transmit the agreement to the Department for execution;

iv. Upon execution of the agreement by all parties, the Authority shall transmit to the district the section 13(c) implementation agreement as well as a sign to the extent permitted by zoning laws indicating that the Authority is undertaking the project.

4. Upon execution of the agreement by all parties, the Authority may determine to delegate a school facilities project or projects of an under 55 percent appealed district to the district pursuant to section 13(a) of the Act and *N.J.A.C. 19:35*.

#### § 19:37-2.3 Site feasibility work on the project site

For each school facilities project requiring approval of the use or acquisition of land for school purposes under *N.J.A.C. 6A:26-7.1*, the district shall comply with the site feasibility work requirements of *N.J.A.C. 6A:26-7.1*, including, but not limited to, the environmental site report, and upon Authority review of the environmental site report, and New Jersey Department of Environmental Protection comments on the report, the Authority may require further environmental studies and reports prior to including any of the costs relating to the acquisition and use of the land for school purposes in the recommendation of the final eligible costs of the school facilities project. If the Authority determines that the site is unsuitable for use or acquisition as a school site, it may terminate or have the district terminate any feasibility studies on the site, notify the district that the site is unsuitable for use or acquisition as a school site, and not proceed with recommendations for final eligible costs for a school facilities project on an unsuitable site.

#### § 19:37-2.4 Provision of local share to the Authority

For each school facilities project which has a local share, prior to the commencement by the Authority of any activities in connection with such school facilities project except those consultant activities that the Authority undertakes pursuant to this chapter, the district shall enter into a section 13(b) local share agreement with the Authority, which shall provide for the payment of the local share for the school facilities project to the Authority.

§ 19:37-2.5 Consultant assignment and assumption agreements

(a) Districts requesting the assignment and assumption of consultant agreements shall comply with the procedures outlined below and any additional procedures established by the Authority. The Authority may take assignment of contracts that a district may have with a consultant, including a design consultant, at the following time:

1. In the case of an under 55 percent electing district, after execution of the section 13(c) implementation agreement and either:

i. Upon receipt of the local share pursuant to the terms and conditions of a section 13(b) local share agreement and after consultation of the district design consultant so that the Authority had the opportunity to monitor the design work in the event that when the Authority received the preliminary project report, the design work was not sufficient for the Authority to make a final eligible costs recommendation to the Department; or

ii. Upon receipt of the local share pursuant to the terms and conditions of a section 13(b) local share agreement in the event that when the Authority received a preliminary project report from the Department, the design work was sufficient for the Authority to make a final eligible costs recommendation to the Department; or

2. In the case of an under 55 percent appealed district, after execution of the section 13(c) implementation agreement and upon the receipt by the Authority of a preliminary project report, other documentation of the school facilities project, and notice of the successful appeal from the Department.

(b) At the time the district submits a request for the assignment and assumption of a consultant contract, the district shall submit to the Authority the following:

1. A written request for assignment of the existing agreement between the consultant and the district;
2. All documents such as design documents provided to the district by the consultant pursuant to the existing agreement between the consultant and the district;
3. An executed copy of the existing agreement between the consultant and the district;
4. A detailed list of all payments made to date and all payments outstanding as of the date of the district's written request; and
5. Any other documentation requested by the Authority.

(c) Assignment of an existing agreement between a district and a consultant will be considered by the Authority only if all of the following conditions are satisfied, in the sole discretion of the Authority:

1. The scope of services to be performed under the existing agreement by the consultant is, in the opinion of the Authority, sufficient for purposes of completing the school facilities project. In the case of a design consultant, the scope of services shall, in the opinion of the Authority, be sufficient and adequate to ensure the proper and complete design of the school facilities project;

2. In the case of a design consultant, the services performed by the design consultant under the existing agreement have proceeded to the completion of the design work required to obtain schematic approval of the school facilities project under *N.J.A.C. 6A:26-5.3*;

3. The consultant has been pre-qualified by the Authority and has the pre-qualification classification and the pre-qualification rating required for the engagement;

4. In the case of an under 55 percent electing district, the consultant has been engaged by the district through a process involving at least three proposals from pre-qualified consultants, selection by the district based upon the most technically qualified firm, taking into account the scope, complexity, and professional nature of the services to be rendered, and compensation that is fair and reasonable;

5. The terms and conditions of the existing agreement are satisfactory to the Authority;

6. The existing agreement permits assignment by the district to the Authority; and

7. The Authority determines that such assignment is in the best interests of the school facilities project.



#### § 19:37-2.6 Cooperation with the Authority

After execution by all of the parties of the section 13(c) implementation agreement, the district shall provide to the Authority all information and documentation in the possession of the district or under the district's control with reasonable promptness to avoid delay in the completion of the school facilities project. The district shall cooperate in the development of and abide by the time lines in the Authority schedule for undertaking the school facilities project. In no event shall the district be authorized to issue an order to stop the work of the Authority on the project. Such cooperation or assistance shall also include attendance at meetings, performance of administrative tasks and the execution of any documentation required of the district as the owner of the project site of a school facilities project so that any necessary permits, licenses, certificates or other governmental approvals can be issued. The district shall also coordinate with the Authority the district undertaking of any other school facilities projects or other capital projects on or in the area of the project site.

#### § 19:37-2.7 Inspection and information

(a) The district and its respective consultants, employees, agents and contractors shall have the right at any reasonable time to observe the school facilities project provided that any such inspection shall be conducted in a manner to minimize interference with the work of the Authority on the school facilities project.

(b) The Authority shall use reasonable efforts to make itself available to respond to reasonable requests for information by the district concerning the school facilities project undertaken by the Authority.

#### § 19:37-2.8 Supervision

Neither the district nor its respective representatives, consultants, employees, agents or contractors shall supervise, direct or have any control over the work of the school facilities project after it is transmitted to the Authority for undertaking pursuant to *N.J.A.C. 19:37-2.2*. The Authority shall have full and complete authority over and responsibility for the means, methods, techniques, sequences and procedures of design and construction and for the safety precautions incident to the undertaking of the school facilities project in compliance with all applicable laws, rules, regulations, ordinances, codes or orders.

#### § 19:37-2.9 Request for changes

(a) If the district wishes to propose or request a change to the scope or design of the school facilities project, it shall notify the Authority in writing. In general, the Authority will not agree to changes in the scope of the school facilities project after the Department has transmitted a preliminary project report to the Authority unless the district, promptly upon learning of an emergent condition requiring a scope change in the school facilities project, notifies the Authority. If the Authority agrees that the proposed change is in the best interest of the school facilities project, it, together with the district, shall obtain the appropriate and applicable approvals from the Department prior to proceeding with any such change. In the event that the district requests a scope change after the Department has transmitted a final project report, the district shall be required to evidence availability of local funds to cover the cost of the change prior to the Authority proceeding with such change.

(b) The district shall be responsible for any design and or construction delays resulting from such changes. District responsibilities for change delays shall include notifying the public and those students, staff, and parents affected by the delays and accommodating district operations to the delays. The making of any material change to the scope or design of the school facilities project is within the sole discretion of the Authority and subject to Department oversight over the district's long-range facilities plan and the standards of educational adequacy. The Authority is not responsible for funding scope changes after the Department has transmitted a final project report or for funding excess costs, including cost overruns arising from the ineligible items generating excess costs.

#### § 19:37-2.10 Insurance

(a) The district shall maintain, either directly or through its consultants, insurance coverage as set forth in the section 13(c) implementation agreement and such insurance shall be maintained in force and effect until the final completion of the school facilities project.

(b) The Authority shall not commence the school facilities project until it receives acceptable documentation of insurance coverage from the district. The section 13(c) implementation agreement shall set forth the specific requirements for evidence of district insurance coverage.

(c) As further detailed in the section 13(c) implementation agreement, the district shall maintain directly or through its consultants, as applicable, the following types of insurance; property insurance, commercial general liability insurance, workers' compensation insurance, comprehensive automobile liability insurance, and professional liability insurance (errors and omissions) when the district engages a consultant to perform services that are commonly the subject of professional liability insurance.

#### § 19:37-2.11 Right of entry, ground lease

(a) The district shall allow the Authority access to and a right of entry or a ground lease upon to occupy the project site, engage in all of activities needed to complete the school facilities project, and transact school facilities project related activities (monitoring, inspections, building commissioning services to verify how building systems function together, etc.) for a period of at least one year after the substantial completion of the school facilities project. A right of entry for a period of at least nine additional years, totaling 10 years from substantial completion, shall be granted to the Authority for the purpose of resolving litigation, claims, and/or audit findings in connection with the school facilities project.

(b) The right of entry or ground lease shall become effective with respect to each project site as of the date it is added to the scope of the section 13(c) implementation agreement.

#### § 19:37-2.12 Rights and responsibilities after completion of the school facilities project

(a) Upon the substantial completion of the school facilities project by the Authority, the district shall enter into an agreement with the Authority providing for the maintenance by the district of the school facilities project pursuant to *N.J.S.A. 18A:7G-13(d)* and in accordance with the regulations adopted by the Department pursuant to *N.J.S.A. 18A:7G-9(b)(3)* and 13(d).

(b) After substantial completion of the school facilities project by the Authority, the district shall allow the Authority access to the school facilities project at such times and to such extent as the Authority may reasonably request in consultation with the district pursuant to the right of entry or ground lease provided pursuant to *N.J.A.C. 19:37-2.11* and the section 13(c) implementation agreement.

(c) The school facilities project shall be used exclusively for the uses which are consistent with the district's approved long-range facilities plan. Upon a Authority finding of a violation of this restriction, and notification to the district, and failure by the district to cure the violation within a time period acceptable to the Authority, the Authority may pursue remedies for such non-compliance, which may include, but not be limited to, legal action to enjoin such inconsistent use. If applicable, the district shall also comply with the requirements for Department approval of the disposal of land and/or the closing of a school facility, pursuant to *N.J.A.C. 6A:26-7.4* and *7.5*.

#### § 19:37-3.1 Applicability

This subchapter establishes the Authority's procedures and requirements governing the undertaking and funding of school facilities projects that under 55 percent electing districts have elected the Authority to construct.

### § 19:37-3.2 Pre-application activities

The under 55 percent electing district is responsible for undertaking and funding all pre-application activities required for the school facilities project elected to be constructed by the Authority and applicable to such districts, as defined in *N.J.A.C. 19:32-1.2*. In the event that the school facilities project requires approval for the use or acquisition of land pursuant to *N.J.A.C. 6A:26-7.1*, pre-application activities shall include the site feasibility reports and studies required by that rule, including, but not limited to, the environmental site report. Once these costs have been allocated to the applicable school facilities project and that project has been approved pursuant to *N.J.A.C. 6A:26-3.3*, the district shall receive credit toward the local share of that project.

### § 19:37-3.3 Design consultant

(a) The district shall hire a design consultant to do the preliminary design, including, but not limited to, the educational specifications and schematic plans as defined in *N.J.A.C. 6A:26-5.2* and *5.3*, of the school facilities project.

(b) If intending to elect to have the Authority undertake the school facilities project, the district shall award a contract for design work only to a design consultant that:

1. Has been pre-qualified by the Authority;
2. Has the pre-qualification classification and pre-qualification rating required for the engagement;
3. Has been procured in accordance with a process consisting of the district receipt of at least three proposals from pre-qualified design consultants, selection based upon the most technically qualified firm, taking into account the scope, complexity, and professional nature of the services to be rendered, and compensation that is fair and reasonable; and
4. Agrees to permit assignment of the contract by the district to the Authority.

### § 19:37-3.4 Undertaking and funding of design work after electing the Authority to construct the school facilities project

(a) After notifying the Department of its election to have the Authority construct the school facilities project, and after the Department has issued a preliminary project report to the Authority, the Authority shall notify the district of the prioritization of completing the school facilities projects of EDA-required districts included in the most current approved long-range facilities plan for such districts and shall further notify the district of the approximate time when the Authority may undertake the project of the under 55 percent electing district.

(b) Upon the receipt of the prioritization notice, the under 55 percent electing district shall notify the Authority if it wishes to proceed with the election or notify the Authority and the Department if it wishes to rescind its initial election and undertake the project itself.

(c) If the district notifies the Authority that it wishes to proceed with the initial election, the design consultant hired by the district in accordance with *N.J.A.C. 19:37-3.3* shall consult with the Authority so that the Authority may monitor the design work for the school facilities project before continuing the design work until it is sufficient for the Authority to make a final eligible costs recommendation under *N.J.A.C. 6A:26-3.5*.

(d) The district shall provide documentation satisfactory to the Authority of the local funds expended on the school facilities project prior to the Authority recommendation of final eligible costs to the Department.

(e) The district shall pay 100 percent of the costs of the design consultant fees and other school facilities project costs until the local share of the school facilities project has been approved, pursuant to *N.J.A.C. 6A:26-3.7*.

1. The district shall provide local share to the Authority, pursuant to the terms and conditions of the section 13(b) local share agreement, prior to the Authority commencing work on the school facilities project and prior to the Authority, at its sole discretion, taking an assignment of the design consultant contract with the district.

2. The costs of the design consultant fees paid by the district shall be credited toward the local share of that project.

§ 19:37-3.5 Undertaking and funding of other consultant services after the receipt of the preliminary project report from the Department

(a) If the district notifies the Authority that it wishes to proceed with the initial election, and the school facilities project requires approval of the land acquisition or use pursuant to *N.J.A.C. 6A:26-7.1*, the site consultant and/or design consultant hired by the district shall consult with the Authority so that the Authority may monitor the site feasibility work for the school facilities project before continuing the site feasibility work until it is sufficient for the Authority to make a final eligible costs recommendation under *N.J.A.C. 6A:26-3.5*.

(b) The district shall provide the environmental site report and New Jersey Department of Environmental Protection comments on same to the Authority, and if the Authority determines that further site feasibility work is required, the district shall provide such further reports and studies to the Authority until the Authority determines that the site is suitable for acquisition or use as a school site. In that case, the Authority will include the costs related to the acquisition or use of the school site in the final eligible costs recommendation. If the Authority determines that the site is unsuitable for acquisition or use as a school site, it will notify the district of its determination and will not make a final eligible costs recommendation until and unless there is a suitable site for the school facilities project.

(c) The district shall pay 100 percent of the costs of the site consultant fees and other school facilities project site feasibility costs until the local share of the school facilities project has been approved pursuant to *N.J.A.C. 6A:26-3.7*. The costs of such consultant fees paid by the district shall be credited toward the local share of the school facilities project.

§ 19:37-4.1 Applicability

This subchapter establishes the Authority's procedures and requirements governing the undertaking and funding of school facilities projects included in the successful appeals of under 55 percent appealed districts.

§ 19:37-4.2 Pre-application activities

The under 55 percent appealed district is responsible for undertaking and funding all pre-application activities required for the school facilities project included in the successful appeal and applicable to such districts, as defined in *N.J.A.C. 19:32-1.2*. In the event that the school facilities project requires approval for the use or acquisition of land pursuant to *N.J.A.C. 6A:26-7.1*, pre-application activities shall include the site feasibility studies and reports required by that rule, including, but not limited to, the environmental site report. Once these costs have been allocated to the applicable school facilities project and that project has been approved pursuant to *N.J.A.C. 6A:26-3.3*, the district shall receive credit toward the local share of that project.

§ 19:37-4.3 Undertaking and funding of design work after the receipt of the preliminary project report from the Department after the Commissioner has granted the appeal

(a) After the Authority receives from the Department the preliminary project report and other school facilities project documentation for a school facilities project included in a successful appeal of an under 55 percent appealed district, the Authority, upon review of such documentation and in consultation with the Department, shall determine if it has the detailed plans and specifications and/or documentation sufficient to make a recommendation of the final eligible costs of the project.

(b) If the existing design work is sufficient for the above review and recommendation, the Authority shall proceed to make such submissions to the Department.

(c) If the existing design work is not sufficient for the above review and recommendation, the Authority shall undertake the required design work by assuming, at its sole discretion and pursuant to *N.J.A.C. 19:37-2.4*, the district design consultant contract or otherwise.

(d) Such additional design work required pursuant to (c) above shall be undertaken and funded by the Authority until the Commissioner authorizes local share of the school facilities project. The local share provided to the Authority pursuant to the terms and conditions of the section 13(b) local share agreement shall be adjusted to account for the 100 percent interim funding by the Authority for such additional design work.

§ 19:37-4.4 Undertaking and funding of other consultant services after the receipt of the preliminary project report from the Department after the Commissioner has granted the appeal

(a) After the Authority receives from the Department the preliminary project report and the other school facilities project documentation for an under 55 percent appealed district, the Authority, upon review of such documentation and in consultation with the Department, shall determine whether such services are necessary and sufficient for the Authority to make a final eligible costs recommendation to the Department, pursuant to *N.J.A.C. 6A:26-3.5*. If the school facilities project requires approval for the land acquisition or use pursuant to *N.J.A.C. 6A:26-7.1*, the Authority shall review the environmental site report and New Jersey Department of Environmental Protection comments on same, and determine whether further site feasibility studies or reports are needed before it can determine whether or not they are sufficient to make a final eligible costs recommendation under *N.J.A.C. 6A:26-3.5*.

(b) If the existing work product is necessary and sufficient for the recommendation in (a) above, the Authority shall proceed to make the recommendation to the Department.

(c) If the existing work product is not sufficient but is necessary for the recommendation in (a) above, the Authority shall undertake the services by assuming at its sole discretion and pursuant to *N.J.A.C. 19:37-2.4* the contract of the consultant or otherwise, and when sufficient, make the final eligible costs recommendation to the Department. If the Authority determines that the site is unsuitable for acquisition or use as a school site, it will notify the district of its determination, and will not make a final eligible costs recommendation until and unless there is a suitable site for the school facilities project.

(d) Such other consultant services required pursuant to (c) above shall be undertaken and funded by the Authority until the Commissioner authorizes local share of the school facilities project. The local share provided to the Authority pursuant to the terms and conditions of the section 13(b) local share agreement shall be adjusted to account for the 100 percent interim funding by the Authority of such services.