

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Section 15 Grant Procedures

Proposed New Rules: N.J.A.C. 19:32

Authorized By: New Jersey Schools Development Authority, Manuel M. Da Silva, Chief
Executive Officer.

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

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

Proposal Number: PRN 2022-114.

Submit written comments by November 5, 2022, to:

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The agency proposal follows:

Summary

The Section 15 Grant Procedures rules of the New Jersey Schools Development Authority (SDA), codified at N.J.A.C. 19:32-1 through 4, were originally adopted to implement Section 15 of the Educational Facilities Construction and Financing Act (“EFCFA” or “the Act”), P.L. 2000 c. 72 (N.J.S.A. 18A:7G-1 et seq.). Section 15 of the Act established a grant program for those school districts that were not included in the category of “SDA Districts” eligible to have their school facilities projects fully funded and constructed by the SDA. The Section 15 Grant Procedures rules expired on July 1, 2022, therefore, the SDA is now proposing the expired rules as new rules, with technical changes, not otherwise discussed, and with three minor substantive changes that are discussed below.

The Section 15 Grant Procedures rules will govern the SDA’s continued administration of the grant program for non-SDA districts, which funds the State share of the final eligible costs of qualifying school facilities projects in non-SDA districts, pursuant to Section 15 of the Act.

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

A summary of the expired rules proposed herein as new rules follows.

Subchapter 1. General Provisions

N.J.A.C. 19:32-1.1 Applicability and Scope

This section provides that the rules implement Section 15 of the Act by creating a program under which school districts that have not been designated as “SDA districts” pursuant to the Act (non-SDA districts) can apply for and receive grant monies to fund school facilities

projects (Section 15 grants). This section further provides that non-SDA districts that wish to apply for Section 15 grants and those that have received grant funding are required to comply with the rules.

N.J.A.C. 19:32-1.2 Construction of Rules

This section provides that Chapter 32 is to be liberally construed to permit the SDA to discharge its statutory functions under the Act.

N.J.A.C. 19:32-1.3 Definitions

This section sets forth the meaning of the words and terms used throughout Chapter 32.

N.J.A.C. 19:32-1.4 Administration and Performance of Grant Agreements

This section provides that the applicant school district, not the SDA, is responsible for the administration and success of a school facilities project funded by a grant pursuant to Chapter 32, and states that grant funds awarded pursuant to this chapter shall be used in conformance with the Act, this chapter, and the provisions of the grant agreement between the district and the SDA, to achieve the purposes of the grant and the Act.

N.J.A.C. 19:32-1.5 Disclosure and Publicity

This section provides that grant applications and submission materials shall constitute public records subject to disclosure to requestors in accordance with State law, and that the dissemination of information by the district regarding the school facilities project shall acknowledge the SDA's financial assistance.

N.J.A.C. 19:32-1.6 Access and Record Retention

This section provides that the SDA, the Economic Development Authority (EDA), the Department of Education (DOE), and other governmental units shall have broad access to records pertaining to the school facilities project and that a district and its contracted parties are required to provide such access. This section also requires a district to include in all contracts a provision requiring contracted parties to permit the SDA, EDA, and other governmental units to investigate, audit, examine, and inspect these records. This section additionally addresses record retention requirements for records relating to school facilities projects funded with Section 15 grants. Subsection (c) is proposed to be relocated as paragraph (b)3.

N.J.A.C. 19:32-1.7 Fraud and Other Unlawful or Corrupt Practices

This section addresses a district's responsibilities in administering grant moneys provided pursuant to this chapter in a proper manner, free from bribery, graft, and corrupt practices. This section also provides that a district must take appropriate remedial actions with respect to any allegations or evidence of such illegality or corrupt practices.

N.J.A.C. 19:32-1.8 Debarment

This section provides that a district and its consultants or contractors shall not enter into a contract for work on a school facilities project with any person or firm that has been debarred, suspended, or disqualified from State, SDA, EDA, or Federal government contracting. This section also sets forth requirements for statements in contracts and bid specifications relating to debarment, suspension, or disqualification from contracting. Further, this section mandates that

the applicant district has a continuing affirmative obligation to notify the SDA and the Attorney General's Office, in writing, whenever it has knowledge that any contracted party, subconsultant, or subcontractor is on a debarment list maintained by the State, SDA, EDA, or the Federal government.

N.J.A.C. 19:32-1.9 Noncompliance

This section provides that in the event of noncompliance with any provisions of the Act, any condition of the grant agreement, or any requirement of this chapter, the SDA may take one or more of the following remedial actions: issuing a notice of noncompliance, withholding grant moneys, suspending the provision of grant moneys, or terminating the grant agreement and rescinding the grant moneys, in accordance with various provisions of this chapter.

N.J.A.C. 19:32-1.10 Notice of Noncompliance

This section addresses the issuance of a notice of noncompliance to a district that has failed to comply with any condition of the grant agreement, provision of the Act, or other requirement of this chapter governing the Section 15 grant program. The issuance of a notice of noncompliance is required before the SDA may take the remedial actions set forth at N.J.A.C. 19:32-1.11 and 1.12.

N.J.A.C. 19:32-1.11 Withholding of Funds

This section provides that the SDA may withhold, upon written notice to the district, grant disbursements, or any portion thereof, when the SDA determines that a district has failed to

comply with any provision of the Act, any condition of the grant agreement, or any requirement of this chapter.

N.J.A.C. 19:32-1.12 Termination of the Grant Agreement for Cause

This section sets forth the procedures for terminating the grant agreement upon an event of default, defining events of default, describing the process of termination and termination actions, addressing assignment of contracts, return of funds by the district, and payment by the district of expenses incurred by the SDA in collecting the repayment of the grant or enforcement of performance or observation of other obligations of the district in the event of default.

N.J.A.C. 19:32-1.13 Termination by Mutual Agreement

This section provides that the SDA and the district may terminate the grant agreement when both parties agree that the continuation of the school facilities project would not produce beneficial results commensurate with the further expenditure of funds.

N.J.A.C. 19:32-1.14 Severability

This section states that if any provision of this chapter, or the application thereof, is held invalid by a court of competent jurisdiction, that invalidity will not affect other provisions or applications.

N.J.A.C. 19:32-1.15 Appeals

This section provides for the commencement of an informal appeals process at the discretion of the district in response to a decision of the SDA, and a formal hearing in the event that the matter is a contested case.

Subchapter 2. Grant Eligibility Requirements

N.J.A.C. 19:32-2.1 Applicability

This section provides that this subchapter establishes the SDA's procedures and requirements governing the eligibility determination for a grant and the execution of every grant agreement pursuant to Section 15 of the Act.

N.J.A.C. 19:32-2.2 Conditions for Eligibility

This section sets forth the conditions for grant eligibility, including approval of the district's long-range facilities plan, DOE approval of the school facilities project, a DOE determination of the project's final eligible costs and the State share, DOE approval of the educational specifications and schematic plans for the project, as well as any land acquisition or facility acquisition for the project, any final disposition of an appeal taken by the district to any of the required approvals, and approval of the district's local share.

N.J.A.C. 19:32-2.3 Eligibility Determination

This section addresses the conditions precedent for the SDA's determination of the district's grant eligibility, namely providing evidence of the approvals required at N.J.A.C. 19:32-2.2.

N.J.A.C. 19:32-2.4 Execution of the Grant Agreement

This section addresses the terms and conditions for execution of the grant agreement. This section further provides for an 18-month time period during which the district must secure funding for the local share of the school facilities project, automatic rescission of the offer upon expiration of the 18-month period if the district has not secured such funding, and the process for reinstating an offer. This section is proposed for amendment to delete a requirement that the district submit a “certified, true sealed copy” of the district resolution authorizing entering into the grant agreement, in favor of requiring only the submission of a “true copy” of the resolution, to facilitate administration of the grant process utilizing electronic documents. An additional proposed amendment deletes reference to an obsolete signage requirement for grant projects.

N.J.A.C. 19:32-2.5 No Assignment of Grant Agreement or Grant by the District

This section prohibits the district from assigning the grant agreement or grant, but permits the SDA to assign the grant agreement to another instrumentality of the State.

N.J.A.C. 19:32-2.6 Effect of Grant Awards

This section addresses when the grant agreement is effective, that it shall constitute an obligation in the amount of the grant agreement, but that the award of the grant shall not be used as a defense by the district to an action brought by any governmental agency on account of the district’s failure to comply with the Act or in order to obtain any requisite permit, license, or operating certificate.

Subchapter 3. Disbursement of the Grant

N.J.A.C. 19:32-3.1 Amount of the Grant

This section provides that the grant shall be in the amount of the State share and may be reduced upon final completion. This section also requires the district to certify to the SDA the total costs of the school facilities project and requires the SDA to adjust the amount of the grant if the total costs are less than the final eligible costs.

N.J.A.C. 19:32-3.2 Cost Overruns

This section provides that cost overruns of the school facilities project shall be the sole responsibility of the district.

N.J.A.C. 19:32-3.3 Legal and/or Equitable Interest

This section provides that the district shall have no legal or equitable interest in the assets of the EDA or the SDA, or in any amount that may be on deposit in the funds and accounts of the EDA or the SDA, which may provide funding of the grant.

N.J.A.C. 19:32-3.4 Disbursements

This section provides that the disbursement of grant funds shall be made at intervals as work progresses and expenses are incurred by the district and approved by the corporation. The general disbursement schedule consists of a five-disbursement schedule as follows: a first disbursement after completion of the design phase checklist and other requirements, subsequent disbursements upon completion of each of three construction completion steps, and a final disbursement upon final completion. This section provides for an alternate disbursement schedule tailored to small school facilities projects (final eligible costs less than or equal to \$250,000), which provides for only three disbursements. Finally, this section contains a waiver

provision from the applicable schedule of disbursements in the case of special circumstances and/or extraordinary need.

N.J.A.C. 19:32-3.5 Conditions Precedent to Payment of a Disbursement

This section sets forth the conditions precedent to the payment of a disbursement by the SDA to a district.

N.J.A.C. 19:32-3.6 Checklists

This section provides that the district shall be required to report to the SDA on the progress of the school facilities project by completing various checklists at various time points during the design and construction of the school facilities project. This section further outlines the procedure for submitting construction phase checklists. The district will be required to provide the SDA with the checklist for each separate bid advertisement and ensuing contract prior to the SDA's disbursement for a construction percentage completed that includes each such contract's work. This section is proposed for amendment as it specifies that the filing of checklists electronically, rather than as hard-copy documents, is at the Authority's option, not the district's.

N.J.A.C. 19:32-3.7 Closeout Procedures

This section provides that closeout shall occur when all applicable administrative actions and all required work have been completed by the district. This section also enumerates the steps for closeout.

Subchapter 4. Undertaking the School Facilities Project

N.J.A.C. 19:32-4.1 General Provisions

This section requires the school district to design and construct the school facilities project pursuant to the plans and specifications, and as approved by the DOE. This section also addresses changes in the school facilities project impacting educational adequacy and the DOE approval needed for such change orders. It specifies that such changes, whether reviewed by the DOE or not, are not eligible for funding under the grant agreement. This section also imposes a continuing obligation on the district to advise the SDA of any proposed changes to the project, or changed conditions for the project.

N.J.A.C. 19:32-4.2 Contract Award and Compliance

This section addresses the district's broad range of responsibilities in awarding contracts for the school facilities project, supervising design and construction, monitoring performance to ensure efficient and effective completion, exhausting remedies in the event of default, and taking action deemed by the district to be reasonably necessary to address a contracting party's default or breach of warranty. This section requires the district to obtain and maintain licenses and certifications required by governmental authorities, to award contracts in accordance with the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and the SDA's prequalification requirements, and to include in construction contracts provisions regarding compliance with the New Jersey Prevailing Wage Act and the New Jersey Law Against Discrimination. This section incorporates the School Ethics Law by reference, and also contains other conflict of interest provisions requiring reporting by the district of certain improprieties to the Attorney General and the State Ethics Commission. This section further addresses the registration of contractors and

subcontractors, the maintenance plan of a school facilities project, proof of insurance, district responsibilities regarding preservation of the tax-exempt status of bonds issued by the EDA, a variety of required district certifications, bid guarantees, performance bonds, and general language providing that the Authority may impose such other conditions, as may be necessary and appropriate, to implement the laws of the State and effectuate the purpose and intent of the Act.

Social Impact

The expired rules proposed herein as new rules will apply to all non-SDA school districts that seek to have the State share of the final eligible costs of a school facilities project funded by an SDA grant pursuant to Section 15 of the Act, conditioned upon available State grant funding. The SDA believes that the expired rules proposed herein as new rules will have a positive social impact and that no negative impact will result. The provision of State share for these school facilities projects will affect school administrators, parents, students, teachers, and local taxpayers in a variety of ways. The funding of State share through Section 15 grants will enable students, teachers, and parents to benefit from school facilities that satisfy health and safety standards, and increase capacity to meet expanding enrollments.

Economic Impact

The expired rules proposed herein as new rules will support the continued implementation of Section 15 of the Act, one of the largest public infrastructure investments programs in the State's history. From the inception of the Section 15 grant program in 2002 through July 31, 2022, the SDA has executed 5,404 Section 15 grant agreements in all 21 counties of the State. To date, over

1,700 schools in 524 districts have been impacted by the Section 15 grant program. Total project costs amount to over \$8.9 billion for which the State share totals over \$3.0 billion.

State share funding provided through Section 15 grants will encourage many districts to undertake school facilities projects that they could not otherwise afford and may have previously deferred. Significant activity in the planning, construction, architecture, and engineering professions will directly result from the expired rules proposed herein as new rules, providing obvious Statewide economic benefits in the short-term. New and improved school facilities will support the achievement of the Core Curriculum Content Standards by New Jersey's students, providing longer-term economic benefits as well. Section 15 grants may be funded with State contract bonds issued by the New Jersey Economic Development Authority pursuant to section 14 of the Act. The expired rules proposed herein as new rules further provide that the SDA may collect fees and recover expenses from school districts incurred in the collection of the repayment of the grant or in the enforcement of performance or observation of any other duties of the district upon an event of default.

Federal Standards Statement

The expired rules proposed herein as new rules implement a State statute, specifically N.J.S.A. 18A:7G-15. There are no Federal standards or requirements applicable to the expired rules proposed herein as new rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The expired rules proposed herein as new rules provide a mechanism for grants to fund the State share of school facilities projects in eligible districts. Thus, to the extent the expired rules

proposed herein as new rules have an effect on jobs, it will be to create jobs in New Jersey, primarily in the construction, consulting, and service sectors, rather than eliminate positions.

Agriculture Industry Impact

The expired rules proposed herein as new rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The expired rules proposed herein as new rules do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined at N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The expired rules proposed herein as new rules primarily impact New Jersey public schools.

Housing Affordability Impact Analysis

The expired rules proposed herein as new rules address the administration of a grant program for funding the State share of the construction of school facilities projects and, therefore, will not have an impact on the affordability of housing or evoke a change in the average costs of housing in the State of New Jersey.

Smart Growth Development Impact Analysis

The expired rules proposed herein as new rules will have an insignificant impact on smart growth development because it is extremely unlikely that the adoption of the expired rules proposed herein as new rules would evoke a change in the average price or availability of housing

in the State of New Jersey Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The SDA has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the expired rules proposed herein new rules may be found in the New Jersey Administrative Code at N.J.A.C. 19:32.

Full text of the proposed amendments to the expired rules proposed herein as new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

19:32-1.1 Applicability and scope

[These rules are] **This chapter is** promulgated by the New Jersey Schools Development Authority (“SDA” or the “Authority”) to implement Section 15 of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-15) and section 26 of P.L. 2007, c. 137 (collectively, the “Act”). Section 15 of the Act establishes a grant program to fund the State share of the final eligible costs of school facilities projects undertaken by school districts other than SDA school districts. [These rules are] **This chapter is** adopted in order to provide the mechanism whereby school districts [which] **that** are eligible to receive grants from the Authority can receive such grants and to ensure that these grant funds are used properly by

the school districts. Any district applying for a grant or having received a grant pursuant to the Act shall, at a minimum, comply with the requirements of this chapter, as applicable.

19:32-1.3 Definitions

- (a) The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

...

“Capital maintenance project” means a school facilities project intended to extend the useful life of a school facility, including upgrades and replacements of building systems, such as structure, enclosure, mechanical, plumbing, and electrical systems.

...

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

...

“Event of default” means any event specified [in] **at** N.J.A.C. 19:32-1.12.

...

“Final eligible costs” means the final approved costs of a school facilities project, as determined pursuant to N.J.S.A. 18A:7G-[5(h)(1)]**5.h(1)** and N.J.A.C. 6A:26-3.6.

“Governmental authority” means the United States, the State or any political subdivision thereof, and any agency, department, commission, board, bureau, or instrumentality which has jurisdiction over a school facilities project or any part thereof or over the design, construction, equipping, use or occupancy of a school facilities project.

...

“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.

...

“Preliminary eligible costs” means the initial approved costs of a school facilities project determined pursuant to the formulas set forth [in] **at** N.J.S.A. 18A:7G-7, which shall be deemed to include the costs of construction and other allowable costs.

...

“Requirements” means any law, ordinance, order, rule, or regulation of a governmental authority applicable to a school facilities project, a grant, and the work performed thereunder.

...

“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 school facilities project.

...

“State share” means the State's proportionate share of the final eligible costs, which equals the district aid percentage or 40 percent, whichever is greater as provided [in] **at** N.J.S.A. 18A:7G-15.

...

“Term” means the term of the grant agreement, which shall commence on the commencement date and shall end on the expiration date, unless sooner terminated.

...

“Unavoidable delays” means any delays due to weather, strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty, or other causes similarly beyond the control of the district; provided, however, that any lack of funds beyond those funds to be provided pursuant to the grant agreement shall not be deemed a cause beyond the control of the district.

...

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

19:32-1.6 Access and record retention

(a) (No change.)

(b) The responsibilities of the district and/or the contracted parties with regard to access to the activities, documents, records, and accounts pertaining to school facilities projects shall be the following:

1. The district or the contracted parties, as the case may be, shall furnish facilities for such access, inspection, and document reproduction[.];

2. The districts shall include in all contracts a provision requiring contracted parties to permit the NJEDA, the Authority, the Office of the Attorney General, the Department, the LWD, the DCA, and their duly authorized agents to investigate, audit, examine, and inspect in such manner and at such times as these parties deem necessary[.]; **and**

[(c)] **3.** 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, the PSCL, the grant agreement, and all applicable regulations and requirements. Financial records, supporting documents, and all other records of the district and the contracted parties which relate in any way to the school facilities project and/or to the grant shall be retained for 10 years following closeout, provided, however, if any litigation, claim or audit relating to the school facilities project and/or to the grant is commenced prior to closeout, such records and documents shall be retained until all litigation, claims, or audit findings involving the records have been fully resolved.

19:32-1.7 Fraud and other unlawful or corrupt practices

(a) The district shall administer moneys pursuant to this chapter, the grant agreement, and any contracts entered into in connection with the school facilities project free from bribery, graft, and corrupt practices. The district has the primary responsibility for the prevention, detection, and

cooperation in the prosecution of any such conduct. The Authority shall have the right to pursue administrative or other legally available remedies in the event it suspects the occurrence of such conduct.

(b) (No change.)

19:32-1.8 Debarment

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

(b) The district shall insert in all contracts with all contracted parties, and all contractors and consultants shall insert into all of their contracts with all subconsultants and subcontractors, a clause stating that the contracted party, its subconsultants or contractors may be debarred, suspended, or disqualified from contracting and/or working on the school facilities project if the contracted party commits any of the acts listed [in] at N.J.A.C. 19:38A-4.6 or any applicable regulation issued by the NJEDA or the Authority.

(c) (No change.)

(d) The district shall have a continuing and affirmative obligation, so long as the grant agreement is in effect to immediately notify the State and the Authority, in writing, whenever it obtains knowledge that any contracted party, subconsultant, or subcontractor is on the Treasurer's, the NJEDA's, the Authority's, or the Federal government's List of Debarred, Suspended or Disqualified Bidders. The State and the Authority reserve the right, in such circumstances, to immediately suspend such contracted party, subconsultant, or subcontractor from contracting and/or engaging in work on the school facilities project and to take such other action as it deems

appropriate pursuant to N.J.A.C. 19:38A-4 or any applicable regulation issued by the NJEDA or the Authority.

19:32-1.10 Notice of noncompliance

In the event that the Authority determines that the district is not in compliance with any provision of the Act, any condition of the grant agreement, or any condition of this chapter, it will notify the district of the noncompliance in writing. The Authority may require the district, its consultants and/or contractors to take and complete corrective action. If the corrective action is not taken within the requisite time period specified or if the action taken is inadequate as determined by the Authority, the Authority may take any of the following actions or combinations contained [in] **at** N.J.A.C. 19:32-1.11 and 1.12.

19:32-1.11 Withholding of funds

The Authority may withhold or require the district to repay, upon written notice to the district, grant disbursements, or any portion thereof, where it determines that a district has failed to comply with any provision of the Act, any condition of the grant agreement or any requirement of this chapter. The Authority may also release the grant disbursement but refer the matter to the Department for further action, which may include **an** audit and/or a request to the Treasurer to withhold funds payable by the State from the district.

19:32-1.12 Termination of the grant agreement for cause

(a) The Authority may terminate the grant agreement upon an event of default, which shall include, but not be limited to:

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

2.-6. (No change.)

7. Work on the school facilities project has ceased without good cause as agreed to by the Authority. The term “good cause” shall include, but not be limited to, circumstances beyond the control of the district or any of the contracted parties such as fire, flood, riot, or strike.

8. The district has contracted with a contractor or a subcontractor in one of the four branches specified [in] **at** N.J.S.A. 18A:18A-18 and such contractor or subcontractor has not been prequalified;

9. The district has disbursed grant monies to a firm which is debarred, suspended, or disqualified from State, NJEDA, or Authority contracting or to a firm [which] **that** has not been prequalified; or

10. (No change.)

(b)-(f) (No change.)

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

19:32-1.13 Termination by mutual agreement

The Authority and the district may terminate the grant agreement when both parties agree that the continuation of the school facilities project would not produce beneficial results commensurate with the further expenditure of funds. The Authority and the district shall agree upon the conditions for termination, including the date on which the termination shall take effect. The closeout provisions specified [in] **at** N.J.A.C. 19:32-3.8 shall apply.

19:32-1.15 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] **by** 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] **pursuant to** (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] **at** 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 for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) (No change.)

SUBCHAPTER 2. GRANT ELIGIBILITY REQUIREMENTS

19:32-2.2 Eligibility

(a) All of the following conditions shall apply regarding eligibility for a grant:

1.-2. (No change.)

3. There is a determination of the final eligible costs and the State share of the school facilities project by the Department pursuant to N.J.S.A. 18A:7G-[5(h)]**5.h** and N.J.A.C. 6A:26-3.6.

4.-5. (No change.)

6. The district shall obtain approval for the local share in accordance with the provisions for the approval of capital projects pursuant to N.J.S.A. 18A:22-1 et seq., **and** N.J.S.A. 18A:24-1 and P.L. 1991, [c.139] **c. 139** (N.J.S.A. 18A:7A-46.1 et seq.), as applicable to the district pursuant to N.J.S.A. 18A:7G-11 and N.J.A.C. 6A:26-3.7.

i.-iii. (No change.)

7. (No change.)

19:32-2.3 Eligibility determination

(a) (No change.)

(b) Eligibility determinations shall be made in the order in which the requirements [of] **at** (a) above have been met.

19:32-2.4 Execution of the grant agreement

(a) The district shall execute the grant agreement pursuant to such terms and conditions as the Authority may determine in its sole discretion.

1. The grant agreement shall be executed by an authorized officer. A [certified,] true [sealed] copy of the authorizing resolution of the district shall also be submitted to the Authority at such time, together with all certifications, opinions, and documents required to be submitted at the time of execution of the grant agreement including, but not limited to, a certificate executed by the school business administrator in the form to be provided by the Authority.

2. Upon execution of the grant agreement by the district, the district shall return the grant agreement together with all applicable attachments to the Authority for execution by the Authority, whereupon the Authority shall transmit a copy of the executed grant agreement to the district[, as well as a sign which is to be erected by the district at the school facilities project site to the extent permitted by zoning laws indicating that financing was made available to the district through the Authority].

3. (No change.)

(b) (No change.)

19:32-2.6 Effect of grant awards

(a) (No change.)

(b) The award of the grant by the Authority shall not be used as a defense by the district to any action brought against the district by any governmental agency on account of the district's failure to comply with the Act or in order to obtain any requisite permit, license, or operating certificate.

SUBCHAPTER 3. DISBURSEMENT OF THE GRANT

19:32-3.1 Amount of the grant

(a) The grant shall be in the amount of the State share and may be reduced upon final completion as set forth [in the following paragraph] **at (b) below**.

(b) Prior to final completion and the final disbursement, the district shall certify to the Authority the total costs of the school facilities project. If such amount is less than the final eligible costs, the Authority shall adjust the amount of the grant accordingly pursuant to the following:

1. (No change.)

2. The amount determined [in] **at (b)1** above shall be multiplied by the district aid percentage or 40 percent, whichever is greater; and

3. The number determined [in] **at (b)2** above shall be subtracted from the original amount of the grant. The remaining number represents the final amount of the grant.

19:32-3.4 Disbursements

(a) (No change.)

(b) Except as provided [in] **at (c) or (d)** below, the disbursement schedule shall be as follows:

1. The first disbursement of the grant in the amount of 10 percent of the grant shall be made upon:

i.-iv. (No change.)

v. Submission of a request for disbursement as set forth [in] **at** (a) above.

2. (No change.)

3. The Authority shall not make scheduled disbursements for construction percentages completed as identified [in (b)3] **at (b)1** above, unless and until:

i.-ii. (No change.)

iii. Submission of a request for the applicable disbursement as set forth [in] **at** (a) above.

4. (No change.)

(c) In the case of a school facilities project with final eligible costs less than or equal to \$250,000, there shall be only three disbursements as follows:

1. The first disbursement of the grant in the amount of 50 percent of the grant shall be made after execution of the grant agreement upon a showing to the satisfaction of the Authority of 50 percent construction completion, after submission of acceptable documentation of required insurance coverages, and after submission of a request for disbursement as set forth [in] **at** (a) above.

2. The second disbursement of the grant in the amount of 45 percent of the grant shall be made upon a showing to the satisfaction of the Authority of substantial completion, acceptable documentation of required insurance coverage has been submitted to the Authority and submission of a request for disbursement as set forth [in] **at** (a) above.

3. (No change.)

(d) (No change.)

19:32-3.6 Checklists

(a) The district shall be required to report to the Authority on the progress of the school facilities project by completing various checklists at various time points during the design and construction of the school facilities project as outlined in this section unless a district is not required to submit one or more checklists prior to disbursement, pursuant to N.J.A.C. 19:32-3.5. Such checklists may, at the option of the [district] **Authority**, be filed electronically.

1.-3. (No change.)

19:32-3.7 Closeout procedures

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

1. (No change.)

2. Any proceeds of school bonds issued by the district for the purpose of funding the local share of the school facilities project which remain unspent upon completion of the school facilities project shall be used by the district to reduce the outstanding principal amount of the school bonds either through redeeming bonds at the earliest call date or applying such proceeds to payment of principal as principal becomes due, as further set forth [in] **at** N.J.A.C. 6A:26-4.6. In no event shall such proceeds be utilized to pay the interest expense on the school bonds issued for any school facilities project.

3.-5. (No change.)

SUBCHAPTER 4. UNDERTAKING THE SCHOOL FACILITIES PROJECT

19:32-4.1 General provisions

(a) The district shall design and construct 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. Any changes in the school facilities project which may impact educational adequacy (the number, size, configuration, location, or use of educational spaces) shall be reviewed and approved by the Department as required [under] at N.J.A.C. 6A:23-7.1 and 6A:26-4.9 prior to such changes being made. Notwithstanding anything to the contrary, any changes whether reviewed by the Department or not, shall not be eligible for funding under the grant agreement.

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

19:32-4.2 Contract award and compliance

(a) The district shall be responsible for the letting of contracts for the design, acquisition, construction, and installation of the school facilities project, supervision of design and construction, acceptance of the completed school facilities project, or parts thereof, and all other matters incidental to performance of the duties and powers expressly granted herein to be undertaken in connection with the acquisition, construction, and completion of the school facilities project. The district shall continually monitor its performance to assure that time schedules are being met and that the completion of the school facilities project will occur in a timely, efficient, and effective manner. In the event of default of any contracted party under any contract, or in the event of a breach of warranty with respect to any contract, the district shall reasonably exhaust the remedies against the defaulting contracted party and against each such surety for the performance

of such contracts. The district shall diligently prosecute or defend any action or proceeding, or take any other action involving the contracted party, that the district deems reasonably necessary.

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

(d) All contractors engaged by the district and subcontractors named in the four branches specified [in] **at** N.J.S.A. 18A:18A-18 who perform any work on the school facilities project shall be prequalified pursuant to the Authority prequalification process. Any contractor whose contract amount is less than the bid threshold pursuant to N.J.S.A. 18A:18A-3 shall not be subject to the prequalification process for bidders on school facilities projects pursuant to Section 59 of the Educational Facilities Construction Financing Act, P.L. 2000, [c.72] **c. 72** (N.J.S.A. 18A:7G-33).

€ (No change.)

(f) All contracts shall contain provisions that the contracted party shall comply with the anti-discrimination provisions [of] **at** N.J.S.A. 10:2-1 et seq., **and** the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., **and** N.J.A.C. 17:27 and [N.J.A.C.] 6A:7-1.8. The district and its contracted parties shall, in addition, agree by contract and guarantee to afford equal opportunity in performance of the contracts in accordance with an affirmative action program approved by the State Treasurer. During the design and construction of the school facilities project, the district and the contracted parties shall abide by the following provisions and shall provide in any contracts provisions as follows:

1. The district and its contracted parties shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, or sex. The district and its contracted parties shall take affirmative action to ensure that such applicants are recruited and employed, that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry,

marital status, affectional or sexual orientation, or sex. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The district and its contracted parties agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The district and its contracted parties shall, in all solicitations or advertisements for employees placed by or on behalf of the district and its contracted parties state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, or sex.

3. (No change.)

(g)-(p) (No change.)