

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
BOARD MEETING
WEDNESDAY, MARCH 7, 2012 AT 9:00A.M.
ONE WEST STATE STREET, 1 WEST BOARD ROOM, TRENTON, NJ

AGENDA

1. Notice of Public Meeting

2. Roll Call

3. Approval of Meeting Minutes

- a. Board Open Session Meeting Minutes of February 1, 2012
- b. Board Executive Session Meeting Minutes of February 1, 2012

4. Authority Matters

- a. CEO Report
 - i. Capital Program Update
- b. Chairman's Report

5. Report and Recommendations of the Audit Committee (Chairman's Report)

- a. Operating Authority - Modifications to Levels of Approval and Operating Scopes

6. Report and Recommendations of the School Review Committee (Chairman's Report)

a Change Orders/Amendments

- 1. COMPANY NAME: Hall Building Corporation
- DISTRICT: City of Orange Township
- CONTRACT NO.: ES-0008-C01
- SCHOOL NAME: Lincoln Avenue Elementary School
- PMF: Bovis Lend Lease
- CHANGE ORDER NO.: 111
- REASON: Change in Scope
- AMOUNT: \$653,067.85
(Change Order # 111 \$301,218.85 + CCD # 5 \$ 300,000.00 + CCD # 7 \$51,849.00)
- CONTRACT STATUS: 97.8% Paid to Date Against the Current Contract Value
- OCCUPANCY DATE: September 7, 2010

- 2. COMPANY NAME: Hall Building Corporation
- DISTRICT: East Orange
- CONTRACT NO.: ES-0020-C04
- PMF/CM: SDA Managed
- SCHOOL NAME: Mildred B. Garvin E.S.
- CHANGE ORDER NO.: 176
- REASON: Credit Change Order
- AMOUNT: (\$10,636.62)
- CONTRACT STATUS: 99% Paid to Date Against the Current Contract Value
- PROJECTED SCHOOL OCCUPANCY DATE: September 2008

3. COMPANY NAME: Skanska USA Building, Inc.
 DISTRICT: Garfield
 CONTRACT NO.: NT-0014-M01
 PMF/CM: Skanska USA Building
 SCHOOL NAME: James Madison Elementary School #10
 AMENDMENT NO.: 1
 REASON: Suspension of Project
 AMOUNT: (\$1,459,000)
 CONTRACT STATUS: 3% Paid to Date Against the Current Contract Value
 PROJECTED SCHOOL OCCUPANCY DATE: Project Suspended

4. COMPANY NAME: Design Ideas Group, LLC (DIG)
 DISTRICT: Paterson
 CONTRACT NO: PA-0006-A01
 PMF/CM: N/A
 SCHOOL NAME: Marshall and Hazel Elementary School
 AMENDMENT NO's.: 11, 12 and 13
 REASON: Various
 AMOUNT: \$1,096,722 Not to Exceed (NTE) Total
 CONTRACT STATUS: 84% Paid to Date Against the Current Contract Value
 PROJECTED SCHOOL OCCUPANCY DATE: September, 2015

5. COMPANY NAME: Grafas Painting Contractors Inc., T/A GPC, Inc.
 DISTRICT: Trenton
 CONTRACT NO.: EP-0044-C02
 PMF/CM: SDA Managed
 SCHOOL NAME: Trenton Central HS
 CHANGE ORDER NO.: 1
 REASON: Unforeseen Conditions
 AMOUNT: \$166,530
 TIME EXTENSION: N/A
 CONTRACT STATUS: 0% Paid to Date Against Current Contract Value
 DELIVERY DATE: TBD

6. COMPANY NAME: Design Ideas Group Architecture & Planning, LLC
 DISTRICT: Trenton
 CONTRACT NO.: EP-0044-A01
 PMF/CM: SDA Managed
 SCHOOL NAME: Trenton Central HS
 ADMENDMENT NO.: 1
 REASON: Unforeseen Conditions
 AMOUNT: \$10,000
 CONTRACT STATUS: 76.8% Paid to Date against current contract value
 DELIVERY DATE: TBD

7. COMPANY NAME: Ernest Bock & Sons, Inc.
DISTRICT: Elizabeth
CONTRACT NO.: EL-0016-C03
PMF SDA Managed
SCHOOL NAME: Victor Mravlag Elementary School No. 21
CHANGE ORDER NO.: 102
REASON: 180 calendar day time extension and extended general conditions costs change order
AMOUNT: \$270,000
CONTRACT STATUS: 51.9% Paid to Date Against the Current Contract Value
OCCUPANCY DATE: January 2013

- b. Approval of Award
 - i. EL-0006-N01 – Elizabeth Academic High School – Early Site Preparation
- c. Rule Proposal
 - i. Readoption with Amendments – 19:36 Procedures for Procurement of Design Build Contracts for School Facilities Projects for the School Construction Program
- d. Rule Adoptions
 - i. Readoption with Amendments --N.J.A.C. 19:38C Procurement of Architects, Engineers, Land Surveyors and Other Professional Services Consultants
 - ii. Readoption with Amendments – N.J.A.C. 19:38D Procurement of Goods and Services

7. Monthly Reports

- a. For Informational Purposes
 - i. Active Projects Report
 - ii. Project Close Out Status Report
 - iii. Emergent Reserve Balance Summary
 - iv. Project Status Reports
 - v. Contracts Executed Report/Amendments & Change Orders Executed Report
 - vi. Contract Terminations Report (*no activity*)
 - vii. Settlement Activities Report
 - viii. Contractor and Workforce Compliance Report
 - ix. Regular Operating District Grant Activity Report
 - x. Notification of Amendments to Goods and Services Contracts Not Exceeding \$250,000 (*no activity to report*)
 - xi. Communications Report
 - xii. Monthly Financial Report

8. Public Comment

9. Executive Session – Report and Recommendations of the Real Estate Committee (Chairman’s Report)

- a. Litigation/Contract Matter(s) – OPMA Exemption N.J.S.A. 10:4-12b (7)

10. Adjournment

APPROVAL OF MEETING MINUTES

FEBRUARY 1, 2012 OPEN SESSION MINUTES

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
BOARD OF DIRECTORS MEETING**

WEDNESDAY, FEBRUARY 1, 2012

A meeting of the Board of Directors of the New Jersey Schools Development Authority (“SDA”, “NJSDA” or “the Authority”) was held on Wednesday, February 1, 2012 at 9:00 A.M. at the offices of the Authority at One West State Street, Trenton, New Jersey.

Participating were:

Edward Walsh, Chairman
Maureen Hassett (NJEDA)
Kevin Luckie (NJDCA)
James Petrino (State Treasury)
Bernard Piaia (NJDOE)
Kevin Egan
Karim Hutson
Loren Lemelle
Lester Lewis-Powder
Michael Maloney
Joseph McNamara
Robert Nixon
Mario Vargas

being a quorum of the Board. Mr. Egan, Mr. Hutson, Mr. Lewis-Powder, Ms. Lemelle, Mr. Maloney, Mr. Petrino and Mr. Piaia participated in the meeting via telephone conference.

At the Chairman’s request, Marc Larkins, chief executive officer, Jason Ballard, chief of staff; Jane F. Kelly, vice president & assistant secretary; Donald Guarriello, vice

president and chief financial officer; Andrew Yosha, vice president; Albert Barnes, senior counsel; Thomas Schrum, director; Ritchard Sherman, director; Corrado Minervini, director; Sean Murphy, director and Paul Hamilton, senior program officer of the SDA attended the meeting.

The meeting was called to order by the Chairman, Mr. Walsh. Mr. Walsh requested that Ms. Kelly read the requisite notice of the meeting. Ms. Kelly announced that the meeting notice had been sent to the *Trenton Times* and *Star-Ledger* at least 48 hours prior to the meeting, and that a meeting notice had been duly posted on the Secretary of State's bulletin board at the State House in Trenton, New Jersey.

Approval of Meeting Minutes

Mr. Walsh then presented the minutes of the meetings of the Board held January 4, 2012 for consideration and approval. He noted that presented for Board consideration were the minutes of the Board's January 4, 2012 Open Session meeting and the minutes of the Authority's Organizational Meeting held that same date. A copy of the minutes and resolutions for Board consideration and approval were provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Nixon and seconded by Mr. Vargas, the January 4, 2012 Organizational and Open Session meeting minutes were approved by the Board upon its vote in favor of the resolution attached hereto as *Exhibits 3a/3b*.

Authority Matters

CEO Report

Mr. Walsh asked Mr. Larkins to provide the report of the CEO. Mr. Larkins informed the Members of recent SDA activities and events. First, Mr. Larkins noted that

the SDA has received some attention from the press with some suggesting that the Authority is not performing any work with regard to school development. He reminded the Members that two weeks ago an article was printed in the Star Ledger including a statement that the SDA has not advanced a single project since Governor Christie's election into office. Mr. Larkins reported that the Star Ledger contacted the SDA and was informed that the statement was incorrect. He said that, following its own review, the Star Ledger concluded that the statement was inaccurate. He said that, with press attention expected to continue, Board members should feel free to contact SDA staff if they are called by the press or have any questions regarding any statements that are being made in the press. Mr. Larkins said that the SDA will give the Members the information they need in order to answer any questions that may be directed toward them by the press.

Next, Mr. Larkins provided an update regarding the emergent program. He said that there has also been criticism published with regard to the status of the emergent program. He reported that the SDA has completed emergent projects in the Irvington, East Orange and Camden school districts within the last few weeks. Mr. Larkins said that there are active emergent projects in the Trenton, Paterson and Passaic school districts. He also noted that the emergent projects continue to be inventoried and prioritized in order to be advanced expeditiously. Mr. Larkins further advised that the emergent program was undertaken in the summer of 2011. He said that the majority of the emergent projects do not advance while students are in school though there are some that can advance then. Mr. Larkins stated that the majority of the projects that the SDA

has been asked to complete will start to advance in the next few months for summer completion.

In continuing, Mr. Larkins provided the Members with an update regarding the 2011 Capital Program. He reported that the SDA is close to completing the West New York (“WNY”) PS3/MS4 school project. He reminded the Members that this was a project that had been stalled due to atrium issues. Mr. Larkins said that the temporary certificate of occupancy (“TCO”) and ultimately the certificate of occupancy (“CO”) are expected to be obtained in the short term. He said that there have been conversations with the district and the plan is to move students in later this month or within the next few months. Mr. Larkins noted that it is the SDA’s goal to have the building completed in February. Mr. Larkins also reported that there have been some issues with a project in Union City and that it is the SDA’s hope to have the project completed by early summer. Mr. Larkins then reported that the Elizabeth Mravlag project is up and running and noted that there is a change order on today’s agenda to pay for storage costs related to this project. He reminded the Members that the Elizabeth project was originally an addition/renovation that had been converted to full construction. Mr. Larkins noted that SDA staff is on site at all three projects every day and is actively involved in bringing these projects to completion. Next, Mr. Larkins reported that activity is taking place on all projects in the 2011 Capital Program. He reminded the Members that last month the SDA advertised for the Elizabeth and Long Branch projects. Mr. Larkins said that the SDA anticipates presenting the Elizabeth site package to the School Review Committee (“SRC”) this month and to the Board in March for approval. He said that the procurement for the Long Branch project is moving along and should be awarded in May.

Mr. Larkins reported that the eight (8) remaining projects in the Capital Program have site investigations in progress in order to clean up those sites prior to advancing the projects into construction. He said that a number of site packages will be advertised before the mid-point of this year. Mr. Larkins stated that the SDA has discussed with the Members that of the eight (8) projects, the first one to be advertised would be the New Brunswick project and that it would be advanced through design/build by spring of this year. Further, Mr. Larkins reported that, as far as other projects that have not been fully announced, the Members are aware that a contract for demolition on the Keansburg school project has been awarded to make way for the advancement of a new school. He said that the contract will be brought to the Committee and Board and that the SDA has attained notice to proceed (“NTP”) status on the project. Mr. Larkins said that there are other demolition projects in WNY, Paterson and Jersey City. He said that all the internal work that has been advanced as far as planning activity and active construction advancement is concerned has been performed while spending less state money. He mentioned that year end accruals are in and that in 2011 the SDA spent \$7 million less in actual dollars than in 2010.

In concluding, Mr. Larkins reported that there has been significant activity in the closeout process. He said that SDA staff is also focused on resolving claims and noted that one of the items on today’s meeting agenda relates to a matter that was almost a claim regarding Chanree Construction for the Morgan Village school project. He said that the SDA was able to resolve the matter at the change order level before it reached claim status. He said that there will be another matter presented at next month’s meeting and that there is a claim settlement to discuss in today’s Executive Session. Mr. Larkins

informed the Members that if they have any questions regarding the projects, Mr. Yosha can further elaborate. He said that SDA staff gave a brief overview of the 2011 projects at the January SRC meeting and noted that there is a schedule included in the Board materials to give the Members an idea of when the SDA anticipates advertising the first stage of advancement on each project. He said that most of the projects have a 2012 date. Mr. Larkins explained that the first project is the Bridgeton project and reminded the Members that the project is changing from new construction to a potential addition/renovation project. He said that the second project is for WNY and stated that the SDA has had conversations with the district and can address their elementary school needs in a different way that will not require the delivery of a new school. Mr. Walsh asked Mr. Yosha to walk the Members through the two projects that are moving forward for construction and to explain what will take place in the next few months. Mr. Yosha reiterated that the Long Branch project is in the bid phase and noted that the SDA has received all inquiries that are expected from potential bidders. He said that technical and price proposals are expected to be received by the end of February and that SDA is scheduled to open bids for the price proposals by the end of March. He said that Board action for construction award will be recommended in the April timeframe. Mr. Yosha informed the Members that, with regard to the Elizabeth project, the site package bids were received and will be presented at the next Board meeting for recommendation and approval. Mr. Yosha echoed Mr. Larkins' comments and noted that the Bridgeton project is the subject of discussion between SDA and the district. He said that those discussions have conceptually concluded and staff should be able to report to the Board with a recommendation on resolving the outstanding issues. With respect to the New

Brunswick project, Mr. Yosha reiterated that this will be the first project to be advanced through design/build delivery. He said that there will be follow up meetings scheduled focusing on the terms of the selection criteria to be utilized and the status of in-house work product.

Mr. Walsh then asked Mr. Ballard for an update regarding the status of project closeout. Mr. Ballard reported that the Special Projects Division, along with the Program Operations Division and Chief Counsel's Office, has closed two (2) capital projects and transferred an additional four (4) projects. Mr. Ballard thanked those involved for their diligent work. He further reported that three (3) emergent projects have been closed and an additional project transferred and closed. Mr. Ballard noted that seven (7) deeds have been transferred, resulting in insurance savings of roughly \$72,000.00. With regard to health and safety, Mr. Ballard reported that ten (10) construction contracts remain open for closeout. He said that these contracts involve open permits with the DCA and that SDA staff is working with DCA staff to address the issues. Mr. Ballard said that SDA staff and Joseph Jingoli & Sons, the pre-developer on most of SDA's demonstration projects, held a productive and positive meeting in the latter part of January in an attempt to closeout all pre-development grants by end of February. He said that, if all holds true, SDA staff anticipates closing out all demonstration projects from a grants perspective by end of 1st quarter 2012. Mr. Ballard highlighted the accomplishments of the Special Projects Division. He reported that, with regard to legacy projects from 2006 and beyond, the division closed three (3) projects and transferred and closed one (1) project. With regard to the 2007 portfolio, Mr. Ballard reported that two (2) projects were transferred. In continuing, Mr. Ballard said that with regard to the 2008 portfolio, one (1)

project was closed. He said that, with regard to the 2010 portfolio, one (1) project was closed and two (2) were transferred. Mr. Ballard said that, with regard to the emergent projects, seven (7) projects were transferred and seven (7) were transferred and closed. Lastly, Mr. Ballard reported that, prior to this administration taking office, there was no active pursuit of cost recovery. He said that Special Projects staff and the Office of Chief Counsel staff have been aggressive in seeking to recoup money back for the SDA. He said that SDA staff identified a universe of forty-three (43) cost recovery claims, initiated cost recovery action on sixteen (16) school facilities projects for an estimated potential recovery of approximately \$22 million. Mr. Ballard said that actual money recovered since 2010 exceeds \$7.5 million for environmental cost recovery inclusive of \$6.5 million in the Pleasant Gardens matter. He further reported that dollars recovered from e-Rate, Smart Start and the HDSRF total approximately \$2.85 million.

Chairman's Report

Mr. Walsh informed the Members that he has had conversations with Mr. Larkins regarding the 2011 Capital Program. He said that he is aware that the SDA is performing work on the Capital Program as well as performing work regarding closeout. Mr. Walsh noted that his focus is on the ten (10) projects slated for work in the Capital Program. Mr. Vargas inquired as to when the public will physically see work occurring in their communities. Mr. Larkins replied that each project differs and depending upon where one lives, work onsite may be occurring at the present time. Mr. Larkins reiterated that there is active ongoing site investigation work and provided brief review of environmental site issues. Mr. Walsh noted that some of the projects that were on the 2003 Capital Plan are now on the 2011 Capital Program and have changed in scope. He

said that he and Mr. Larkins went through the plans for each project. He suggested that there be an update in a month as to the status of the ten (10) projects. Mr. Walsh invited the Members to contact him if they wished to further discuss any of the projects in the Capital Program. Ms. Hassett inquired about the rule proposal regarding price and other factors and inquired as to whether the SDA has received any feedback from the industry. Mr. Larkins replied that there has been positive feedback in terms of price and other factors. He said that the SDA has not received any negative feedback, but that there has been some attention paid to one additional change, i.e. the constructability review. After discussion, Mr. Walsh recommended that, with regard to future projects, peer reviews should be conducted prior to preparing plans. Mr. McNamara commented that if the SDA has an opportunity, the public should be taken through the process and informed of the difference between an “emergent” project and an “emergency” so that they know the lengthy process involved in ultimately having work performed on a project. Mr. Walsh said that he and Mr. Larkins should have further discussions regarding Mr. McNamara’s suggestion. Mr. Nixon asked whether the legislature asked for a review of the process regarding the emergent program. Mr. Larkins replied that the SDA has had those types of conversations with the press, as well as with the legislature. Mr. Larkins said that SDA Communications Director Kristen MacLean has been making outreach to reporters but negative stories are sometimes run anyway. Mr. Larkins noted that the perception is that the state is responsible for all issues in a given school district with regard to its facility needs, which is inaccurate. He noted that there are issues for which the districts are responsible and issues for which the SDA is responsible. Mr. Larkins stated that if something goes wrong with a school the SDA is blamed for it even though, legally, the

SDA does not have the authority to perform some of that work. Mr. Vargas asked if there is a designated person to field inquiries regarding SDA projects. Mr. Larkins informed the Members that Ms. MacLean is the SDA's Communications Director and that the Members should feel free to steer inquiries to her for a response.

Audit Committee Report

Mr. Walsh then asked for the report of the Audit Committee. Mr. Nixon advised the Board that the Audit Committee met on January 17, 2012. He said that the December 2011 New Funding Allocation and Capital Program update presented to the Audit Committee had reported no changes in any of the reserve balances. He informed the Members that the reserve balance for the Regular Operating Districts ("RODs") increased by \$800,000 due to a reduction in State share for projects nearing completion. He added that no additional grants were offered during the current reporting period.

In continuing, he said that Mr. Ballard had provided the Committee with a report on the status of the Authority's audit recommendations. He noted that, as a result of the DB Realty audit, a credit adjustment in the amount of \$20,531.00 was successfully implemented regarding Common Area Maintenance ("CAM") charges for operating expenses. He reported that the SDA Design Manual Checklist audit was also completed and provides suggestive procedures which can be implemented to fit departmental needs. In conclusion, he noted that Mr. Ballard had reported that of a total of 53 audit recommendations have been recorded to date and that, of this amount, 39 have been completed. Mr. Walsh asked if the Audit Committee was planning on meeting with the outside auditors as discussed in the December meeting. Mr. Nixon responded that he

would be contacting the outside auditors and that this discussion topic would be on the February Audit Committee agenda.

Change Orders/Amendments – Ernest Bock & Sons, Inc.; Cobra Construction Company, Inc.; SSP Architectural Group, Inc.; Michael Graves & Associates; Chanree Construction Company, Inc.

The Chairman then asked Mr. McNamara to provide the report of the SRC. Mr. McNamara, who had acted as Chairman of the Committee at its most recent meeting, reported that the Committee met on January 17, 2012 and discussed various issues. He referenced materials that were previously sent to the Members for review. First, Mr. McNamara reported that the Committee had discussed a change order for Ernest Bock & Sons, Inc. for the Victor Mravlag Elementary School No. 21 in the Elizabeth school district for extended and additional material and equipment storage costs. He noted that the project was originally an addition/renovation but had been changed to become a new construction project for cost effectiveness reasons.

A resolution pertaining to the approval of a credit change order for Ernest Bock & Sons, Inc. had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Luckie, and seconded by Ms. Hassett, the resolution, attached hereto as *Exhibit 6a1*, was approved by the Board.

Next, Mr. McNamara reported that the Committee had also discussed a credit change order in the amount of \$11,000.00 regarding Cobra Construction Company, Inc. for the Thomas Dudley Elementary School in the Camden City school district. He reported that the project has been completed and that the anticipated punch list items did not have to be addressed. Some discussion ensued as to the advisability of continuing to require presentation of credit amendments for approval by the Board. Mr. Larkins noted

that SDA staff will propose an amendment to the SDA Operating Authority (“OA”) for review by the Audit Committee and Board. He said that, with a Board approved change to the OA, this type of credit amendment need no longer be presented to the Committee and Board for approval.

A resolution pertaining to the approval of a credit change order for Cobra Construction Company, Inc. had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Luckie, and seconded by Mr. Vargas, the credit change order for Cobra Construction Company, Inc. was approved by the Board upon its vote in favor of the resolution attached hereto as *Exhibit 6a2*.

Next, Mr. McNamara reported that the Committee had also discussed an amendment for SSP Architectural Group, Inc. (“SSP”) in the amount of \$950,000.00 for the New PS No. 20 Elementary School in the Jersey City school district for additional and extended design construction and administrative services. Mr. Minervini noted that there was prior approval through the CEO under the OA that did not require Board approval. He said that the schematic has been completed and will be submitted to DOE and the NTP will be effective after the veto period. Mr. Minervini briefly described the changes to this project and noted that this project served as a catalyst for the KOP approach. Mr. Walsh inquired if the project would warrant a peer review. Mr. Minervini replied that if the project is managed properly and the architect works accordingly there should not be a need for a peer review.

A resolution pertaining to the approval of the amendment had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Nixon, and seconded by Ms. Hassett, the amendment for SSP Architectural Group, Inc.

was approved by the Board upon its vote in favor of the resolution attached hereto as *Exhibit 6a3*.

In continuing, Mr. McNamara reported that the Committee had also discussed an amendment for Michael Graves & Associates for the New PS #16 Elementary School in the Paterson school district in the amount of \$332,351.00. He reported that there were revisions to program and schematic phase submissions. Mr. McNamara briefly described the project as noted in the memorandum. Mr. Yosha clarified that the amendment in its entirety will pay all remaining monies due for work performed and will essentially bring closure to the involvement of this firm with this project. He said that there will not be any additional activity or amendments regarding this project with this firm.

A resolution pertaining to the approval of the amendment had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Luckie, and seconded by Ms. Hassett, the amendment for Michael Graves & Associates was approved by the Board upon its vote in favor of the resolution attached hereto as *Exhibit 6a4*.

Next, Mr. McNamara informed the Members that there is a walk on change order that the Committee had not discussed pertaining to compensation to Chanree Construction Company Inc. regarding delays at the Morgan Village Middle School in the Camden City district. He noted that the change order is for compensation for delay in the amount of \$450,000.00. Mr. Sherman reported that there were numerous reasons for the delay. He said that the overall delay was in excess of five-hundred (500) days. Mr. Sherman further reported that CMD performed a review and concluded that two-hundred

(200) days were the result of excusable delays and that one-hundred thirty-five (135) days were compensable delays, which is the basis for the amount of the change order.

A resolution pertaining to the approval of a change order for Chanree Construction Company Inc., Inc. had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Ms. Hassett, and seconded by Mr. McNamara, the change order for Chanree Construction Company Inc. was approved by the Board upon its vote in favor of the resolution attached hereto as *Exhibit 6a5*.

Approval of Award; Package No. GP-0182-R01 – Claims Assistance Services

Mr. McNamara then asked Mr. Murphy to present the approval of award for Claims Assistance Services. Mr. Murphy reported that the Members are being asked to approve the award of three (3) contracts to three (3) consultants to assist the SDA with claims review. He reported that all firms were required to agree to hourly rates of \$185 for senior claims consultants and \$100 for claims support personnel. Mr. Murphy noted that the SDA accepted nine (9) proposals and that all nine (9) firms were interviewed. He referenced his memorandum and noted that the final rankings could be found on Table 2 of the memorandum. Mr. Murphy said that the SDA is recommending that the three (3) highest ranked firms be approved for award.

A resolution pertaining to the approval of award for Claims Assistance Services had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Ms. Hassett, and seconded by Mr. McNamara, the approval of award for Claims Assistance Services was approved by the Board upon its vote in favor of the resolution attached hereto as *Exhibit 6bi*.

Public Comments

The Chairman then announced that the Public Comment portion of the meeting would begin. He asked if there were any members of the public present that wished to address the Members. The Chairman reviewed the Public Comment Sign In sheet and asked Mr. Robert Eagleson of Ernest Bock & Sons, Inc. (“Bock”) to address the Members. Mr. Eagleson thanked the Members for the opportunity to speak. He reported that he was assigned the Victor Mravlag project back in November 2006. He gave a brief background of the project and noted that he has been actively engaged in the project. He mentioned that he had originally planned to attend the December 2011 Board meeting, but that he had a conversation with Mr. Ballard who requested that he give him more time to assess the situation. Mr. Eagleson said that Ernest Bock & Sons has not been paid since December 2009 with regard to general conditions. Despite this, he said, Bock staff has shown up to the project every day. He noted that the delays at issue were not caused by Bock. Mr. Eagleson said that his staff has stood by the SDA and has sat in community meetings and spoken to reporters in defense of the SDA. Mr. Eagleson said that his staff has advocated for the state and yet can’t seem to get past their general conditions change order requests which have now become claims. He said that he respects what the Board and the Authority are doing with all of the issues and changes, but that Bock’s situation completely “fell through the cracks”. Mr. Eagleson said that his staff actually negotiated a change order with CMD and came to a consensus agreed upon by both the SDA and Bock. He said that he signed off on the change order in the amount of \$270,000.00 along with Mr. Minervini and CMD staff. He said that the change order would take care of costs up to July 2010. Mr. Eagleston stated that the time was added

into the contract, but funds were not received. He offered to provide a copy of the contract to the Members. Mr. Ballard addressed Mr. Eagleson and noted that SDA staff has been actively working with all parties to resolve some of the general conditions that Mr. Eagleson referenced. Mr. Ballard said that there was recently a meeting held with CMD and other SDA staff to gain understanding of where the general conditions lie so that some form of payment can be disbursed to Bock. Mr. Ballard asked that Mr. Eagleson give the SDA a little more time as staff is close to a resolution. He noted that there is a difference of opinion as to what is due to Bock, but once another meeting is held to resolve the issues, some amount of payment will be disbursed to Bock. Mr. Larkins stressed that last winter when a \$3.1 million change order was negotiated, he was under the impression that everyone was in agreement that, because of the issues related to this job, the general conditions were to be addressed at the end of the project. He noted that Tom Bock was a part of that discussion. Mr. Larkins acknowledged that Bock has stood by the state and committed to getting the job finalized and that the SDA would like to do whatever is needed to help Bock in this situation. Mr. Eagleson stated that funding is needed to manage the job. Mr. Ballard said that the SDA would pay general conditions going forward, but the team has to vet the old issues regarding general conditions and determine what is owed. Mr. Eagleson confirmed that there is now a claim filed with regard to this change order. After further discussion, Mr. Walsh informed Mr. Eagleson that he has the attention of Mr. Ballard and the Members and that Mr. Ballard would be in communication with him.

Mr. Walsh then asked Wendy Kunz of the Camden school district to address the Members. Ms. Kunz reported that since she last visited the SDA, things have gotten worse in the Camden district. First, she asked the Members, with regard to emergent and emergency situations, what happens if an emergency project exceeds the \$500,000.00 that the district is allowed to spend. She said that the demolition of the Broadway School is going to approach \$1 million and that the district does not have the funding. She said that the district is asking the DOE and SDA for assistance. Ms. Kunz stated that the building is in imminent danger of falling onto a public way, which would be a public sidewalk and street. Mr. Walsh asked if that school was on the emergent projects list. Mr. Larkins replied that it is not and asked Ms. Kunz if the project was submitted as an emergent project to the SDA. Ms. Kunz replied in the affirmative. Mr. Larkins informed Ms. Kunz that the SDA will take another look at the emergent list. Ms. Kunz said that both the SDA and DOE have inspected the project on several occasions. Mr. Larkins answered Ms. Kunz' previous question regarding exceeding the \$500,000 threshold on emergency situations by informing her that if the building is in a position to fall down, that the district would have to stabilize it and that the \$500,000.00 threshold is not applicable to stabilizing the building. Ms. Kunz noted that the building has been stabilized within the threshold that can be spent and if the entire building is stabilized, it will cost approximately \$700,000.00. She said that it would also cost \$700,000.00 to demolish the building. Mr. Piaia informed Ms. Kunz that the \$500,000.00 prohibition on SDA districts is for school facilities projects. He said that if it is an emergency, it would not be considered a school facilities project and would not even need approval. Mr. Piaia noted that the district should do what is warranted to stabilize the building; if it is not

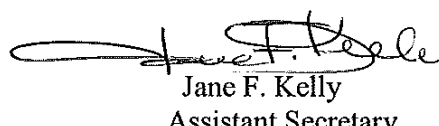
eligible for state funding, there is no \$500,000.00 cap for those types of projects either and would have to be approved with the money in the district's budget. Mr. Piaia invited Ms. Kunz to call him for an offline discussion. Ms. Kunz thanked Mr. Piaia. Mr. Larkins said that the school does not qualify as an emergent project, but that the SDA would assist the district with its critical needs. Ms. Kunz thanked Mr. Larkins and noted that the routine maintenance alone that the district is facing in 2013 exceeds \$12 million and the budget is \$5 million, not to mention the emergency projects that would bring the total to \$20 million. Mr. Larkins noted that the law does not allow the SDA to spend funds for routine maintenance, but the SDA and DOE can work with the district to try to figure out what is critical and if there is a way for the SDA to provide assistance. Next, Ms. Kunz reported that a new emergency has come to the surface. She reported that the Fedders and Broadway schools were the schools to which the students were moved from the Lanning Square School. She reported that both schools have structural problems. Ms. Kunz reported that in the past month, Fedders has had several buckling walls and that stone work is separating from the masonry back up and if it moves another inch, it will be on the sidewalk. She said that the SDA stabilized a wall in one area of the school that almost fell down. Ms. Kunz said that there are a couple of other areas on the old building where the building is actually starting to move. Mr. Larkins said that SDA staff will work with Ms. Kunz to determine the scope of the issue. Ms. Kunz then stated that she was informed that the Morgan Village demolition project is still under consideration. She said that it should have been bid by now and that bids should have been received in order to get the work done this summer. Mr. Larkins noted that the SDA is planning to advertise the demolition for Morgan Village in the short term. Ms. Kunz inquired about

the demolition for H. B. Wilson School because the school is deteriorating and is being used for illicit activity. Mr. Larkins reported that the demolition for H.B. Wilson is on the SDA's radar. Next, Ms. Kunz reminded the Members that the SDA (SCC at the time) identified problems with the terra cotta front work along the top of the Camden High School building in the 2000 Long Range Facilities Plan ("LRFP"). She said that that portion of the building was slated to be restored. Ms. Kunz said that planning for the renovations was suspended several times and as recently as 2010. Ms. Kunz said that the SCC erected a fence around the perimeter with the exception of the entrances in order to protect the public from falling masonry. She said that the SDA then erected scaffolding and put plywood protection at both the side and front entrances until the masonry could be restored. Ms. Kunz said that when the estimate came in at \$20 million, she inquired as to why \$20 million would be spent on a building that is not appropriate for an educational facility. She said that the tower at the front entrance was restored at the cost of \$4 million and that the scaffolding has been removed, but that there is still scaffolding at the other entrances of the building and the fences are still up and are being maintained by the district. Ms. Kunz then explained how the terra cotta is breaking off the building and displayed a photo. Mr. Larkins stated that he and Mr. Ballard visited the high school and the SDA made outreach to the district and will be talking to the superintendent on February 2 with regard to pursuing work at the high school. Ms. Kunz noted that her visit today was much more satisfactory than previous visits to the SDA.

Mr. Walsh then asked if there was any other member of the public present who wished to address the Board. Hearing none, upon a motion by Mr. McNamara, and

seconded by Mr. Nixon and with unanimous consent, the Open Session meeting was adjourned.

Certification: The foregoing represents a true and complete summary of the actions taken by the Board of the New Jersey Schools Development Authority at its February 1 2012 meeting.


Jane F. Kelly
Assistant Secretary

RESOLUTION—3a./3b.**Approval of Minutes**

WHEREAS, the By-Laws provide that the minutes of actions taken at meetings of the New Jersey Schools Development Authority be approved by the Authority's Board of Directors; and

WHEREAS, pursuant to Section 3(k) of P.L. 2007, Chapter 137, the minutes of the February 1, 2012 Board meeting of the New Jersey Schools Development Authority, for the Open and Executive Sessions, was forwarded to the Governor on February 7, 2012.

NOW, THEREFORE, BE IT RESOLVED, that the minutes of the New Jersey Schools Development February 1, 2012 Open and Executive Session meetings are hereby approved.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Dated: March 7, 2012

AUTHORITY MATTERS

CEO REPORT
CAPITAL PROGRAM UPDATE

Prepared by the New Jersey Schools Development Authority

SDA Capital Program Report

SDA Capital Program

Section 1: The Process

Project Identification & Evaluative Criteria

WHY REVIEW NOW?

- Districts requests for substitutions – impacting 15% of 2008 Capital Plan projects
- The Office of Legislative Services State Auditor findings in June 2010 recommending that the SDA review the 2008 Capital Plan to evaluate the list of 27 projects not previously ranked and remove the requirement that each district receive at least one project.
- Statutory Requirement of periodic review
- Inefficient spending and lack of progress toward implementation of 2008 Capital Plan

Framework for the Review

- The formulation of a statewide strategic capital plan is rooted in legislation

P.L.2007, c.137 (C.52:18A-235 et al. “(SDA) shall establish a Statewide strategic plan to be used in the sequencing of SDA district school facilities projects based upon the projects’ educational priority rankings and issues which impact the development authority’s ability to complete the projects including, but not limited to, the construction schedule and other appropriate factors.”

Statutory Principles:

- *Statewide educational priority ranking*
- *Statewide strategic plan*
- *Sequencing of projects*
- *Revision of plan at least once every five years*

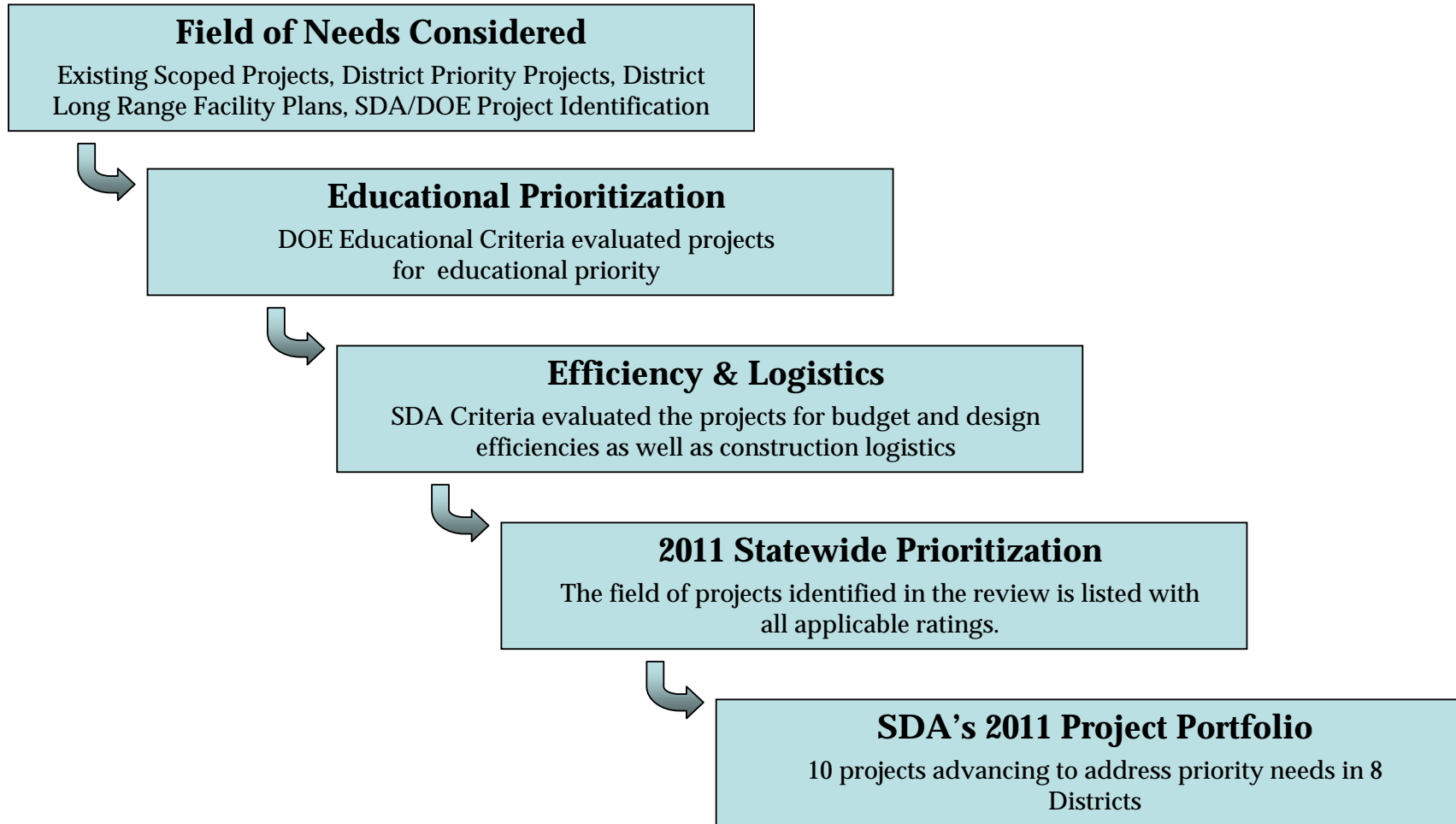
THE PROCESS

In June 2010 the Capital Plan Review Team was formed via an Interagency Working Group with the charge to conduct a thorough review of the 2008 Capital Plan and present recommendations for a reformulated program. Staff members from the Department of Education (DOE) and the Schools Development Authority (SDA) worked together to:

- Create prioritization criteria that address the State Auditor’s findings and reflect both current educational priorities and factors relating to the most efficient use of public funds
- Communicate with the Districts and cultivate information on facilities conditions
- Analyze and assess projects, as appropriate, in the Districts Long Range Facilities Plan (LRFP)

Potential projects were scored in accordance with the DOE educational rating criteria and then evaluated for efficient construction and cost factors. These factors, combined with the districts’ identified priority rankings make up the 2011 Statewide Prioritization.

SDA Capital Program The Process



2008 : 2011

A Side-by-Side of the Rating Criteria

2008 Criteria

2011 Criteria

	Ranking Category (25 Points Total)	% of Points		Ranking Category (18 Points Total)	% of Points
DOE	District-wide Overcrowding (5pts)	20%	DOE	District-wide Overcrowding (6pts)	33%
	Preschool (4pts)	16%		FES Compliance (5pts)	28%
	Temporary & Annex Buildings (4pts)	16%		General Building Conditions (4pts)	22%
	FES Compliance (4pts)	16%		Efficiency (3pts)	17%
	Building Age (4pts)	16%		<i>Range of points awarded: 2-16</i>	
	Misc. Building Considerations (2pts)	8%			
	LRFP Completion (2pts)	8%			
SDA	Ranking Category No Points Awarded; The evaluation was based on programmatic/policy considerations		SDA	Ranking Category (10 Points Total)	
	Complete the 27 previously deferred projects (not subjected to DOE Evaluation)	N/A		Efficient Response to Educational Need (3pts)	30%
	Complete district identified priority projects with investments exceeding \$3M.	N/A		Efficient Use of Public Funds (3pts)	30%
	All districts to have at least one project.	N/A		Construction Schedule Factors (4pts)	40%
	No district to have more than four projects unless sunk costs of additional projects exceed \$3M.	N/A		<i>Range of points awarded: 0-8.5</i>	

SDA Capital Program

Section 2: Results of the Review & Reassessment

Authorized SDA District Funding *(dollars in billions)*

As of October 31, 2010

Authorized Funding for SDA Districts:	\$ 9.006
SDA Related Expenses to date:	(\$ 5.744)
Ongoing SDA Funding Obligations & Reserves	(\$ 0.996)*
Funding Remaining for New Projects	\$ 2.266

- The funding calculations for remaining funding is cumulative based on all funding allocations for SDA district construction since program inception and exclusive of funding for the Regular Operating Districts.
- **Includes costs to complete active construction projects and ongoing obligations including administrative expenses for a period of 5 years.*

SDA 2011 Statewide Prioritization (1 / 4)

District	School Name	School Type	Grade Alignment	FES Capacity	Project Type	District Rank	DOE Inter District Ed. Priority Score	SDA Criteria Points Total
Asbury Park	Asbury Park HS	HS	9-12	520	Addition/Renovation	2	6	4
Asbury Park	Bangs Avenue E.S. (Barack Obama)	ES	PK-5	521	New Construction	1	2	6
Bridgeton	Cherry Street E.S.	ES	K-8	591	New Construction	1	13	7.5
Bridgeton	GO Foster ECC	ECC	PK	420	Addition/Renovation	2	11	4.5
Bridgeton	Indian Avenue ES	ES	K-8	591	New Construction	3	11	5
Bridgeton	Broad Street ES	ES	K-8	934	Addition/Renovation	4	10	5
Bridgeton	Buckshutem Road ES	ES	K-8	537	Addition/Renovation	LRFP	6	4.5
Burlington City	Boudinot Area ECC	ECC	PK	180	New Construction	1	3	7
Burlington City	Captain James Lawrence	ES	K-2	175	Addition/Renovation	3	2	4
Burlington City	Samuel Smith	ES	PK-2	268	Addition/Renovation	2	1	5
Camden	Lanning Square E.S.	ES	PK-8	615	New Construction	1	5	6.5
Camden	Camden H.S.	HS	9-12	1,244	New Construction	2	4	4
Camden	Washington ES Replacement School	ES	PK-8	615	New Construction	4	4	2
Camden	Pyne Poynt Family School	ES	PK-8	615	Addition/Renovation	3	3	6
East Orange	East Orange Campus HS	HS	10-12	1,665	Addition/Renovation	LRFP	5	2
East Orange	George Washington Carver	ES	PK-5	541	New Construction	1	5	6
East Orange	Johnnie Cochran ES	ES	PK-5	466	Addition/Renovation	LRFP	2	4.5
Elizabeth	Academic Magnet HS	HS	9-12	1,091	New Construction	1	14	7
Elizabeth	PS 32	ES	PK-8	710	New Construction	LRFP	12	2
Elizabeth	New PS 22 William F Halloran	ES	PK-8	725	New Construction	LRFP	10	3.5
Elizabeth	PS 18 Morris	ES	PK-8	705	New Construction	LRFP	10	3.5
Elizabeth	PS 19 Wilson	ES	PK-8	727	New Construction	LRFP	9	3.5
Elizabeth	Visual/Performing Arts HS	HS	9-12	1,071	New Construction	LRFP	9	1
Elizabeth	PS 12 (Elmora)	ES	PK-8	705	New Construction	LRFP	7	3.5
Elizabeth	PS 6 L'ouverture /Lafayette	ES	PK-8	742	Addition/Renovation	LRFP	6	4.5
Elizabeth	Vocational HS	HS	9-12	900	New Construction	LRFP	4	1.5
Garfield	Garfield HS	HS	9-12	1,333	Addition/Renovation	3	11	2
Garfield	James Madison School #10	ES	K-5	275	New Construction	1	11	7.5

Note: LRFP identifies projects selected from the District Long Range Facilities Plan.

NJSDA Capital Program Report

Section 2 : Results

Prepared by the New Jersey Schools Development Authority

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SDA 2011 Statewide Prioritization (2 / 4)

District	School Name	School Type	Grade Alignment	FES Capacity	Project Type	District Rank	DOE Inter District Ed. Priority Score	SDA Criteria Points Total
Garfield	Woodrow Wilson Replacement School No. 5	ES	K-5	282	New Construction	2	9	4.5
Garfield	Abraham Lincoln	ES	K-5	294	New Construction	LRFP	6	4
Gloucester City	Middle School - New	MS	4-8	811	New Construction	1	8	3.5
Gloucester City	Cold Springs	ES	PK-3	1,067	Addition/Renovation	LRFP	3	4
Harrison	HS conversion to MS	MS	5-8	622	Addition/Renovation	1	8	6
Harrison	Harrison Intermediate	ES	4-5	305	New Construction	2	5	4.5
Hoboken	Thomas G. Connors	ES	PK-4	351	Addition/Renovation	1	10	4
Hoboken	Joseph Brandt	ES	PK-8	450	Addition/Renovation	2	9	4.5
Irvington	Irvington HS	HS	9-12	1,512	Addition/Renovation	2	5	2.5
Irvington	Madison Avenue ES	ES	PK-5	581	Addition/Renovation	1	5	5.5
Jersey City	ECC 13	ECC	PK	324	New Construction	2	14	5
Jersey City	ECC 14	ECC	PK	324	New Construction	3	14	5.5
Jersey City	ES 3/ECC 03	ES	PK-5	814	New Construction	4	12	4.5
Jersey City	Dickinson 9th Grade Academy	HS	9	653	New Construction	LRFP	10	2
Jersey City	P.S. 20	ES	K-5	628	New Construction	1	7	4
Jersey City	PS 24 Charles Watters	ES	K-5	716	Addition/Renovation	LRFP	7	4.5
Jersey City	PS 29	ES	K-5	350	New Construction	LRFP	6	2.5
Jersey City	PS 31	ES	K-5	350	Addition/Renovation	LRFP	6	5
Jersey City	PS 33	ES	K-5	350	New Construction	LRFP	6	2.5
Keansburg	New ECC PK-2 (Caruso)	ES	PK-2	813	New Construction	2	15	7.5
Keansburg	Lorraine Place ES	ES	3-5	424	New Construction	1	11	6.5
Keansburg	Keansburg HS	HS	9-12	538	Addition/Renovation	LRFP	2	3.5
Long Branch	George L. Catrambone ES (Elberon)	ES	PK-5	817	New Construction	1	11	8.5
Long Branch	Lenna Conrow	ES	PK-5	890	Addition/Renovation	LRFP	4	4
Millville	New high school	HS	9-12	2,028	New Construction	1	12	1.5
Millville	Bacon	ES	K-5	494	New Construction	LRFP	4	3
New Brunswick	A. Chester Redshaw E.S.	ES	1-5	670	New Construction	1	15	7
New Brunswick	K Center	Primary	PK-K	331	New Construction	2	12	3

Note: LRFP identifies projects selected from the District Long Range Facilities Plan.

NJSDA Capital Program Report

Section 2 : Results

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SDA 2011 Statewide Prioritization (3/4)

District	School Name	School Type	Grade Alignment	FES Capacity	Project Type	District Rank	DOE Inter District Ed. Priority Score	SDA Criteria Points Total
New Brunswick	Paul Robeson Community E.S.	ES	1-5	599	Addition/Renovation	3	11	7.5
New Brunswick	Lincoln Elementary	ES	1-5	678	New Construction	4	9	4
New Brunswick	K Center 2	ECC	K	181	New Construction	LRFP	5	3.5
Newark	South Street	ES	PK-2	502	New Construction	2	13	4
Newark	Oliver Street	ES	3-8	868	New Construction	1	11	6
Newark	Ridge Street	ES	PK-4	600	Addition/Renovation	6	8	5.5
Newark	West Side	HS	9-12	1,479	New Construction	3	8	3
Newark	Branch Brook	ES	PK-8	436	New Construction	7	7	2.5
Newark	Harold Wilson	ES	PK-8	825	New Construction	5	7	3.5
Orange	Orange HS	HS	9-12	1,048	Addition/Renovation	LRFP	13	2.5
Orange	Cleveland Street ES	ES	PK-8	492	Addition/Renovation	1	6	4
Passaic	Dayton Avenue MS	MS	6-8	1,091	New Construction	3	15	4.5
Passaic	New ECC & Board Offices @ Leonard Pl.(Henry St)	ECC	PK	294	New Construction	4	15	5.5
Passaic	New ECC @ Dayton Avenue Site	Primary	PK-K	256	New Construction	2	14	4.5
Passaic	Dayton Avenue ES	ES	1-5	787	New Construction	1	13	4
Passaic	Passaic HS	HS	9-12	3,371	New Construction	LRFP	10	2
Passaic	Thomas Jefferson (PS 1)	ES	PK-5	683	Addition/Renovation	LRFP	8	4.5
Passaic	Roosevelt (PS 10)	ES	PK-5	709	New Construction	LRFP	7	4
Passaic	Lincoln Middle School	MS	6-8	1,065	Addition/Renovation	LRFP	6	4
Paterson	New ES at Marshall & Hazel	ES	K-8	650	New Construction	1	14	7
Paterson	Number 25 E.S.	ES	K-8	703	Addition/Renovation	3	14	6
Paterson	PS # 16 ES	ES	PK-8	651	New Construction	2	11	3.5
Paterson	#3 ES	ES	PK-8	651	New Construction	4	10	3
Paterson	PS 20	ES	PK-8	584	Addition/Renovation	LRFP	10	5
Paterson	New ES at Don Bosco	ES	PK-8	630	New Construction	LRFP	9	3
Paterson	New Engineering/Technology HS	HS	9-12	889	New Construction	5	7	1.5
Paterson	PS 6A	ES	PK-5	705	New Construction	LRFP	7	2
Paterson	New Health/Medical Science HS (HARP)	HS	9-12	564	New Construction	LRFP	5	2

Note: LRFP identifies projects selected from the District Long Range Facilities Plan.

NJSDA Capital Program Report

Section 2 : Results

Prepared by the New Jersey Schools Development Authority

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SDA 2011 Statewide Prioritization (4 / 4)

District	School Name	School Type	Grade Alignment	FES Capacity	Project Type	District Rank	DOE Inter District Ed. Priority Score	SDA Criteria Points Total
Pemberton Twp.	Addition/Renovation at Denbo	ES	PK-5	728	Addition/Renovation	1	6	6
Pemberton Twp.	Emmons	ES	K-5	325	Addition/Renovation	LRFP	5	5
Perth Amboy	High School	HS	9	2,400	Addition/Renovation	1	15	5
Perth Amboy	New Middle School	MS	6-8	1,106	Addition/Renovation	LRFP	14	1.5
Perth Amboy	Seaman Avenue	ES	K-5	707	New Construction	2	14	3.5
Phillipsburg	New Phillipsburg HS	HS	9-12	1,846	New Construction	1	16	6.5
Phillipsburg	Andover-Morris	ES	1-2	176	Addition/Renovation	LRFP	4	5.5
Plainfield	Hubbard	ES	PK-8	549	Addition/Renovation	LRFP	5	4.5
Plainfield	Cook E.S.	ES	K-8	399	Addition/Renovation	1	4	6.5
Pleasantville	New ECC	Primary	PK-K	858	New Construction	1	9	3.5
Pleasantville	North Main	ES	1-5	187	New Construction	LRFP	1	3
Pleasantville	Decatur Alternative HS	TBD	TBD	TBD	TBD	2	0	0
Salem City	Middle School	MS	4-8	361	New Construction	2	6	4
Salem City	John Fenwick ES	ES	PK-4	610	New Construction	1	4	5.5
Trenton	New Early Childhood Center	ECC	PK	294	New Construction	1	8	8
Trenton	Roebing School	ES	PK-8	1,183	New Construction	2	6	3
Trenton	Trenton Central H.S.	HS	9-12	1,843	New Construction	3	4	3.5
Union City	Jefferson	ES	K-5	717	New Construction	LRFP	14	2.5
Union City	Gilmore	ES	K-5	503	New Construction	LRFP	10	3.5
Union City	Robert Waters	ES	K-5	515	Addition/Renovation	LRFP	9	4.5
Union City	Union Hill MS	MS	6-9	624	Addition/Renovation	1	6	4.5
Vineland	Landis MS	MS	6-8	643	Addition/Renovation	LRFP	5	4.5
Vineland	Vineland Middle School #2	MS	6-8	558	New Construction	1	7	6.5
West New York	Memorial H.S.	HS	9-12	1,859	Addition/Renovation	1	16	6
West New York	Harry L. Bain ES (PS 6)	ES	PK-6	736	New Construction	2	7	4.5
West New York	PS 5	ES	PK-5	677	New Construction	3	6	4

Note: LRFP identifies projects selected from the District Long Range Facilities Plan.

NJSDA Capital Program Report

Section 2 : Results

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District Summary: Historical Distribution since inception

District	Health and Safety/ Grants		Completed Capital Projects		Active Capital Projects		Subtotal	
	No. of Projects	Contract Value	No. of Projects	Contract Value	No. of Projects	Project Budget	No. of Projects	Contract Value
1 Asbury Park	5	\$4.5	2	\$22.2	0	\$0.0	7	\$26.8
2 Bridgeton	10	\$15.2	2	\$19.8	0	\$0.0	12	\$35.0
3 Burlington City	5	\$9.5	3	\$95.0	0	\$0.0	8	\$104.5
4 Camden City	46	\$32.3	4	\$191.6	1	\$40.1	51	\$264.0
5 East Orange	16	\$16.0	7	\$252.6	0	\$0.0	23	\$268.6
6 Elizabeth	23	\$36.7	11	\$292.2	1	\$40.3	35	\$369.1
7 Garfield	12	\$3.5	2	\$65.5	0	\$0.0	14	\$69.0
8 Gloucester City	7	\$8.8	2	\$44.2	0	\$0.0	9	\$53.0
9 Harrison	3	\$2.5	2	\$83.0	0	\$0.0	5	\$85.5
10 Hoboken	7	\$30.5	1	\$10.7	0	\$0.0	8	\$41.2
11 Irvington	23	\$24.4	4	\$76.1	0	\$0.0	27	\$100.5
12 Jersey City	36	\$71.1	16	\$203.6	0	\$0.0	52	\$274.7
13 Keansburg	7	\$5.8	0	\$0.0	0	\$0.0	7	\$5.8
14 Long Branch	9	\$16.4	4	\$199.1	0	\$0.0	13	\$215.5
15 Millville	11	\$18.5	2	\$34.5	0	\$0.0	13	\$53.0
16 Neptune	9	\$2.0	9	\$245.8	0	\$0.0	18	\$247.7
17 New Brunswick	13	\$3.3	3	\$222.1	0	\$0.0	16	\$225.4
18 Newark	93	\$159.2	10	\$367.3	0	\$0.0	103	\$526.5
19 Orange	11	\$15.5	3	\$108.1	0	\$0.0	14	\$123.6
20 Passaic City	12	\$45.0	4	\$93.3	1	\$45.5	17	\$183.8
21 Paterson	44	\$157.2	6	\$135.8	0	\$0.0	50	\$293.1
22 Pemberton Twp.	19	\$19.3	0	\$0.0	1	\$29.7	20	\$49.0
23 Perth Amboy	6	\$11.7	5	\$77.3	0	\$0.0	11	\$89.0
24 Phillipsburg	7	\$11.5	2	\$43.7	0	\$0.0	9	\$55.2
25 Plainfield	3	\$2.7	4	\$73.7	0	\$0.0	7	\$76.3
26 Pleasantville	5	\$5.3	0	\$0.0	0	\$0.0	5	\$5.3
27 Salem City	8	\$3.2	0	\$0.0	0	\$0.0	8	\$3.2
28 Trenton	19	\$24.5	8	\$186.9	0	\$0.0	27	\$211.3
29 Union City	18	\$6.3	4	\$226.5	1	\$46.2	23	\$279.0
30 Vineland City	13	\$15.1	6	\$126.3	0	\$0.0	19	\$141.4
31 West New York	8	\$14.3	3	\$104.1	1	\$62.8	12	\$181.2
Total	508	\$791.8	129	\$3,601.0	6	\$264.5	643	\$4,657.2

NJSDA Capital Program Report

Section 2 : Results

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SDA Capital Program

Section 3:

Implementation Approach

Next Steps for Implementation

The SDA will implement a statewide strategic sequencing plan that advances projects from the Statewide Prioritization that are:

- Of high educational priority (DOE Rating)
- Of efficient construction factors (SDA Rating)
- Poised to proceed to next appropriate development stage (planning and/or design status)
- In final validation stages to proceed
 - » Review of Site & Environmental Factors
 - » Constructability Review
 - » Review of Project Budget & Schedule
 - » Review of Value Engineering
- Supportive of standardization (inclusive of a cost benefit analysis of redesign).

This strategic framework supports the development of design and constructability standards that are recognized to ensure quality and consistency of systems and materials; ease of operations and maintenance; and appropriate and cost-effective design.

The Authority will evaluate projects in accordance with this framework to identify an annual portfolio for design and construction advancement.

Further the Authority will undertake an annual determination of project capacity and continue its pursuit of alternate delivery approaches such as design build.

The SDA will meet with local district and elected officials to conduct a thorough review prior to advancing a procurement for a project.

Implementation

• Plans to Achieve Standardization

The SDA will pursue design standardization through a phased approach that will lead to design replication on multiple projects. The benefits of a phased approach include:

- coordination with sister state agencies on the development of programmatic standards,
- the establishment of internal standards,
- application of those standards to individual projects, while
- allowing for the advancement of appropriate projects.

In 2011, the SDA plans to pursue standardization through three phases:

Phase I: Evaluate the 2011 Statewide Prioritization to identify model school types that lend themselves to greatest number of projects
(i.e. Elementary School, K-8 for 600-700 students)

Phase II: Consider procurement for a “Kit of Parts” Prototype Design for a model school type

Phase III: Advance principles of standardization in all projects commencing construction in 2011

- » Potential design reuse: classrooms, labs, auditoria etc.
- » Identification of standard systems & materials
- » Standardized space specifications / model room layouts

Implementation

- **2011 Selection Process**

A comprehensive review of the existing designs of projects included in the 2011 Statewide Prioritization revealed two projects that are supportive of the principles of standardization and are in final validation stages for advancement into construction in 2011:

- Elizabeth - Academic Magnet High School
- Long Branch - Catrambone Elementary School (Elberon)

A comprehensive review of the 2011 Statewide Prioritization further revealed several projects that are appropriate candidates for pursuit of standardization application in 2011:

- Bridgeton – Cherry Street Elementary School
- Jersey City – PS 20 Elementary School
- Jersey City – Elementary School 3
- New Brunswick – A. Chester Redshaw Elementary School
- Newark – Oliver Street Elementary School
- Paterson – Marshall & Hazel Elementary School
- Paterson – PS Number 16 Elementary School
- West New York – Harry L. Bain Elementary School

Implementation

SDA's 2011 Project Portfolio:

- 10 Projects to advance into a Model Design Procurement, Pre-Development or Construction in 2011 to address educational priority needs in Districts.
- Identification and Advancement of Alternative Delivery Methods
- Site Visit Program to Investigate Conditions & Validate Needs
- Completion of the current Emergent Projects and identification of future projects (allocation of \$100 million to fund future emergent projects)
- Complete Active Construction Projects in SDA Districts
- Pursue Project Close-Out for 94 completed capital projects
- Administer the Grants Program for Regular Operating Districts (1,155 grants) and complete SDA managed projects in the Regular Operating Districts
- Environmental and Errors & Omissions Cost Recovery Pursuit



Educational Prioritization of School Facilities Projects

FOR SDA 2008 CAPITAL PLAN REASSESSMENT

Prepared by the New Jersey Department of Education, Office of School Facilities

2008 CAPITAL PLAN REASSESSMENT

Inter-District Educational Rating Criteria

In accordance with N.J.S.A. 18A-7G-5m, the following describes the educational rating criteria used by the New Jersey Department of Education to prioritize projects funded in the New Jersey Schools Development Authority's (SDA) 2008 Capital Plan or proposed in district Long Range Facilities Plans. The purpose of the Department's review is to ensure that funded projects are responsive to current educational priorities and are an appropriate use of available funding. Project ratings are based on information developed in the "Educational Facilities Needs Assessment" for each district. Non-educational issues, such as current project status, funds expended, project costs, land acquisition needs, and logistical and construction considerations, are being considered separately by the SDA. The findings of the Department's educational assessment and the SDA analysis will be jointly considered in the final prioritization and recommendations.

The proposed methodology for the educational ranking of projects is similar to that utilized for the prior prioritization:

- A rating "point system" is applied to each project based on specific criteria. Projects with a higher number of total points are considered the most educationally needed.
- The rating criteria are designed to be as objective as possible and utilize readily available information. Existing rather than projected enrollments are used to assess overcrowding. Educational adequacy is measured by compliance with the Facilities Efficiency Standards (FES). The building condition assessment is primarily based on age and completed renovations.
- The rating criteria highlights the most deficient conditions since each project included in the analysis addresses facilities needs worthy of consideration. Therefore, a low score for a project should not be interpreted as indicating that the project is not needed. Rather, it indicates that higher scoring projects address more severely deficient conditions.
- Overcrowding remains the most weighted criteria.

Major changes to the previous educational prioritization criteria are as follows:

- All potential projects included in a district's approved LRF that are consistent with the findings of the district's Educational Facilities Needs Assessment are considered rather than just those identified as priorities by the school districts or included in the SDA's Capital Plan.
- No additional consideration is given to specific school types or grade levels for overcrowding. Therefore, unlike the previous prioritization, an early childhood center or elementary school does not receive more rating points than a high school, for example, if equally overcrowded.
- District school buildings are assessed for general condition that includes building age, prior renovations, and FES compliance rather than just building age as in the prior assessment.
- The number of district students accommodated in appropriate, FES compliant buildings is used to assess the extent of district needs rather than LRF completion.
- Criteria concerning the efficient use of available buildings and capacity have been added.
- The use of temporary classroom units (TCUs) and annex buildings are no longer considered separately since their use does not necessarily imply that a district is overcrowded or has inadequate facilities. Instead, their use is considered within the other rating categories.

OVERVIEW OF RATING CRITERIA

A comparison between the rating categories and total available “rating points” used for the 2008 Capital Plan and those proposed for the reassessment is provided below, followed by detailed descriptions of the proposed criteria.

2008 Capital Plan Prioritization		2010 Capital Plan Reassessment	
Ranking Category (25 points maximum)	Percentage of Maximum Points	Ranking Category (18 points maximum)	Percentage of Maximum Points
Overcrowding (5 pts. max.)	20%	Overcrowding (6 pts. max.)	33%
Preschool (4 pts. max.)	16%	FES Compliance (5 pts. max.)	28%
Temporary and Annex Buildings (4 pts. max.)	16%	School Building Quality (4 pts. max.)	22%
Building Age (4 pts. max.)	16%	Efficiency/Misc. (3 pts. max.)	17%
Misc. Building Considerations (2 pts. max.)	8%		
LRFP Completion (2 pts. max.)	8%		

District-Wide Overcrowding

(6 potential points; 33% of total potential points)

Existing overcrowding is assessed on a district-wide basis with the capacities of all district schools serving the same grades as the proposed project added together and compared to current enrollments. The criteria highlight the most severe cases of overcrowding in which every seat in every school is utilized, regardless of operational impediments such as school sending areas and bussing that may hinder full capacity utilization.

School capacities are based on the Facilities Efficiency Standards (FES) capacity calculation methodology for grades PK-5 and the “District Practices” capacity calculation methodology for grades 6-12. The FES capacity calculation methodology only includes district-owned preschool, kindergarten, general, and self-contained special education classrooms in the capacity calculations. This methodology is appropriate for elementary schools since instruction is non-departmentalized or “homeroom” based. District practices capacity allows select specialized classrooms, such as science labs, to be added to the capacity calculations for middle and high schools. Since each district has discretion in assigning capacity to specialized classrooms in its LRFP, the Department reviewed and recalculated capacity as needed to provide consistency among districts. This includes considering select middle school science labs and select high school science, technology education, physical education, vocational, and visual and performing arts classrooms capacity-generating regardless of whether indicated as such by the district in its LRFP.

A capacity utilization factor in accordance with the FES is included in the calculations. A 90% capacity utilization rate is applied to classrooms serving grades K-8. An 85% capacity utilization rate is applied to classrooms serving grades 9-12. A capacity utilization factor is not applied to preschool classrooms. Class size for all capacity calculations is based on the FES and is prorated for undersized classrooms. (*“Functional Capacity,” which determines “Unhoused Students” for potential State support for school facilities projects, is not used in this analysis.*)

A proposed project can receive up to six points for overcrowding and related considerations:

- **Existing overcrowding in grades served:** One point if the proposed project serves grades for which current district-wide enrollments exceed existing district-wide capacity.
- **5% or greater overcrowding in grades served:** One additional point if the proposed project serves grades for which current district-wide enrollments exceed existing district-wide capacity by more than 5%.
- **10% or greater overcrowding in grades served:** One additional point if the proposed project serves grades for which current district-wide enrollments exceed existing district-wide capacity by more than 10%. Since a 90% capacity utilization factor is applied to schools serving grades K-8, districts with a capacity deficiency greater than 10% are operating beyond maximum school capacity for these grades based on the number of district-identified general classrooms. High schools, whose capacities incorporate an 85% utilization rate, likely have scheduling difficulties and larger class sizes if 10% or higher overcrowding is identified.
- **15% or greater overcrowding in grades served:** One additional point if the proposed project serves grades for which current district-wide enrollments exceed existing district-wide capacity by more than 15%. Districts with a capacity deficiency of 15% or higher are operating beyond maximum school capacity. Current enrollments are likely accommodated through increased class sizes, the elimination of specialized classrooms, compromised program delivery, and/or temporary or leased facilities.
- **10% or greater district-wide overcrowding:** One point if current enrollments exceed total existing capacity for grades PK-12 by 10% or more. This gives additional consideration to districts that cannot relieve overcrowding by changing school grade alignments to utilize available capacity.
- **Increasing 3-year enrollments in grades served:** One point if enrollments in the grades served by the proposed project increased by 3% or more over the last three years. Although projected enrollments are not considered in this analysis due to their subjective nature, consideration is given to districts experiencing sustained growth trends.

FES Compliance

(5 potential points; 28% of total potential points)

FES compliance in terms of square feet per student, classroom size, and school size is considered for the grade groups served by the proposed project. The analysis considers current enrollments and existing district-owned instructional buildings that are in service or that can return to service without significant renovation. Lack of compliance indicates educationally inadequate buildings that may be overcrowded and/or lack appropriate instructional spaces. FES compliance rating criteria also give consideration to districts that have sacrificed specialized instructional and administrative spaces to increase capacity for enrollment demands. For example, if a district eliminated art, music, and other specialized classrooms in its elementary schools to create additional capacity-generating classrooms, it may not receive rating points for overcrowding but would gain points for FES deficiencies.

A proposed project can receive up to five points for FES compliance issues:

- **District-wide square feet per student is less than the FES for grades served:** One point if total district square feet per student for the grades served by the proposed project, based on current enrollments and including district-owned buildings or long-term leases, is less than that prescribed by the FES.
- **25% or more students in schools providing less square feet per student than the FES for grades served:** One point if 25% or more of district students for the grades served by the proposed project are accommodated in facilities that provide less square feet per student than prescribed in the FES.
- **50% or more students in schools providing less square feet per student than the FES for grades served:** One additional point if 50% or more of district students for the grades served by the proposed project are accommodated in facilities that provide less square feet per student than prescribed in the FES. This weights projects in districts in which the majority of students in a particular school type are educated in non-FES compliant facilities.
- **Majority of students in undersized classrooms:** One point if at least half of a district's students are taught in schools with general classrooms sized at least 10% less than the FES for the grades served in the proposed project.
- **Proposed school capacity equal to or greater than FES:** One point if the proposed project minimally provides the school capacity prescribed in the FES (early childhood center = 294; elementary school = 460; middle school = 675; combined elementary/middle = 689; high school = 900). This gives consideration to school projects that are efficiently sized and impact a significant student cohort.

Quality of School Buildings

(4 potential points; 22% of total potential points)

General building conditions are assessed to prioritize projects in districts that have a substantial number of students in aged, educationally inadequate facilities. Given the limitations of existing building data and time constraints that prevent comprehensive field surveys, the building condition assessment uses building age as a starting point and then factors in FES compliance and completed renovations to broadly assess the quality of each school building.

District schools were classified, in order from best to worst condition, as "appropriate," "marginal," or "questionable" in each district's Educational Facilities Needs Assessment. Criteria for the three classifications are as follows:

- **Appropriate facilities**
 - ✓ Constructed or major renovation within last 30 years (1980-present)
 - ✓ FES compliant (minimum square feet per student provided; average general classroom size within 10% of FES prescribed size)

- **Marginal facilities**
 - ✓ Majority of building less than 60 years old (1950-present) with no major renovation since original construction
 - ✓ Not FES compliant (less square feet/student than FES; average general classroom undersized by more than 10%)

OR

 - ✓ Majority of building between 31-100 years old (1910-1979) with no major renovation since original construction
 - ✓ FES compliant (minimum square feet per student provided; average general classroom size within 10% of FES prescribed size)

- **Questionable facilities**
 - ✓ Majority of building more than 60 years old (1949 or earlier) with no comprehensive renovation
 - ✓ Not FES compliant (less square feet/student than FES and/or average general classroom undersized by more than 10%)

OR

 - ✓ Majority of building more than 100 years old with no comprehensive renovation

OR

 - ✓ Building provides at least 25% less square feet per student than prescribed in the FES based on current school enrollments

The rating criteria for building quality prioritize projects in districts with the worst overall facilities conditions. A proposed project can receive up to four points based on building quality:

- **Majority of PK-12 students in marginal or questionable facilities:** One point if 50% or more of all district students are accommodated in buildings that have been determined to be marginal or questionable per the previously described criteria.
- **Majority of students in marginal or questionable facilities for grades served by project:** One point if 50% or more of district students in the grades served by the proposed project are accommodated in buildings that have been determined to be marginal or questionable per the previously described criteria.
- **Proposed project addresses “questionable” facilities:** One point if completion of the proposed project allows a building determined to be of questionable quality to be taken offline or improved by the proposed project.
- **Majority of district square footage is more than 60 years old without major renovation for grades served by project:** One point if the proposed project serves grades for which 50% or more of the total district square footage was constructed more than 60 years ago and has not been comprehensively renovated or educationally updated.

Efficiency

(3 potential points; 17% of total potential points)

Consideration is given to district use of available capacity and whether a proposed project allows more efficient operations in terms of the number of school buildings or indirectly addresses deficiencies in other school(s). A proposed project can receive up to three points based on the following considerations:

- **At least 90% of all available district capacity is utilized after project completion:** One point if the district will use at least 90% of all available capacity after the proposed project is completed based on current enrollments.
- **School grade alignments efficiently utilize existing facilities:** One point if a change in school grade alignments will not reduce construction needs. This gives consideration to districts who utilize all available capacity. *(For example, a district would receive a rating point for a proposed elementary school project if the middle schools do not have surplus capacity to accommodate one entire grade from the elementary schools.)*
- **Project addresses overcrowding in other grades through existing school reassignment:** One point if completion of the proposed project allows an existing building to be reassigned to other grades that are overcrowded and/or have facilities that are not FES compliant, thereby addressing facilities deficiencies in more than one school type. This gives consideration to new construction projects that allow an existing building to be reassigned to other, often more appropriate grades that are overcrowded regardless of whether the project itself directly addresses overcrowding in the grades served. *(For example, one point if a proposed new middle school project allows an existing, educationally inadequate, middle school to be reassigned to elementary school grades in a district that has elementary school overcrowding.)*

2010 CAPITAL PLAN REASSESSMENT

SDA Rating Criteria

The following describes the rating criteria used by the New Jersey Schools Development Authority to review projects identified for inclusion in a reformulated Capital Plan. In accordance with N.J.S.A. 18A-7G-5m, upon the New Jersey Department of Education's (DOE) determination of educational priority ranking of school facility projects in SDA districts, the Schools Development Authority shall establish a Statewide strategic plan to be used in the sequencing of projects based upon the projects' educational priority rankings and issues which impact the SDA's ability to complete the projects, including, but not limited to, the construction schedule and other appropriate factors.

As a first step toward development of a Statewide strategic plan, the SDA has developed rating criteria to identify projects which represent the most efficient and effective use of available funding. The rating criteria are intended to evaluate the projects advanced by DOE as to the most efficient use of public funds.

The proposed methodology for the SDA ranking of projects is similar to that utilized by the Department of Education for the educational prioritization:

- A rating "point system" is applied to each project based on specific criteria. Projects with a higher number of total points are considered to represent a more efficient use of funds and more appropriate for advancement.
- The rating criteria are designed to be as objective as possible and utilize readily available information.
- As the DOE rating criteria identifies projects which represent the greatest educational need, the SDA point ratings identify which of those projects also represent a more efficient use of available funds. Since each project included in the analysis represents a high priority educational need as identified by DOE and is worthy of consideration, a lower overall score for a project should not be interpreted as indicating that the project is not needed. Rather, a lower score indicates that other higher scoring projects represent a greater educational need and a more efficient use of available funds.

The SDA rating criteria considers and accounts for a number of factors which together contribute toward efficiencies in program and project delivery. While efficient use of available capital funds is chief amongst these, consideration has also been given to factors which impact the efficiency of the schools construction program. The SDA rating categories account for these considerations and encompass the following:

- **Efficient Response to Educational Need – Total Points: 3**
How efficiently the proposed project responds to the identified educational need is evaluated by three metrics:
 - Design Net to Gross Ratio: *the ratio of the approved program area (instructional and support areas) to the gross square footage of the building (including hallways, toilets, storage areas, mechanical rooms etc). SDA Planning allowance for this ratio is 1.50%.*
 - Does not meet SDA Planning Allowance (over 1.50%) = 0
 - Meets SDA Planning Allowance (1.50 up to 1.425%) = 0.5
 - More Efficient than SDA Planning Allowance by 5% or more (1.425 or less) = 1.0

If the proposed project does not meet the SDA Planning Allowance, would redesign result in net improvement? If "No" then 0.5 point may be awarded to recognize that the present design is as efficient as possible.

2010 CAPITAL PLAN REASSESSMENT

SDA Rating Criteria

- Building Construction Costs per Square Foot: *planning amounts for costs per square foot are general conservative estimates that are reflective of sound cost efficient building practices.*

Does not meet SDA Planning Allowance = 0

Meets SDA Planning Allowance = 0.5

More Efficient than SDA Planning Allowance by 5% or more = 1.0

If the proposed project does not meet the SDA Planning Allowance, would redesign result in net improvement? If “No” then 0.5 point may be awarded to recognize that the present design is as efficient as possible.

- Have alternate and more efficient approaches to addressing the educational need been considered?

Yes = See next question

No = 0

If “yes”, was the proposed project found to be more cost effective than the alternate option(s)?

Yes = 1

No or Not yet Known = 0

If a partially completed feasibility study exists or if other evaluative factors are in process that indicate efficiencies in pursuit then 0.5 point may be awarded. If no point is obtained for this metric and the proposed project garners sufficient points in the SDA Rating Criteria to proceed onto the reformulated Capital Plan, this question must be adequately addressed as part of advancement. If a more efficient and viable solution is identified, that solution must be evaluated for modification to the capital plan.

▪ **Efficient Use of Public Funds – Total Points: 3**

How well the proposed project represents an efficient use of funds as authorized by P.L. 2008, c. 39 (NJSDA’s New Funding Legislation) is evaluated by two metrics:

- Total Costs to Complete per Student as compared to the median of projects evaluated.

Greater than the Median Cost per Student (1.05% of median or greater) = 0

Median Cost per Student (\pm 5%) = 0.5

Less than the Median Cost per Student (95% of median or less) = 1.0

- Total Project Cost

Greater than \$100 Million = 0

Greater than \$75 Million and less than \$100 Million = 0.5

Greater than \$50 Million and less than \$75 Million = 1.0

Greater than \$25 Million and less than \$50 Million = 1.5

Less than \$25 Million = 2.0

2010 CAPITAL PLAN REASSESSMENT

SDA Rating Criteria

- **Construction Schedule Factors – Total Points: 4**

How do construction schedule related factors align with the efficient use of public resources is evaluated by three metrics:

- Current Land Acquisition Status
 - Pending = 0
 - In Progress = 0.5
 - Complete or Not Required = 1.0

- Evaluation of Site & Environmental Risk Factors *(see the following detail)*
Based on established SDA criteria for evaluating the relative degree of uncertainty or risk associated with existing site and environmental conditions, projects are evaluated as follows
 - Not Yet Identified or No Data Available for Evaluation = 0
 - Site Identified, Moderate Risk = 0.5
 - Site Identified, Minimal Risk = 1.0
 - Site Identified, Low Risk = 1.5

- Degree of Certainty as Aligned with Construction Schedule
Understanding that with the further advancement of a projects concept and design, costs and design efficiencies are less likely to change and represent a more accurate depiction of the ultimate final project costs.
 - Obtained Pre-Development Approval = .5
 - Obtained Schematic Design Approval = 1.0
 - Obtained Final Educational Adequacy Approval = 1.5

OVERVIEW OF RATING CRITERIA

SDA Rating Criteria	
Ranking Category (10 points total)	Percentage of Potential Points
Efficient Response to Educational Need (3 points)	30%
Efficient Use of Public Funds (3 points)	30%
Construction Schedule Factors (4 points)	40%

2010 CAPITAL PLAN REASSESSMENT

SDA Rating Criteria**Evaluation of Site & Environmental Factors**

The assessment process was performed by completing a review of the list of schools provided by the DOE. The objective was to evaluate the potential risk associated with the demolition, past usage, environmental and site development. This evaluation examined each project utilizing the criteria below with a maximum total of 19 points. Projects were then assigned up to 1.5 points for the overall SDA Rating Criteria based on the following ranges:

Not Yet Identified or No Data Available for Evaluation = 0
 Site Identified, Moderate Risk (scored less than 65% of total points) = 0.5
 Site Identified, Minimal Risk (scored between 65% and 80% of total points) = 1.0
 Site Identified, Low Risk (scored 80% of total points or higher) = 1.5

Demolition

Demo Complete: Site demolition 100% complete including buildings, foundations and all known structures.

Special Demo/Disposal: Demolition that has the potential to increase project risk.

Past Usage

Undeveloped: Farmland, wooded or undisturbed property.

Residential/School (low): Current or former single family, multi-family, apartment buildings or educational facilities.

Mixed Use/Commercial (med): Multi-use sites containing a combination of residential, commercial, office and/or retail space.

Industrial/High Hazard /Unknown (high): Industrial, manufacturing, fueling facilities, landfills or sites with high potential for unforeseen conditions.

Environmental Investigation

PA/SI: Completed Preliminary Assessment and/or Site Investigation.

RAWP: Remedial Action Work Plan has been submitted to the DEP defining the corrective action.

RAR Sub/NFA Issued: Remedial Action Report submitted or a No Further Action Letter issued by the DEP.

Property Restrictions (DN/CEA): Known or anticipated Engineering Control and Deed Notice or Classification Exception Area required for partial or entire site.

Regulatory Land Use Conflicts: Known or anticipated land use conflicts that limit or restrict site development such as wetlands or endangered species.

Historical Preservation Required: Requirement to document, retain or preserve historical elements.

Remediation Risk

Low: Total estimated remediation exposure less than \$500 K.

Medium: Total estimated remediation exposure greater than \$500 K but less than \$1.5 M.

High: Total estimated remediation exposure greater than \$1.5 M but less than \$3.0 M.

Extreme: Total estimated remediation exposure in excess of \$3.0 M.

2010 CAPITAL PLAN REASSESSMENT

SDA Rating Criteria

Evaluation of Site & Environmental Factors (continued)

Site

Utilities Impacts:	Extraordinary impacts associated with utility service runs, connections or upgrades associated with the project.
Drainage Concerns:	Extraordinary engineered storm water measures impacting layout and construction.
Offsite Improvements:	Improvements to publicly owned facilities requiring upgrade as a result of site generated impacts such as highway ramps and traffic improvements.
GeoTechnical Concerns:	Poor soil quality or unsuitable fill material impacting construction.
Ground Water Concerns:	Shallow ground water elevation impacting construction.
Foundation Concerns:	Extraordinary foundation considerations such as the use of piles, caissons or mat foundations.

Resolution – 4ai.**Resolution Approving SDA Capital Program
2012 Advancement Portfolio**

WHEREAS, the New Jersey Schools Development Authority (“SDA” or “the Authority”) was established by law pursuant to P.L.2007, C.137 (N.J.S.A. 52:18A-235 et. seq.) as an entity “in but not of” the New Jersey State Department of the Treasury; and

WHEREAS, P.L. 2007, C. 137 (N.J.S.A. 52L18A-235 et seq. or “the Authority’s enabling legislation”) provides that “(SDA) shall establish a Statewide strategic plan to be used in the sequencing of SDA district school facilities projects based upon the projects’ educational priority rankings and issues which impact the development authority’s ability to complete the projects including, but not limited to, the construction schedule and other appropriate factors”; and

WHEREAS, the Authority’s enabling legislation establishes certain statutory principles to which the Authority must adhere in establishing a strategic capital plan; and

WHEREAS, such principles include the establishment of a Statewide educational priority ranking, a Statewide strategic plan, the sequencing of projects and a requirement that such plan be revised at least once every five years; and

WHEREAS, in June 2010, a Capital Plan Review Team (“the Review Team”) was formed via an Interagency Working Group with the charge to present recommendations for a reformulated program; and

WHEREAS, the Review Team was comprised of staff members from the Authority and the State Department of Education (DOE) who created prioritization criteria addressing certain 2010 State Auditor findings and reflecting both current educational priorities and factors relating to the most efficient use of public funds; and

WHEREAS, the Board has approved the methodology and approach and recommendations presented by the Review Team and SDA executive management for consideration and deemed same consistent with the statutory requirements and previous guidance of the State Auditor; and

WHEREAS, the Review Team communicated with the local districts and cultivated information on facilities conditions and analyzed and assessed projects, as appropriate in the districts’ long range facilities plans; and

WHEREAS, the Review Team ranked potential projects in accordance with the DOE educational rating criteria and then evaluated them for efficient construction and cost factors; and

WHEREAS, such factors, combined with the districts' identified priorities were intended to serve as the basis for the SDA's 2011 Statewide Capital Program as well as Statewide Prioritization Programs to follow on a rolling basis; and

WHEREAS, SDA executive management recommends approval of the 2012 Capital Program, as set forth in the materials presented to the Board on this date and incorporated herein, as consistent with the statutory criteria and in accordance with the methodology previously approved by the Members of the Authority; and

WHEREAS, in 2011, a review was conducted of facilities condition information submitted by the districts; and

WHEREAS, on the basis of the facilities condition review, SDA executive management recommends that the 2012 Advancement Portfolio further include identified projects that address serious facilities deficiencies.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby authorizes and approves for advancement the Authority's 2012 Capital Program, along with projects that address serious facility deficiencies, as presented by executive management and consistent with the materials presented to the Board on this date.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: SDA Capital Program Report, 2012 Advancement Portfolio, dated March 7, 2012

Dated: March 7, 2012

CHAIRMAN'S REPORT

REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE -CHAIRMAN'S REPORT

OPERATING AUTHORITY



STATE OF NEW JERSEY

SCHOOLS DEVELOPMENT AUTHORITY

1 WEST STATE STREET
P.O. BOX 991
TRENTON, NJ 08625-0991
609-943-5955

TO: Members of the Authority

FROM: Susan Pacuta, Director
Division of Program Assessment and Development

RE: Operating Authority by Levels – Proposed Modification

DATE: March 7, 2012

The school construction program enacted under the “Educational Facilities Construction and Financing Act,” P.L.2000, c.72, and the “Schools Development Authority Act,” P.L. 2007, c. 137 establishes a comprehensive agenda for the planning and predevelopment activities associated with the design, construction and renovation of schools throughout the State.

In order to effectively execute these responsibilities, the By-Laws of the Authority, most recently adopted on August 15, 2007, established that the Board “shall designate by resolution those individual members, officers, employees (or any combination thereof) who shall be authorized (either generally or in specific transactions) to approve contracts and to execute documents legally binding on the Authority, or to sign checks and disbursements on behalf of the Authority.”, commonly referred to as Operating Authority. The current Operating Authority was most recently modified in December 2010.

At the request of the School Review Committee, the Division of Program Assessment and Development (“Division”) reviewed the Operating Authority by Level and revised the requisite Levels of Approval required for credit change orders and amendments. Additionally, nonuse or underutilization of allowances has been separated from the credit process. The Division also changed the Operating Scope of the Professional Services procurement activities to properly reflect the statutory bid threshold for advertisement set by the State Treasurer pursuant to N.J.S.A. 52:34-7b (\$36,000 as of 1/11/2012). The analysis and proposed modifications were presented to Senior Management who refined the recommendations which are presented herein as proposed modification to the Operating Authority.

The modifications proposed provide appropriate financial controls, accountability and transparency of action. For the Committee’s consideration, modifications to text are in red font. Cells or rows reflecting changes to or new scopes of work are yellow highlighted. In this action, the Members are asked to support the proposed modification to the Operating Authority’s Operating Levels of approval for Operating Scopes attached hereto, to be presented to the Members of the Board at the March Board Meeting.

/s/ Susan Pacuta

Attachments: Operating Levels

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE

**New Jersey Schools Development Authority
OPERATING AUTHORITY BY LEVEL**

Explanation of Operating Levels -- Titles Within Levels, By Operating Office and Division							
NJSDA Divisions/Units	Level 1	Level 2	Level 3	Level 4	Level 5*	Level 6	Level 7 Members of the Authority
Office of Chief Executive Officer						Chief Executive Officer	
Office of Chief of Staff Divisions of: Special Projects; Program Assessment and Development				Div. Special Projects: Director Div. Pt. Assessment & Devel: Director	Chief of Staff		
Office of Program Operations Divisions of: Program Operations; Safety & Compliance; Capital Planning & Grants Administration	Div. Capital Planning & Grants Administration Analyst	Div. Program Operations: Manager/Officer Div. Capital Planning & Grants Administration Sr. Analyst	Div. Program Operations: Deputy Program Director Div. Capital Planning & Grants Administration Program Manager	Div. Program Operations: Program Operations Director Div. Safety & Comp: Program Operations Director Div. Cap. Planning & Grants Admin: Program Operations Director	Vice President		
Office of Corporate Governance and Operations Divisions of: Chief Counsel; Human Resources; Project Services & MIS; Communications		Div. Chief Counsel: Associate Counsel Div. Human Resources: Manager HR Specialist	Div. Chief Counsel: Assistant Counsel Div. Human Resources: Sr. Manager Div. Project Services & MIS: (Sr.)Manager Div. Communications:	Div. Chief Counsel: Senior Counsel Div. Human Resources: Senior Director Div. Project Services & MIS: Managing Director Div. Communications: Director	Vice President		
Office of the Chief Financial Officer Divisions of: Controller; Contract Management; Real Estate Services; Procurement; Risk Management & Vendor Services	Div. Controller: Div. Contract Management: Div. Real Estate Services: Div. Procurement: Div. Risk Mgmt. & Vendor Services:	Div. Controller: Div. Contract Management: Sr. Cost Engineer Div. Real Estate Services: Div. Procurement: Div. Risk Mgmt. & Vendor Services: Analyst/Sr. Analyst	Div. of Controller Sr. Manager Div. Contract Management: Deputy Director Div. Real Estate Services: Manager Div. Procurement: Manager Div. Risk Mgmt. & Vendor Services: Specialist	Div. Controller: Controller Director Div. Contract Management: Director Div. Real Estate Services: Director Div. Procurement: Director Div. Procurement: Senior Director Div. Risk Mgmt. & Vendor Services: Director	Chief Financial Officer & VP		
Note: there are two Vice Presidents within The Office of Program Operations — one VP signature is required							

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE

**New Jersey Schools Development Authority
OPERATING AUTHORITY BY LEVEL**

Contracts for Professional Services Consultants and/or for Goods and Services - Competitive Processes							
For the procurement and award of contracts for professional services including architectural, engineering, land surveying and other licensed/certified professionals. For the procurement and award of contracts for goods and services.							
Operating Scope	Operating Levels						
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
Professional Services	Approvals for Levels 1, 2, 3 and 4 must be staff from the Office of the Chief Financial Officer unless otherwise noted.						
(Advertisement not required) Compensation Less Than or Equal To \$29,000 the statutory bid threshold set by the State Treasurer pursuant to N.J.S.A. 52:34-7b (\$36,000 as of 1/11/2012)			With an award that does not exceed the estimate within the most recently approved Project Charter, co-approval with Level 4 or higher	With an award that does not exceed the estimate within the most recently approved Project Charter, co-approval with Level 5 or higher	With an award amount exceeding the estimate within the most recently approved Project Charter by less than 10%, co-approval with Level 6 required	With an award amount exceeding the estimate within the most recently approved Project Charter by less than 10%, co-approval required	
Compensation Greater Than the statutory bid threshold set by the State Treasurer pursuant to N.J.S.A. 52:34-7b (\$36,000 as of 1/11/2012)					Co-approval with Level 6 for Contracts with an award amount less than \$100,000	Co-approval required for contracts less than \$100,000	Board approval required for Contracts with an award amount greater than \$100,000
For the award of any design agreement with both predevelopment and design services							Board approval required Board notification of second phase Authorization to Proceed required
Waiver of advertisement due to public exigency					With an award amount of any value, co-approval with Level 6, and with notification to the Board	Co-approval required	Board ratification required at the next subsequent meeting
Waiver of advertisement for procurement awards for professional services and/or goods and services available through existing NJ State, GSA or other Governmental Contracts				With a contract amount less than \$100,000 co-approval with Level 5 or higher	With a contract amount less than \$100,000 co-approval with Level 4 or higher ----- With a contract amount from \$100,000 to \$250,000 co-approval within Level 5 ----- With a contract amount from \$250,000 to \$500,000 co-approval with Level 6	With a contract amount less than \$100,000 co-approval with Level 4 With a contract amount less than \$500,000 co-approval with Level 5	Board approval required for contract amount greater than \$500,000
Title Insurance Appraisers				With recommendation of Program Operations Director, co-approval with Level 5 for expenses of \$50,000 or less	With recommendation of Program Operations Director, co-approval within Level 5 or with Level 6 for expenses of \$100,000 or less	Co-approval	Board approval required for expenses greater than \$100,000
Experts - Consultation with Counsel and Division of Law required							Board approval required

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE

**New Jersey Schools Development Authority
OPERATING AUTHORITY BY LEVEL**

Operating Scope	Operating Levels						
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
Professional Services	Approvals for Levels 1, 2, 3 and 4 must be staff from the Office of the Chief Financial Officer unless otherwise noted.						
Goods and Services Contracts with no assigned dollar value							Board approval required.
Construction Management Contracts					Co-approval with Level 6 for Contracts with an award amount less than \$100,000	Co-approval required for contracts less than \$100,000	Board approval required for Contracts with an award amount greater than \$100,000
Sole Source Procurement - In accordance with Executive Order 37 (Corzine)							Board Approval Required
Execution of Professional Services, Goods and Services and/or Construction Management Consultant Contracts (after receipt of requisite approvals, including review by the Division of Chief Counsel)				May singularly execute contracts resulting from a competitive bidding process and approved by Level 5	May singularly execute	May singularly execute	
Termination of Professional Services, Goods and Services and/or Construction Management Consultant Contracts for cause and/or convenience				After review and approval by the Division of Chief Counsel, Director from the Office of Program Operations may co-approve the termination of Contracts/Agreements	After review and approval by the Division of Chief Counsel, the VP of Program Operations may co-approve the termination of Contracts/Agreements	After review and approval by the Division of Chief Counsel, CEO may co-approve the termination of Contracts/Agreements	Board notification required at the next subsequent Board Meeting for the termination of any Contract/Agreement (monthly report)
Delegation of Approval of Final Agency Action of Procurement Appeals and Bid Protests					VP of the Office of the CFO may singularly sign Final Agency Action after consultation with Division of Chief Counsel		
<p>The Members of the Board may request approving any contract award at the Project Charter approval stage.</p> <p>A monthly report to the Board of Directors listing all executed contracts for Professional Services is required.</p> <p>A monthly report to the Board of Directors listing all terminated Professional Services contracts and/or agreements is required.</p> <p>A monthly report to the Board of Directors listing all executed contracts with state, GSA and governmental agencies is required.</p>							

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE

**New Jersey Schools Development Authority
OPERATING AUTHORITY BY LEVEL**

Change Orders/Construction Change Orders							
Notification to the Cost Recovery Operating Unit is required for Change Order requests over \$75,000							
Contract Management Division approval is required for Change Order requests over \$100K \$75,000							
Contract Management Division approval is required for any Change Order impacting schedule							
Note: Project Budget Manager of each Project Team must verify the availability of funds prior to the construction change recommendation							
Operating Scope Change Orders	Operating Levels						
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
Contract Management Division must approve any change order greater than \$75,000. CEO notification is required for any time extension exceeding 30 days, or any time extension impacting school occupancy date.							
EMERGENT PROJECT, SDA-managed: Change Order or a Credit Change Order which singularly does not exceed the lesser of \$250,000 or 10% of the contract value		Not exceeding \$10,000: Co-approval with Level 3 or 4	Not exceeding \$25,000: Co-approval with Level 4	Co-approval with Level 5 or 6	Co-approval	Co-approval	Board approval required for any change order or credit change order which singularly exceeds \$250,000 or 10% of the contract value Delegation of approval to the CEO for values less than \$10,000
Credit Change Order - all projects		Which singularly does not exceed \$25,000 or 10% of the contract value, co-approval with Level 3 or 4	Which singularly does not exceed \$75,000 or 10% of the contract value, co-approval with Level 4	Which singularly does not exceed \$500,000 or 10% of the contract value,co-approval with Level 5 or Level 6	Co-approval	Co-approval	Board approval required for any credit change order which singularly exceeds \$500,000 or 10% of the contract value Delegation of approval to the CEO for credit values that do not exceed \$100,000
De-obligation of funds due to unspent or underspent allowance provisions				Co-approval with Level 5 or 6	Co-approval with Level 4 or 6	Co-approval	
Change Order or a Credit Change Order which singularly does not exceed \$25,000		Co-approval with Level 3 or 4	Co-approval	Co-approval	Co-approval	Co-approval	
Change Order or a Credit Change Order which singularly does not exceed \$150,000 CMD review and approval required for requests exceeding \$75,000		Recommendation required	Co-approval with Level 4	Co-approval	Co-approval	Co-approval	
Change Order or a Credit Change Order which singularly does not exceed \$250,000 CMD review and approval required for requests exceeding \$75,000		Recommendation required	Co-approval with Level-4- 5 required	Co-approval with Level 5 required	Co-approval required	Co-approval	
Change Order or a Credit Change Order which singularly does not exceed the lesser of \$500,000 or 10% of the contract value CMD review and approval required for requests exceeding \$75,000		Recommendation required	Recommendation required	Recommendation required	VP of Program Operations co- approval with Level 6 required	Co-approval required	

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE

**New Jersey Schools Development Authority
OPERATING AUTHORITY BY LEVEL**

Change Orders/Construction Change Orders
Notification to the Cost Recovery Operating Unit is required for Change Order requests over \$75,000
Contract Management Division approval is required for Change Order requests over \$100K \$75,000
Contract Management Division approval is required for any Change Order impacting schedule

Note: Project Budget Manager of each Project Team must verify the availability of funds prior to the construction change recommendation

Operating Scope Change Orders	Operating Levels						
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
Change Order or a Credit Change Order which singularly exceeds \$500,000 <u>or</u> singularly or in aggregate is greater than 10% of the contract value CMD review and approval required for requests exceeding \$75,000			After review and approval by the Contract Management Department, recommendation required	After review and approval by the Contract Management Department, recommendation required	After review and approval by the Contract Management Department, recommendation required		Board approval required
Any change order valued at less than \$10,000 yet requiring Board Approval							Delegation to the CEO, monthly report required
Any change order impacting schedule Inter-divisional approval required from CMD/Program Operations				After review and approval by the Contract Management Department, co-approval by Program Operations Director required	After review and approval by the Contract Management Department, co-approval required	CEO notification required	
The first time a Change Order which singularly or in the aggregate exceeds 60% of the construction contingency in the most recently approved project charter (one time event) ----- For projects designated as "Emergent" The first time a Change Order which singularly or in the aggregate exceeds 60% of the construction contingency in the most recently approved project charter (one time event)				Project Review and recommendation required ----- Project Review required Co-approval with Level 5 required	VP of Program Operations co-approval with Level 6 required ----- Co-approval required	Co-approval required ----- Co-approval	
Change Order which singularly or in the aggregate exceeds: - Board-approved Project Charter contingency - CEO-approved additional contingency	After review and approval by the Contract Management Department, recommendation required	After review and approval by the Contract Management Department, recommendation required	After review and approval by the Contract Management Department, recommendation required				Board approval required

Operating Levels - any given lowest required level is expected to seek co-approval from the supervisory level of that position. Lower levels shall have approved actions prior to seeking required level approvals.

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE

New Jersey Schools Development Authority
OPERATING AUTHORITY BY LEVEL

Change Orders/Construction Change Orders
 Notification to the Cost Recovery Operating Unit is required for Change Order requests over \$75,000
 Contract Management Division approval is required for Change Order requests over \$100K \$75,000
 Contract Management Division approval is required for any Change Order impacting schedule
 Note: Project Budget Manager of each Project Team *must* verify the availability of funds prior to the construction change recommendation

Operating Scope Change Orders	Operating Levels						
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7

Monthly Reports will be provided to the Board of Directors including:
 1. Projects that are projected to exceed their Board-approved Project Charter contingency amount
 2. Projects indicating the possible compromise of an occupancy date, inclusive of recovery plan, as appropriate
 3. All approved Change Orders during the previous month.

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE

**New Jersey Schools Development Authority
OPERATING AUTHORITY BY LEVEL**

Amendments to Professional Services, Project Management or Construction Management Firm Contracts
Division of Contract Management Department shall approve *all* amendments

Operating Scope Amendments Review and approval from the Division of Contract Management Required	Operating Levels						
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7
Credit Amendment		Which singularly does not exceed \$25,000 or 10% of the contract value, co-approval with Level 3 or 4	Which singularly does not exceed \$75,000 or 10% of the contract value, co-approval with Level 4	Which singularly does not exceed \$100,000 or 10% of the contract value, co-approval with Level 5 or Level 6	Co-approval	Co-approval	Board approval required for any credit amendment which singularly exceeds \$100,000 or 10% of the contract value Delegation of approval to the CEO for credit values that do not exceed \$100,000
De-obligation of funds due to unspent or underspent allowance provisions				Co-approval with Level 5 or 6	Co-approval with Level 4 or 6	Co-approval	
Amendment or a credit amendment which singularly does not exceed \$25,000			Co-approval with Level 4	Co-approval	Co-approval	Co-approval	
Amendment or a credit amendment which singularly does not exceed \$75,000			Recommendation required	Recommendation required	Co-approval	Co-approval	
Amendment or a credit amendment which singularly does not exceed \$100,000 or 10% of the contract value				Recommendation required	Co-approval with Level 6 required	Co-approval required	
Amendment or a credit amendment which exceeds \$100,000 or 10% of the contract value				Recommendation required	With advice from Division of Chief Counsel, recommendation required by the Vice President of Program Operations		Board approval required
Operating Levels - any given lowest required level is expected to seek co-approval from the supervisory level of that position. Lower levels shall have approved actions prior to seeking required level approvals.							

RESOLUTION—5a.**Authorizing and Approving Modifications
to the SDA Operating Authority**

WHEREAS, the New Jersey Schools Development Authority (“SDA” or “the Authority”) was established by law pursuant to P.L.2007, C.137 (N.J.S.A. 52:18A-235 et. seq.) as an entity “in but not of” the New Jersey State Department of the Treasury; and

WHEREAS, pursuant to law, the Authority is authorized to “adopt bylaws for the regulation of its affairs and the conduct of its business” which bylaws were adopted by the Authority on August 15, 2007; and

WHEREAS, pursuant to Section 5.3 of the Authority’s bylaws, the Members of the Authority are required to “designate by resolution those individual members, officers, employees (or any combination thereof) who shall be authorized (either generally or in specific transactions) to approve contracts and to execute documents legally binding on the Authority, or to sign checks and disbursements on behalf of the Authority...”; and

WHEREAS, the SDA operates pursuant to an Operating Authority which sets forth Levels of Operating Authority for the SDA for various levels of transactions that involve its daily operations, and has made modifications to that Operating Authority, most recently in December 2010; and

WHEREAS, at the request of the School Review Committee, SDA staff and executive management reviewed the Operating Authority by Level and recommended revisions to the requisite Levels of Approval required for credit change orders and amendments; and

WHEREAS, the SDA staff and executive management further recommended changes to the Operating Scope of the Professional Services procurement activities to properly reflect the statutory bid threshold set by the State Treasurer pursuant to N.J.S.A. 52:34-7(b); and

WHEREAS, the proposed modifications, which have been determined to provide appropriate financial controls, accountability and transparency of action, are set forth in greater detail in materials presented to the Board on this date and incorporated herein.

NOW THEREFORE, BE IT RESOLVED, that, consistent with materials presented to the Board on this date, the Members of the Authority hereby authorize and approve revisions to the requisite Levels of Approval required for credit change orders and amendments as set forth in the SDA Operating Authority by Level.

BE IT FURTHER RESOLVED, that, consistent with materials presented to the Board on this date, the Members of the Authority hereby authorize and approve changes to the Operating Scope of the Professional Services procurement activities as set forth in the SDA Operating Authority by Level to properly reflect the statutory bid threshold set by the State Treasurer pursuant to N.J.S.A. 52:34-7(b).

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately but, pursuant to P.L.2007, C.137 (N.J.S.A. 52:18A-235 et. seq.), no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority’s meeting at which this resolution was adopted has been delivered to the Governor for his approval unless, during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon receipt of such approval.

Attached: Memorandum, Operating Authority by Levels – Proposed Modification, dated February 21, 2012
Dated: March 7, 2012

REPORT AND RECOMMENDATIONS OF THE SCHOOL REVIEW COMMITTEE

CHAIRMAN'S REPORT

HALL BUILDING CORPORATION



MEMORANDUM

TO: Members of the Authority
FROM: C. Aidita Milsted
 Program Director, Program Operations
DATE: March 7, 2012
SUBJECT: Change Order – Hall Building Corporation

COMPANY NAME: Hall Building Corporation
DISTRICT: City of Orange Township
CONTRACT NO.: ES-0008-C01
SCHOOL NAME: Lincoln Avenue Elementary School
PMF: Bovis Lend Lease
CHANGE ORDER NO.: 111
REASON: Change in Scope
AMOUNT: \$653,067.85
 (Change Order # 111 \$301,218.85 + CCD # 5 \$ 300,000.00 +
 CCD # 7 \$51,849.00)
CONTRACT STATUS: 97.8% paid to date against the current contract value
OCCUPANCY DATE: September 7, 2010

INTRODUCTION

I am writing to recommend approval by the Members of the Authority for Change Order No. 111, in the amount of \$301,218.85. Change Order No. 111 will also serve to resolve two (2) Construction Change Directives (CCDs), CCD # 5 and CCD # 7, which were issued for \$300,000 and \$51,849 respectively. The value of Change Order No. 111 is \$301,218.85, resulting in a total value for this change of \$653,067.85. Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, a change order that exceeds \$500,000 or (singularly or when aggregated) is greater than ten percent (10%) of the contract value requires approval by the Members of the Authority. The aggregate value of the change orders for this contract exceeds ten percent (10%) of the contract value.

CCDs are typically only used when the work has been verified to be a change to the base scope and one of the following two conditions are met: either the work is so urgent that it requires a directive for immediate action by the General Contractor (GC) or negotiations for a change order have failed to come to a resolution, thereby placing the work in the critical path requiring immediate direction to avoid construction delays impacting a schedule milestone, e.g. school turn-over to the district. A resolving change order is the mechanism by which the final dollar value of the CCD is determined. It

Members of the Authority
Change Order No. 111– Hall Building Corporation
City of Orange Township – Lincoln Avenue ES
March 7, 2012
Page 2 of 4

is the combined value of the CCD and the resolving change order that determines the required level of approval for the resolving change order.

The construction of this addition/renovation project is complete, with the exception of minor punch list work. The school has been occupied by the City of Orange Township District since September 7, 2010. There are nine (9) change orders presently under review and negotiation: six (6) - one of which is a credit change order - each at a dollar value under \$10,000; two (2) credit change orders to resolve issued Construction Change Directives, and one (1) time delay change order (with a GC requested value of \$423,066.94). Their resolution and the execution of Change Order No. 111 are necessary for final payment and contract closeout.

BACKGROUND

The Lincoln Avenue Elementary School project included the renovation of an existing 81,856 square foot elementary school for grades K through 8 (built in 1892 with a 1906 addition) and the construction of a 48,174 square foot two-story addition to educate 645 students.

Hall Building Corporation (HBC) was issued a Notice to Proceed (NTP) on November 14, 2007. The construction of this project, with the exception of minor punch list work, is complete and the school facility has been occupied by the City of Orange Township District since September 7, 2010.

REASON FOR CHANGE

During construction of this addition/renovation project, design revisions were needed, many related to the existing structure. The following scope modifications, consolidated in Change Order No. 111, were required: replacement of subfloors within the original structures (removal of existing finished floors during the construction phase, revealed differing subfloor types which were unsuitable for the installation of the vinyl composition tile); work performed to ensure required fire safety code compliance at several areas throughout the building (not originally included as part of construction documents); structural work including bracing of joists and reframing in the existing buildings (work was needed to achieve necessary structural requirements for new construction); masonry work associated with the building's structure and required reinforcement of the existing structures (work not included in construction documents).

Among the twenty three (23) CORs incorporated as part of Change Order No, 111, two (2) address resolution of previously issued CCDs. Both CCDs provided approval for work to be completed on a time and materials basis and included: floor repair work (originally addressed by CCD # 5 for an authorized value of \$300,000), and fire proofing work (originally addressed by CCD # 7 for an authorized value of \$51,849). When these CCDs were issued, authorization included a dollar value, which differs from current requirements that CCDs are issued for a zero dollar value. NJSDA review of submitted time and material information validated that the actual cost to perform the additional scope exceeded the values of the issued CCDs, at additional costs of \$157,492 and \$22,778 respectively.

Members of the Authority
 Change Order No. 111– Hall Building Corporation
 City of Orange Township – Lincoln Avenue ES
 March 7, 2012
 Page 3 of 4

In addition to the scope within the CCDs, and contrary to the current change order process and contract language, the work in this Change Order has been executed by HBC. Although HBC proceeded at its own risk, the work described in this Change Order was necessary for the progression of construction and code compliance in order to receive a Certificate of Occupancy. The work was completed between March 2009 and December 2010 and has been accepted by the NJSDA.

This Change Order will be forwarded to the NJSDA Special Projects Division for determination of potential recovery.

SUMMARY OF CHANGE

Approval is requested for HBC Change Order No. 111 for the Lincoln Avenue Elementary School for a total value of \$301,218.85 (See Attachment A). This Change Order represents scope modifications identified after the start of construction that have already been performed by the contractor.

All documents supporting this change order have been reviewed by the associated NJSDA project team members as well as the Program Director, Deputy Program Director and the Contract Management Division (CMD) for adherence to current NJSDA policy and procedures. All reviewing NJSDA staff members, including CMD, have determined that the change order is justified and that the amount is reasonable and appropriate.

CALCULATIONS

a. Original Contract Amount (base contract including allowances)	\$28,965,000.00
b. Approved Change Orders to Date	* \$4,093,275.23
c. Proposed Change Orders Amount	\$301,218.85
d. Total Change Orders to Date including this Change Order (Total of Line (b.) and Line (c.))	\$4,394,494.08
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	15.2%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$33,359,494.08

* This amount is inclusive of the value of CCD # 5 in the amount of \$300,000, and CCD # 7 in the amount of \$51,849.

Members of the Authority
Change Order No. 111– Hall Building Corporation
City of Orange Township – Lincoln Avenue ES
March 7, 2012
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RECOMMENDATION

The Members of the Authority are requested to approve Change Order No.111, in the amount of \$301,218.85, which will also serve to resolve CCD # 5 and CCD # 7, resulting in a total value of \$653,067.85. In accordance with the Operating Authority adopted by the Board on December 1, 2010, any change order which singularly exceeds \$500,000 or (singularly or when aggregated) with all prior approved change orders is greater than ten percent (10%) of the contract value requires approval by the Members of the Authority. When aggregated with all previously approved change orders, this Change Order exceeds ten percent (10%) of the contract value.

Recommended by:

/s/ Aidita Milsted
C. Aidita Milsted, Program Director, Program Operations

Reviewed and Recommended by: Andrew Yosha, Vice President, Program Operations
Reviewed and Recommended by: Thomas Ahern, Deputy Program Director, Program Operations
Prepared and Recommended by: Bruce Lieblich, Program Officer, Program Operations

ATTACHMENT A
Change Order No. 111 - Hall Building Corporation
City of Orange Township - Lincoln Avenue ES
March 7, 2012

NO.	CHANGE ORDER REQUEST NO.	DESCRIPTION	HBC REQUESTED \$ AMOUNT
1	28	ADDITIONAL CARPENTRY BY AUDITORIUM STAGE	\$11,312.96
2	169	EXCHANGE STANDARD SINKS TO POLYPROPYLENE	\$8,588.48
3	174	AIR TEST ON SPRINKLERS	\$1,637.00
4	186	FILL/PITCH LOCKER ROOM SHOWERS	\$6,057.00
5	194	BROKEN WINDOW REPAIRS	\$3,605.57
6	196	ADDITIONAL REGISTERS, GRILLS AND DIFFUSERS	\$3,032.00
7	197	FLOOR REPAIR AND LEVELING-RESOLVING CHANGE ORDER FOR CCD #5 (AUTHORIZED IN THE AMOUNT OF \$300,000)	\$168,828.38
8	199	FIRE PROOFING-RESOLVING CHANGE ORDER FOR CCD #7 (AUTHORIZED IN THE AMOUNT OF \$51,849)	\$23,913.00
9	208	FIRE RATED CEILING ASSEMBLIES	\$4,725.00
10	209	ADDITIONAL BRICK PATCH AND CAULKING	\$761.40
11	214	CHANGE IN SOFFIT ELEVATION DUE TO CEILING HEIGHT	\$2,329.00
12	216	ADDITIONAL CARPENTRY (BRACING, JOIST SUPPORT, REFRAMING)	\$36,296.69
13	219	REPAIRS TO FINISHES NEEDED DUE TO HVAC WATER CONDENSATION	\$22,023.55
14	222	PLUMBING CHANGES NEEDED TO ACCOMMODATE KITCHEN EQUIPMENT	\$8,511.57
15	224/226	ADDITIONAL CLEANING AND DEBRIS CONTAINER	\$3,228.00
16	225	ADDITIONAL MASONRY WORK FOR DUCT INFILL AND BLOCK OVER STEEL	\$51,927.89
17	227	NEW STAIR TREADS	\$1,033.00
18	228	REPAIRS AND ADJUSTMENTS OF STAIRWELL AND EXIT METAL DOOR HARDWARE	\$7,948.27
19	229	ADDITIONAL SURVEYOR TIME DUE TO PROJECT CHANGES	\$1,590.75
20	233	CREDIT FOR DELETION OF A PORTION OF PARKING LOT WORK	(\$16,004.00)
21	234	INSTALL ANGLE AT ELEVATOR SHAFT NEEDED TO SUPPORT ROOF DECK	\$2,761.05
22	242	CREDIT FOR ELIMINATION OF REVEAL PATTERNS IN EIFS	(\$500.00)
23	243	CREDIT FOR SCOPE REDUCTION-FINISHES AT MECHANICAL SPACES	(\$3,731.03)
			\$349,875.53
NJSDA NEGOTIATED RESOLUTION			\$301,218.85
NJSDA NEGOTIATED RESOLUTION + CCDs #5 & #7			\$653,067.85

Resolution—6a1.

COMPANY NAME: Hall Building Corporation
 DISTRICT: City of Orange Township
 CONTRACT NO.: ES-0008-C01
 SCHOOL NAME: Lincoln Avenue Elementary School
 PMF: Bovis Lend Lease
 CHANGE ORDER NO.: 111
 REASON: Change in Scope
 AMOUNT: \$301,218.85
 CONTRACT STATUS: 97.8% paid to date against the current contract value
 OCCUPANCY DATE: September 7, 2010

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) requires that a change order that exceeds \$500,000 or (singularly or when aggregated) is greater than ten percent (10%) of the contract value requires approval by the Members of the Authority;

WHEREAS, the Lincoln Avenue Elementary School project included the renovation of an existing 81,856 square foot elementary school for grades K through 8 and construction of a 48,174 square foot two-story addition to educate 645 students; and

WHEREAS, Hall Building Corporation (HBC) was issued a Notice to Proceed (NTP) on November 14, 2007 and has generally completed construction of this project which has been occupied by the City of Orange Township District since September 7, 2010; and

WHEREAS, as described in detail in the memorandum presented to the Board on this date and incorporated herein, during construction of this project, certain scope modifications, consolidated in Change Order No. 111, were required; and

WHEREAS, the work described in this Change Order, necessary for the progression of construction and code compliance in order to receive a Certificate of Occupancy, was completed between March 2009 and December 2010 and has been accepted by the SDA; and

WHEREAS, there are nine (9) change orders presently under review and negotiation as described in the memorandum presented to the Board on this date and incorporated herein; and

WHEREAS, execution of these change orders and the execution of Change Order No. 111 are necessary for final payment and contract closeout; and

WHEREAS, associated program staff and executive management recommend Board approval of Change Order No 111 in the amount of \$301,218.85, representing scope modifications identified after the start of construction that have already been performed by the contractor; and

WHEREAS, the aggregate value of the change orders for this contract exceeds ten percent (10%) of the contract value; and

WHEREAS, all documents supporting this change order have been reviewed by the associated SDA project team members as well as the Program Director, Deputy Program Director, Vice President of Program Operations and the Contract Management Division (CMD) for adherence to current SDA policy and procedures and all reviewing SDA staff members have determined that the change order is justified and that the amount is reasonable and appropriate; and

WHEREAS, this Change Order will be forwarded to the SDA Special Projects Division for determination of potential cost recovery.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve Change Order No. 111 in the amount of \$301,218.85 for Hall Building Corporation (Contract No. ES-0008-C01) in connection with the Lincoln Avenue ES project in the Orange Township School District.

BE IT FURTHER RESOLVED THAT, this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Change Order No. 111, Hall Building Corporation (Contract No. ES-0008-C01), Lincoln Avenue ES project, Orange Township School District, dated March 7, 2012

Dated: March 7, 2012

HALL BUILDING CORPORATION



MEMORANDUM

TO: Members of the Authority
FROM: Corrado Minervini
 Program Director, Program Operations

DATE: March 7, 2012

SUBJECT: Change Order – Hall Building Corporation

COMPANY NAME: Hall Building Corporation
 DISTRICT: East Orange
 CONTRACT #: ES-0020-C04
 PMF/CM: SDA Managed
 SCHOOL NAME: Mildred Barry-Garvin Elementary School
 CHANGE ORDER #: 176
 REASON: Credit Change Order
 AMOUNT: (\$10,636.62)
 CONTRACT STATUS: 99% Paid to Date Against the Current Contract Value
 OCCUPANCY DATE: September 2008

INTRODUCTION

I am writing to recommend approval by the Members of the Authority of credit Change Order (CO) No. 176 in the amount of (\$10,636.62), against the remaining balance of Contract ES-0020-C04 for work not performed and the unused allowances included in the original contract amount for Hall Building Corporation. A credit CO is the accounting mechanism by which the SDA de-obligates a contract's unused funds. Execution of the CO is necessary for the release of final payment and to advance contract closeout. In accordance with the NJSDA Operating Authority adopted by the Board on December 1, 2010, a change order or credit change order that exceeds \$500,000 or (singularly or when aggregated) exceeds ten percent (10%) of the contract value, requires approval by the Members of the Authority. The aggregate value of the change orders for this contract exceeds ten percent (10%) of the contract value.

BACKGROUND

On July 10, 2006, a construction contract was awarded to Hall Building Corporation for the addition and renovation of the existing Mildred Barry-Garvin Elementary School. The school educates 389 students from Pre-K through grades 5. The project is 100% complete and has been occupied by the East Orange School District since September 2008.

REASON FOR CHANGE

During close-out activities and a review of the construction contract schedule of values, it was revealed that there existed balances of an unused portion of an allowance, an unused portion of a change order and change order work deemed unnecessary for completion of the school project for school occupancy.

Members of the Authority
 Change Order 176– Hall Building Corporation
 March 7, 2012
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SUMMARY CHANGE

Change order No. 176 seeks to resolve all unused portions of allowances, change orders and change order work deemed unnecessary for completion of the project for school occupancy, detailed below:

Allowance for Unforeseen Conditions.

Original Allowance Amount	\$ 150,000.00
Amount utilized	\$ <u>149,490.29</u>
Amount remaining to be credited to the NJSDA	\$ (509.71)

Change Order #13: Clean existing sanitary lines. In May 2007, as a preventative measure, it was decided by the project team to execute a change order for construction services consisting of cleaning the existing sanitary lines of any obstructions should any be encountered during the tie-in of the new sanitary lines. Upon exposure of the existing sanitary lines and a visual inspection of the same, it was determined by the project team that the existing sanitary lines were free of obstructions and therefore the construction services described in the change order were deemed unnecessary.

Original CO Amount	\$ 4,812.15
Amount utilized	\$ <u>0.00</u>
Amount to be credited to the NJSDA	\$ (\$4,812.15)

Change Order #76: Installation of air inlets and flue outlets to water heaters. This change order was originally executed as a lump sum change order for the installation of makeup air inlets and exhaust flue outlets to water heaters. During construction an alternate method of installation of these components became apparent. This revised method was reviewed and approved by the Engineer of Record and implemented by the general contractor at a cost savings to the SDA.

Original CO Amount	\$ 10,628.79
Amount utilized	\$ <u>5,314.40</u>
Amount to be credited to the NJSDA	\$ (5,314.39)

Total credit due NJSDA	\$ (10,636.62)
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Documents supporting this Change Order have been reviewed by the Associated NJSDA project team members as well as the Program Director, Deputy Program Director and the Contract Management Division (CMD) for adherence to current NJSDA Standard Operating Procedures and Policy. All reviewing SDA staff members have determined that the Change Order is justified and the amount is reasonable and appropriate.

Members of the Authority
 Change Order 176– Hall Building Corporation
 March 7, 2012
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CALCULATIONS

a. Original Contract Amount (Base Contract including Allowances)	\$15,934,000.00
b. Change Orders to Date (Excluding proposed Change Order)	\$ 1,874,206.94
c. Proposed Change Order Amount	\$ (10,636.62)
d. Total Change Orders to Date including this Change Order (Total of Line (b.) and Line (c.))	\$ 1,863,570.32
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	11.7%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$17,797,570.32

RECOMMENDATION

The Members of the Authority are requested to approve the credit change order, in the amount of (\$ 10,636.62). In accordance with the Operating Authority adopted by the Board on December 1, 2010 any change order which singularly exceeds \$500,000 or (singularly or when aggregated) with all prior approved change orders is greater than 10% of the contract value requires approval by the Members of the Authority. The aggregate value of the change orders for this contract exceed ten percent (10%) of the contract value.

Recommended by:

/s/ Corrado Minervini
 Corrado Minervini, Program Director, Program Operations

Reviewed and Recommended by: Andrew Yosha, Vice President, Program Operations
 Reviewed and Recommended by: Vincent Lechmanick, Deputy Program Director
 Prepared by: Gabriel Salas, Program Officer, Program Operations

Resolution—6a2.

COMPANY NAME: Hall Building Corporation
 DISTRICT: East Orange
 CONTRACT #: ES-0020-C04
 PMF/CM: SDA Managed
 SCHOOL NAME: Mildred Barry-Garvin Elementary School
 CHANGE ORDER #: 176
 REASON: Credit Change Order
 AMOUNT: (\$10,636.62)
 CONTRACT STATUS: 99% Paid to Date Against the Current Contract Value
 OCCUPANCY DATE: September 2008

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) provides that a change order or credit change order that exceeds \$500,000 or (singularly or when aggregated) exceeds ten percent (10%) of the contract value, requires approval by the Members of the Authority; and

WHEREAS, a credit change order is the accounting mechanism whereby the SDA de-obligates a contract’s unused funds; and

WHEREAS, on July 10, 2006, a construction contract was awarded to Hall Building Corporation for the addition and renovation of the existing Mildred Barry-Garvin Elementary School, a facility for educating 389 students from Pre-K through grades 5 in the East Orange School District which is 100% complete and has been occupied by the East Orange School District since September 2008; and

WHEREAS, during close-out activities and a review of the construction contract schedule of values, it was determined that there exist balances of an unused portion of an allowance, an unused portion of a change order and change order work deemed unnecessary for completion of the school project for school occupancy; and

WHEREAS, as set forth in detail in materials presented to the Board on this date and incorporated herein, credit Change Order No. 176 in the amount of (\$10,636.62) is recommended for Board approval against the remaining balance of Contract ES-0020-C04 for work not performed and the unused allowances included in the original contract amount for Hall Building Corporation; and

WHEREAS, execution of the credit Change Order which seeks to resolve all unused portions of allowances, change orders and change order work deemed unnecessary for completion of the project for school occupancy, is necessary for the release of final payment and to advance contract closeout.

WHEREAS, the aggregate value of the change orders for this contract exceeds ten percent (10%) of the contract value; and

WHEREAS, documents supporting this credit Change Order have been reviewed by the associated SDA project team members, the Program Director, Deputy Program Director, the Vice President of Program Operations and the Contract Management Division (CMD) for adherence to current SDA Standard Operating Procedures and Policy and all reviewing SDA staff members have determined that the Change Order is justified and the amount is reasonable and appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve a credit change order, in the amount of (\$ 10,636.62) to Hall Building Corporation (Contract No. ES-0020-C04) for the Mildred Barry Garvin Elementary School project in the East Orange School District.

BE IT FURTHER RESOLVED THAT, this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Credit Change Order to Hall Building Corporation, Mildred Barry Garvin Elementary School, E. Orange School District, dated March 7, 2012

Dated: March 7, 2012

SKANSKA USA BUILDING, INC.



MEMORANDUM

TO: Members of the Authority

FROM: Thomas Schrum
Program Director, Program Operations

DATE: March 7, 2012

SUBJECT: Amendment – Skanska USA Building, Inc.

COMPANY NAME:	Skanska USA Building, Inc.
DISTRICT:	Garfield
CONTRACT NO.:	NT-0014-M01
PMF:	Skanska USA Building, Inc.
SCHOOL NAME:	James Madison Elementary School, #10
AMENDMENT NO.:	1
REASON:	Suspension of Project
AMOUNT:	(\$1,459,000)
CONTRACT STATUS:	3% Paid to Date against the Current Contract Value
OCCUPANCY DATE:	Project Suspended

INTRODUCTION

I am writing to recommend approval by the Members of the Authority of a credit amendment to Skanska USA Building Inc. (Skanska) in the amount of \$1,459,000 for unused professional services. A credit amendment is the accounting mechanism by which the SDA de-obligates a contract’s unused funds. The value of this credit amendment represents 97% of the total contract value. Execution of this amendment is necessary to advance contract close-out. Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, an amendment or credit amendment valued in excess of \$100,000 or 10% of the contract value requires approval by the Members of the Authority.

BACKGROUND

The Garfield James Madison Elementary School, #10 (James Madison School) was planned to be a new 59,085 square foot facility to educate students in grades Kindergarten through 5th. Skanska USA Building, Inc. was given the Notice to Proceed on August 5, 2009 to provide construction management services for the James Madison School.

The joint DOE/SDA 2010–2011 Statewide Prioritization review identified projects for prioritization as part of the 2011 portfolio. James Madison School was not identified for inclusion within the 2011 advancement portfolio.

Members of the Authority
 Amendment #1 – Skanska USA Building, Inc.
 Contract No. NT-0014-M01
 Garfield – James Madison School #10
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The SDA is currently working with the Garfield School District in an effort to identify how to best address the District’s facilities needs. In the event that the James Madison School project advances in the future, construction management services may need to be re-procured.

REASON FOR CHANGE

Engagement of Skanska in August, 2009 anticipated the need for its services for a period from August, 2009 to October, 2013. The services performed by Skanska were pre-construction services for abatement/demolition and school construction, including design review, estimating and preparation of bid packages for these activities, as well as bid and award services for the abatement and demolition portion of the contract. These services were provided from August of 2009 through January 2010 at which time the contract was suspended by NJSDA.

Initial invoicing from Skanska represented the cost of the pre-construction services as \$103,000. Based upon review and negotiations with Skanska, CMD and Program Operations the value established for these services was determined to be \$50,000. Skanska has received four (4) progress payments previously approved by NJSDA representing this value. At present, for the above stated reasons, we are recommending a credit amendment that will serve to de-obligate all remaining funds, so that the contract can be terminated and financially closed.

SUMMARY OF CHANGE

Approval of Credit Amendment No. 1 is requested to financially close out and complete the termination of the contract.

a. Original Contract Value	\$ 1,509,000
b. Costs Incurred To Date	\$ 50,000
c. Balance of Contract Funds and proposed credit amount	\$ 1,459,000

Documents supporting this amendment have been reviewed by the associated SDA project team members, as well as the Deputy Program Director, Program Director, CMD, and the Division of Chief Counsel for adherence to current NJSDA policy and procedures. All reviewing NJSDA staff members have determined that this amendment is justified and that the amount is reasonable and appropriate.

CALCULATIONS

a. Original Contract Amount	\$ 1,509,000
b. Amendments to Date	\$ 0
c. Proposed Amendment Amount	(\$ 1,459,000)
d. Total Amendments to Date (Total of line (b.) and Line (c.))	(\$ 1,459,000)
e. Percentage of Original Contract Line (Line (d) represents a percent of Line (a).)	97%
f. Proposed Adjusted Contract Price (Line (a) plus Line (d))	\$ 50,000

Members of the Authority
Amendment #1 – Skanska USA Building, Inc.
Contract No. NT-0014-M01
Garfield – James Madison School #10
March 7, 2012
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RECOMMENDATION

The Members of the Authority are requested to approve Amendment No. 1, in the credit amount of \$1,459,000. In accordance with the Operating Authority adopted by the Board on December 1, 2010, approval by the Members is required of an amendment or a credit amendment which exceeds \$100,000 or 10% of the contract value. Credit Amendment No. 1 exceeds \$100,000 and 10% of the contract amount.

Recommended by:

/s/ Thomas Schrum
Thomas B. Schrum, Program Director, Program Operations

Reviewed and Recommended by: Andrew Yosha, Vice President, Program Operations
Prepared by: Joseph Lucarelli, Deputy Program Director, Program Operations

Resolution—6a3.

COMPANY NAME:	Skanska USA Building, Inc.
DISTRICT:	Garfield
CONTRACT NO.:	NT-0014-M01
PMF:	Skanska USA Building, Inc.
SCHOOL NAME:	James Madison Elementary School, #10
AMENDMENT NO.:	1
REASON:	Suspension of Project
AMOUNT:	(\$1,459,000)
CONTRACT STATUS:	3% Paid to Date against the Current Contract Value
OCCUPANCY DATE:	Project Suspended

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) provides that an amendment or credit amendment valued in excess of \$100,000 or 10% of the contract value requires approval by the Members of the Authority; and

WHEREAS, a credit amendment is the accounting mechanism whereby the SDA de-obligates a contract’s unused funds; and

WHEREAS, the Garfield James Madison Elementary School, #10 (James Madison School) was planned to be a new 59,085 square foot facility to educate students in grades Kindergarten through 5th; and

WHEREAS, Skanska USA Building, Inc. was given the Notice to Proceed on August 5, 2009 to provide construction management services for the James Madison School, with an anticipated need for services between August, 2009 to October, 2013; and

WHEREAS, the joint DOE/SDA 2010–2011 Statewide Prioritization review identified projects for prioritization as part of the 2011 portfolio and James Madison School was not identified for inclusion in the 2011 advancement portfolio; and

WHEREAS, between August 2009 and January 2010 Skanska provided pre-construction services for abatement/demolition and school construction as detailed in the memorandum presented to the Board on this date, and thereafter such services were suspended by SDA; and

WHEREAS, SDA is currently working with the Garfield School District in an effort to identify how to best address the District’s facilities’ needs; and

WHEREAS, while initial invoicing represented the cost of the pre-construction services performed as \$103,000, following negotiations, the value of such services was determined to be \$50,000, which amount has been paid to Skanska; and

WHEREAS, SDA executive management and associated staff recommend a credit amendment to Skanska in the amount of (\$1,459,000) for unused professional services in order to de-obligate all remaining funds, so that the contract can be terminated and financially closed; and

WHEREAS, the value of this credit amendment which represents 97% of the total contract value exceeds 10% of the contract value and requires Board approval;

WHEREAS, documents supporting this amendment have been reviewed by the associated SDA project team members, the Deputy Program Director, Program Director, Contracts Management Division, and the Division of Chief Counsel for adherence to current SDA policy and procedures and all reviewing staff members have determined that this amendment is justified and that the amount is reasonable and appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve Amendment No. 1, in the credit amount of (\$1,459,000) to Skanska USA Building, Inc. in connection with the James Madison Elementary School #10 in the Garfield school district

BE IT FURTHER RESOLVED THAT, this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Credit Amendment for Skanska USA Building, Inc. (Contract No. NT-0014-M01), James Madison Elementary School #10, Garfield School District, dated March 7, 2012

Dated: March 7, 2012

DESIGN IDEAS GROUP, LLC (PLACE HOLDER)



MEMORANDUM

TO: Members of the Authority
FROM: Thomas B. Schrum
 Program Director, Program Operations
DATE: March 7, 2012
SUBJECT: Amendment – Design Ideas Group, LLC

COMPANY NAME: Design Ideas Group, LLC
 DISTRICT: Paterson
 CONTRACT NO: PA-0006-A01
 PMF/CM: N/A
 SCHOOL NAME: Marshall and Hazel Elementary School
 AMENDMENT NO's.: 11, 12 and 13
 REASON: Various
 AMOUNT: \$209,450 Amendment #11
 \$224,600 Amendment #12
 \$267,000 Amendment #13
 \$701,050 Total
 CONTRACT STATUS: 84% Paid to Date
 PROJECTED SCHOOL OCCUPANCY DATE: September, 2015

INTRODUCTION

I am writing to request approval from the Members of the Authority for Amendments #11, #12 and #13 for the architect, Design Ideas Group (DIG), for the Paterson Marshall & Hazel Street Elementary School (Marshall Street ES). Pursuant to the Operating Authority adopted on December 1, 2010, approval by the Members is required for Professional Service contract amendments which exceed \$100,000 or 10% of the contract value. The value of the amendments discussed in this memorandum are greater than \$100,000 and 10% of the contract value.

At the March 2, 2011 NJSDA Board Meeting, the Members approved the Authority’s 2011 Capital Program. This Program identified the Marshall Street ES project as one of the projects for final validation and advancement in 2011. Amendments #11, #12 and #13 are for design services necessary to prepare the project for advancement into construction.

BACKGROUND

Project Definition:

The Marshall Street ES project is a 108,700 square foot facility to educate 650 students from Kindergarten to 8th grade. The school project includes an outdoor play area, parking lot and a storm water detention/filtration system. In addition, this project includes a pedestrian bridge over the NJ Transit railroad right of way necessary in order to provide access for the areas of the city the school is serving.

Members of the Authority
Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)
PA-0006-A01
March 7, 2012
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Project History

On May 1, 2003, NJK-12 Architects, LLC (since re-formed under the name “Design Ideas Group”, or “DIG”) was issued a Notice to Proceed (NTP) for design and construction administration services for the project. Real Estate acquisitions were completed in 2004, and necessary easements to vacate utilities and city-owned streets were obtained in 2007. Upon completion of land acquisition, contracts were issued to Delric Construction Co., Inc. for demolition and abatement work, and to “D” Construction Co. for construction of a retaining wall and performance of site preparation activities. The demolition work awarded to Delric in 2004 was completed in 2006, and the retaining wall/site work awarded to D. Construction in 2005 was completed in 2007.

Two remaining areas of environmental concern were not addressed by these two contractors:

- The proposed “Deed-Restricted” area where soil was found to contain polycyclic aromatic hydrocarbons (PAHs) slightly in excess of residential standards. In the proposed Deed Restricted area, it was concluded by NJSDA’s consultant that the PAHs found in the soil were attributed to urban fill materials. New Jersey Department of Environmental Protection (NJDEP) regulations provide that urban fill materials may remain on-site with an engineering control.
- A separate area where soil and groundwater were found to contain residual petroleum hydrocarbon attributed to the former Superior Automotive site. For the petroleum-impacted area, several leaking underground gasoline, diesel, and waste oil storage tanks (USTs) were previously removed from this site in the 1990’s by former property owners.

The tank removal activities were the subject of an October 18, 1993 and March 2, 2000, No Further Action (NFA) determination from the NJDEP. The underlying groundwater in this area was also impacted by petroleum compounds, but at levels that did not warrant an active groundwater remediation program. Therefore, Superior Automotive proposed a monitored natural remediation program for the petroleum compounds, whereby the petroleum compounds would eventually degrade to below NJDEP standards under natural biological conditions. A groundwater classification exception area (CEA) was established by Superior Automotive as part of their monitored natural attenuation program, and Superior predicted it would take eight years for the petroleum compounds to degrade.

The Authority recommended and completed a confirmation groundwater testing program and determined that the petroleum compounds had not degraded sufficiently as predicted by Superior Automotive. The NJDEP concluded that the soil remediation performed by Superior was incomplete, and that additional soil remediation was required.

This will be forwarded to NJSDA Special Projects Division for review of potential cost recovery.

Members of the Authority

Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)

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Project advancement planning at the time determined that the deed restricted area would be addressed as part of construction activities and the additional soil remediation would be addressed prior to construction. In December, 2008, the project received DCA approval.

On February 25, 2009, Bovis Lend Lease LMB, Inc. (Bovis) received an award to provide construction management for the project. DIG's contract for the project was amended in April of 2009 to account for project scope modifications resulting from the NJSDA's review of the existing design upon inclusion of the project in the 2008 New Funding Allocation and Capital Plan. These modifications included minor programmatic model changes and value management revisions.

On October 26, 2009, NJSDA awarded the construction contract to Dobco, Inc. (Dobco) for \$24,400,000, with a unit cost based allowance of \$144,000 for the excavation, transportation, and disposal of petroleum impacted soils.

During initial earthwork and construction activities, Dobco excavated a greater quantity of unsuitable surface soils than originally anticipated. Dobco also disturbed the proposed deed restricted area. The excavated soil was found to contain low-levels of lead in excess of residential unrestricted use standards. The presence of lead was not identified through preconstruction testing at the site. Only PAH's were previously found in this area.

The cost to address the additional quantity of soil exceeded the allowance designated for that purpose. As a result, the NJSDA issued a "Notice of Suspension of Work" to Dobco in March of 2010 to allow for an evaluation of Dobco's proposed change order, and to determine the best course of action for the project. Pending the performance and outcome of the review, the NJSDA suspended the engagements with DIG and Bovis in June of 2010.

After review of the project status, including the quality of the contract drawings and the potential for additional environmental conditions to surface during construction, the NJSDA determined that the best course of action was to terminate the construction contract. In that the 2008 Capital Plan was undergoing a review at the time the Marshall Street ES project was suspended, the need that the project was intended to address was included in the statewide prioritization review effort, to ensure the project was one that remained appropriate to advance at this time.

At the March 2, 2011 NJSDA Board Meeting, and based upon the results of the Capital Plan review, the Marshall Street ES project was approved to advance as part of the Authority's 2011 Capital Program. In recognition of the open environmental issues at the project site, the project was not identified for construction advancement in 2011. In order to recommend a plan for advancement for the project, the NJSDA staff has undertaken a review and validation of the project design and completed work to date, inclusive of a review of the drawings for compliance with standardization of materials and systems as well as any necessary revisions of the scope of work for the differing site conditions and to appropriately prepare the project for re-bidding.

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 Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)
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CURRENT PROJECT STATUS

The June 2010 suspensions of contracts overlapped with the review of the 2011 Capital Plan review. Based upon that review identifying the Marshall Street ES project as one of the projects for advancement in 2011 the project team is seeking to re-start the Design Consultant DIG's contract with revisions discussed below.

SDA Review and Validation:

Following Board approval of the 2011 Capital Program in March 2011, SDA staff undertook a review and validation of the scope and design of the Marshall Street ES project. That process included:

- Review and validation of the current design and construction documents.
- Review and validation of the design and construction documents relative to site development and environmental site closure considerations, to ensure conformance with current required approach and standards and best practices; and
- Review of materials and systems selection.

That process also included a review of the proposed project scope, budget and schedule.

Based on the review and validation of the project background, history and design as described above, the Program Team recommends the advancement of the Marshall Street ES project, utilizing the DIG developed design with revisions and with DIG remaining as the design consultant for the project. The reasons for this recommendation are as follows:

- Design Review: A review of the current design finds the design to be efficient with regard to plan organization and circulation, and to have an efficient footprint well-suited to its urban site. The design is also consistent with NJDOE's program requirements for this school. However, the existing underground geo-thermal HVAC system design will be replaced with a conventional above-ground heat pump system with boilers and chillers.
- Consistency with NJDEP's regulations: Maser Consulting P.S. (Maser) was authorized on September 8, 2011 to undertake a comprehensive site investigation. This investigation was expanded from the original investigation to areas not previously available due to structures being in place and areas that were backfilled after demolition with soils of unknown characteristics. This investigation includes a review to assure that all actions prescribed by the previous contract documents are updated. DIG will assist Maser with this investigation and will utilize this information and assemble all information from those reports and incorporate them into the existing site survey. All information will be utilized for work in Amendment #12 for the updating of existing drawings.
- Consistency with Materials and Systems Standards: A review of the materials and systems, included within the project design, finds that these materials and systems are closely aligned with standards developed by the NJSDA.

Members of the Authority

Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)

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As a result of this review and validation process, NJSDA staff recommends advancement of the project's current design, with the following activities to be undertaken:

- A comprehensive investigation of the existing conditions at the project site, including environmental and geo-technical conditions, and site preparation work to advance the construction of school.
- A review and documentation of all previous completed construction work and procured construction materials, and
- Replacement of the originally designed geo-thermal Heating, Ventilation and Air Conditioning (HVAC) with a conventional water source heat pump system, while maintaining the majority of the current HVAC system design.

DIG, under Amendment #10, will be conducting the existing conditions review, the inspection and documentation of previous work and the detailing of prior procured materials.

NJSDA staff review also concluded that the development of a separate early site remediation bid package was necessary and appropriate. An early site remediation bid package will address remediation of the two remaining areas of environmental concern and areas that were not accessible during earlier site activities. The inclusion of this early site preparation package will provide for a clearly defined scope and site construction of the school facility. This early site preparation package will also reduce the potential for construction delays and associated additional project costs.

REASON FOR CHANGE

The purpose of this memo is to seek approval by the members for three (3) Amendments to the Design Consultant, DIG, for efforts to re-start design to support the construction of the school through the completion of the project, including additional design services, and extended construction phase services. These services include the following:

- Design modifications to incorporate the revised HVAC system.
- Design modifications to incorporate the findings and recommendations from the above investigations.
- Development of the site preparation package for bidding.
- Bidding services for the procurement of both the site preparation and construction general contractors, and
- Extended pre-construction and construction administration services.

The above design services have been separated into the following three (3) amendments in order to distinguish the scope of services into different disciplines and to allow the project team to easily manage the work within the amendments as follows:

Members of the Authority
 Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)
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Amendment #11: \$209,450 - Redesign the HVAC system, Update Construction Cost Estimate (CCE) and Resubmit to NJDCA for an amended approval.

Reason for Change:

- The review of the existing design, determined that the geo-thermal well field if installed as per the existing design would be impacted by the large volume of contaminated water in the area that was to serve as the geo-thermal well field. To avoid the environmental impacts and unforeseen conditions of this area that could raise the cost of HVAC installation, the geothermal heating system will be deleted and a conventional water source heat pump system will be installed. This revised system will be easier to effectively maintain for the district.
- After review of the current design and review of systems that would be compatible with this design, it was determined that the existing geothermal system could be substituted with a conventional heat pump system. This substitution would include the installation of boilers and a circuit cooling tower. The review of systems suitable for the substitution of the geo-thermal system included the review of cost, maintenance and the maximizing the reuse of the current design. The costs for redesign are expected to be significantly less than the construction cost to be avoided.
- This re-design will include all required work for the submission of the revised drawings to NJDCA to obtain an amended approval for the construction of the project.
- To update the CCE to include the redesigned HVAC system, previously procured construction materials, existing site conditions and corrective work.

Fee Breakdown:

The fees for the proposed scope of services for Amendment #11 are as follows:

HVAC Redesign Services	\$191,150
Updated Construction Cost Estimate	\$ 18,300
Total	\$209,450

Amendment #12: \$224,600 - To implement design modifications incorporating the findings and recommendations from the site and materials investigations; and to prepare the early site package for bidding and execution.

Reason for Change:

As noted earlier, a comprehensive investigation of the existing conditions at the project site is being conducted by Maser Consulting and DIG, including investigations of the site's environmental, geo-technical conditions and a detailing of previous work and procured materials. As a result of these investigations the contract documents are required to be updated to reflect the findings. In addition, an early site preparation package is necessary to prepare the site for the continuation of construction.

Members of the Authority
 Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)
 PA-0006-A01
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The consultant shall provide the following services:

- Update the previously issued Bid Set drawings, based on findings and recommendations from DIG’s and Maser’s site conditions reports. These drawings are also to be modified to reflect all previously procured construction materials, their location and all corrective work required to re-start construction. These modifications include all required work for the submission of the revised drawings to NJDCA to obtain an amended approval for the construction of the project.
- Prepare Early Site package plans and specifications for the removal of contaminated soils and older pre-existing foundations. This preparation includes contract documents, construction schedule, cost estimates and the provision of technical support to complete the construction of Phase I - Site Preparation. In addition the consultant shall assist in the Bid and Award phase to procure a new Site Preparation General Contractor. These services will include site visits, pre-bid meetings, answering of pre-bid questions/RFIs and addenda issuance.

Fee Breakdown:

The fees for the proposed scope of services for Amendment #12 are as follows:

Design Modification Services	\$180,000
Phase I - Site Package and Bidding Services	\$ 44,600
Total	\$224,600

Amendment #13: \$267,000- To Extend Pre-Construction (PC) and Construction Administrative (CA) Services

Reason for Change

To continue with the construction of the project, upon completion of the design modifications included in Amendments #11 and #12, a new general contractor needs to be procured and DIG’s pre-construction and construction administration services need to be extended for Phase II – Construction.

- To assist in the Bid and Award phase to procure a new construction General Contractor. These services will include site visits, pre-bid meetings, answering of pre-bid questions/RFIs and creation and issuance of any required addenda.
- As this project had been in construction previously, CA services had already been rendered by DIG. Additional CA services, therefore, are needed to replace those already incurred. In addition, the duration of the project has been revised for an additional 6 months. Extended CA services are needed to carry DIG to the end of the project. These extended services include escalation costs as well.

Members of the Authority
 Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)
 PA-0006-A01
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- Fee Breakdown:

The fees for the proposed scope of services for Amendment #13 are as follows:

Phase II - Bidding Services	\$ 17,000
Phase II – Extended CA Services	\$ 250,000
Total	\$ 267,000

SUMMARY OF CHANGE

Approval is being requested for Amendments #11, #12 and #13 for DIG to re-start the Marshall Street ES project. The amounts of these Amendments are as follows:

Amendment #11 - HVAC Redesign and CCE services	\$209,450
Amendment #12 – Design Mods; Phase I: Site Package and Bidding Svcs.	\$224,600
Amendment #13 – Phase II: Extended Construction Administration and Bidding Services	\$267,000
Total	\$701,050

Documents supporting this amendment have been reviewed by the associated SDA project team members, as well as the Deputy Program Director, Program Director, CMD, and the Division of Chief Counsel for adherence to current NJSDA policy and procedures. All reviewing NJSDA staff members have determined that this amendment is justified and that the amount is reasonable and appropriate.

There are sufficient funds available in the project’s approved Charter for the total value of the three amendments combined, totaling \$701,050. In keeping with the provisions of the Operating Authority, a revised Charter will be presented for review and consideration by the Members of the Authority, when appropriate.

CALCULATIONS:

a.	Original Contract Amount	\$ 1,525,855
b.	Amendments to Date	\$ 584,869
c.	Proposed Amendments Amount	\$ 701,050
d.	Total Amendments to Date (Total of Line (b) and Line (c))	\$ 1,285,919
e.	Percentage Change to Original Contract (Line (d) represents a percent of Line (a))	84%
f.	Proposed Adjusted Contract Amount (Line (a) plus Line (d))	\$ 2,811,774

Members of the Authority
Amendment No.'s 11, 12 and 13 – Design Ideas Group, LLC (DIG)
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PROJECT SCHEDULE

It is anticipated that the additional services recommended in these three amendments will commence on or around April 1, 2012. It is also anticipated that these services will be delivered on a schedule, which supports the advancement of the construction bidding in early first quarter of 2013.

RECOMMENDATION

The Members of the Authority are requested to approve:

- Amendment #11, in the amount of \$209,450, for HVAC Re-design and Updated CCE
- Amendment #12, in the amount of \$224,600, for Design Modifications, Phase I – Site Package and Bidding
- Amendment #13, in the amount of \$267,000, for Extended Pre-Construction and Construction Administration

Pursuant to the Operating Authority adopted on December 1, 2010, approval by the Members is required for Professional Service contract amendments which exceed \$100,000 or 10% of the contract value. DIG Amendments #11, #12 and #13 exceed \$100,000 and exceed 10% of the contract value.

Recommended by:

/s/ Thomas B. Schrum
Thomas B. Schrum, Program Director, Program Operations

Reviewed and Recommended by: Andrew Yosha, Vice President, Program Operations
Reviewed and Recommended by: Ronald Carper, Senior Program Officer, Program Operations
Prepared by: Joseph Lucarelli, Deputy Program Director, Program Operations

Resolution—6a4.

COMPANY NAME: Design Ideas Group, LLC (DIG)
 DISTRICT: Paterson
 CONTRACT NO: PA-0006-A01
 PMF/CM: N/A
 SCHOOL NAME: Marshall and Hazel Elementary School
 AMENDMENT NO's.: 11, 12 and 13
 REASON: Various
 AMOUNT: \$209,450 Amendment #11
 \$224,600 Amendment #12
\$267,000 Amendment #13
 \$701,050 Total
 CONTRACT STATUS: 84% Paid to Date
 PROJECTED SCHOOL
 OCCUPANCY DATE: September, 2015

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) provides that approval by the Members of the Authority is required for Professional Services contract amendments which exceed \$100,000 or 10% of the contract value; and

WHEREAS, the Marshall Street ES project (“the Project”) is a 108,700 square foot facility to educate 650 students from Kindergarten to 8th grade in the school district of Paterson; and

WHEREAS, on May 1, 2003, NJK-12 Architects, LLC (since re-formed under the name “Design Ideas Group”, or “DIG”) was issued a Notice to Proceed (NTP) for design and construction administration services for the Project; and

WHEREAS, the materials presented to the Board on this date and incorporated herein describe in detail the history of the Project and the challenges presented thereby; and

WHEREAS, in March 2011 the Members of the Authority approved the Authority’s 2011 Capital Program identifying the Project as one of the projects for final validation and advancement in 2011; and

WHEREAS, following review and validation of the Project’s background, history and design, associated SDA staff and executive management recommend the advancement of the Marshall Street ES project, utilizing the DIG developed designs with revisions, with DIG remaining as the design consultant for the Project; and

WHEREAS, Board approval of three (3) amendments to DIG is recommended to re-start design to support the construction of the school through the completion of the project, including additional design services, and extended construction phase services; and

WHEREAS, the particulars of Amendments #11, #12 and #13, are set forth in detail in the memorandum presented to the Board on this date and incorporated herein; and

WHEREAS, the negotiated value of the amendments is a not-to-exceed value in recognition that the level of effort for some of the scope elements is dependent upon other factors, including the findings of ongoing investigations; and

WHEREAS, there are sufficient funds available in the project's approved Charter for the total value of the three amendments combined, totaling \$701,050.00 (NTE); and

WHEREAS, the value of the amendments discussed in this memorandum is greater than \$100,000 and 10% of the contract value; and

WHEREAS, this matter shall be forwarded to SDA Special Projects Division for review of potential cost recovery; and

WHEREAS, documents supporting this amendment have been reviewed by the associated SDA project team members, as well as the deputy program director, program director, Contracts Management Division, and the Division of Chief Counsel for adherence to current SDA policy and procedures and all reviewing SDA staff members have determined that the amendments are justified and that the amount is reasonable and appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve Amendments # 11, #12, and #13 with a total value of \$701,050.00 (NTE) to Design Ideas Group, LLC (Contract No. PA-0006-A01) for additional design services, and extended construction phase services for the Marshall and Hazel Elementary School in the school district of Paterson, consistent with the memorandum presented to the Board on this date.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Contract amendment, Design Ideas Group, LLC (Contract No. PA-0006-A01), Marshall and Hazel Elementary School, Paterson School district, dated March 7, 2012

Dated: March 7, 2012

GRAFAS PAINTING CONTRACTORS INC.



MEMORANDUM

TO: Members of the Authority
FROM: Ritchard J. Sherman
 Program Director, Program Operations
DATE: March 7, 2012
SUBJECT: Construction Change Order No. 1 – Grafas Painting Contractors, T/A GPC, Inc.

COMPANY NAME: Grafas Painting Contractors, T/A GPC, Inc
 DISTRICT: Trenton
 CONTRACT #: EP-0044-C02
 PMF/CM: SDA Managed
 SCHOOL NAME: Trenton Central High School
 CHANGE ORDER No.: 1
 REASON: Unforeseen Conditions
 AMOUNT: \$166,530
 TIME EXTENSION: NA
 CONTRACT STATUS: 0.0% Paid to Date Against the Current Contract Value
 DELIVERY DATE: TBD

INTRODUCTION

I am writing to recommend approval by the Members of the Authority for Change Order #1 in the amount of \$166,530. Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, a change order for an emergent project that exceeds \$250,000 or 10% of the contract value requires approval by the Members of the Authority. This change order is for an emergent project and exceeds 10% of the contract value.

If approved, the inclusion of this change order will necessitate a release of funds from the Program Reserve for emergent projects in the amount of \$166,530. Consistent with the Operating Authority adopted by the Board on December 1, 2010, CEO approval is required for a release funds from the Program Reserve that does not exceed \$500,000. CEO approval will be sought for the release of funds from the Program Reserve and will be memorialized through a revision to the emergent project charter.

BACKGROUND

The Trenton Central High School in the Trenton School District, which educates approximately 1,600 students in grades 9 through 12, was constructed in 1931. On September 8, 2010, Grafas Painting Contractors, T/A GPC, Inc. (Grafas) was given a Notice to Proceed for construction services for an emergent partial roof replacement project at Trenton Central High School. This Time & Material contract was awarded pursuant to the terms and conditions of the General Construction Services Task Order, GP-0127-C06, with a Not To Exceed value of \$134,702. The scope of this emergent roof replacement project included removal of an existing skylight structure above the stage and enclosing it with roofing materials.

Members of the Authority
 Change Order No. 1 – Grafas Painting Contractors, T/A GPC, Inc.
 Contract No. EP-0044-C02
 March 7, 2012
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REASON FOR CHANGE

During construction, it was determined that the existing skylight structure included a manually operated smoke vent for the auditorium stage below, something not addressed in the scope of work and which required modification to address the venting need. Work in this area was suspended and the skylight structure opening was temporarily enclosed pending further investigation and resolution of the condition. The design consultant, DIG, investigated the condition, prepared revised design documents, submitted the revised documents to DCA for approval, and, on September 12, 2011, DCA issued an amended final release for this change in the work. This change order is necessary to authorize Grafas to proceed with implementation of the revised design.

Per the current Operating Authority, this change order has been forwarded to the NJSDA Special Projects Division for review for possible cost recovery.

SUMMARY OF CHANGE

Change Order No. 1 consists of the installation of a new automatic smoke hatch, additional roof framing to support the smoke hatch, and a necessary connection of the smoke hatch to existing power sources. The installation of an operable automatic smoke hatch is a code requirement. The cost associated with this change is a Not To Exceed amount of \$166,530 which will be paid on a Time & Material basis in accordance with the terms and conditions of the existing contract.

Documents supporting this change order have been reviewed by the associated SDA project team members as well as the Program Director and Deputy Program Director, and the Contract Management Department (CMD) for adherence to current NJSDA policy and procedures. All reviewing SDA staff members, including CMD, have determined that the change order is justified and that the amount is reasonable and appropriate. Additionally, the needed release of funds from the Program Reserve for emergent projects has been reviewed by the Capital Planning & Grants Administration group, which has verified that sufficient funds are available within the reserve to fund this increase

CALCULATION

a.	Original Contract Amount (base contract only)	\$	134,702
b.	Change Orders to Date	\$	-
c.	Proposed Change Order Amount	\$	166,530
d.	Total Change Orders to Date including this Change Order (Total of Line (b.) and Line (c.))	\$	166,530
e.	Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))		123.6%
f.	Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$	301,232

Members of the Authority
Change Order No. 1 – Grafas Painting Contractors, T/A GPC, Inc.
Contract No. EP-0044-C02
March 7, 2012
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RECOMMENDATION

The Members of the Authority are requested to approve Change Order No.1 in the amount of \$166,530. In accordance with the Operating Authority adopted by the Board on December 1, 2010, a change order for an emergent project that exceeds \$250,000 or 10% of the contract value requires approval by the Members of the Authority. This change order is for an emergent project and exceeds 10% of the contract value.

Recommended by:

/s/ Ritchard Sherman
Ritchard J. Sherman, Program Director, Program Operations

Reviewed and Recommended by: Andrew Yosha, Vice President, Program Operations
Recommended by: Gary Cleveland, Deputy Program Director, Program Operations
Prepared and Recommended by: Richard Ferrara, Program Operations

Resolution—6a5.

COMPANY NAME:	Grafas Painting Contractors, T/A GPC, Inc
DISTRICT:	Trenton
CONTRACT #:	EP-0044-C02
PMF/CM:	SDA Managed
SCHOOL NAME:	Trenton Central High School
CHANGE ORDER No.:	1
REASON:	Unforeseen Conditions
AMOUNT:	\$166,530
TIME EXTENSION:	NA
CONTRACT STATUS:	0.0% Paid to Date Against the Current Contract Value
DELIVERY DATE:	TBD

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) provides that a change order for an emergent project that exceeds \$250,000 or 10% of the contract value requires approval by the Members of the Authority.

WHEREAS, the Trenton Central High School (TCHS) in the Trenton School District, which educates approximately 1,600 students in grades 9 through 12, was constructed in 1931; and

WHEREAS, on September 8, 2010, Grafas Painting Contractors, T/A GPC, Inc. (Grafas) was given a Notice to Proceed for construction services for an emergent partial roof replacement project at TCHS; and

WHEREAS, the Grafas contract, with a Not To Exceed value of \$134,702, provides for an emergent roof replacement project including removal of an existing skylight structure above the stage and enclosing it with roofing materials; and

WHEREAS, as set forth in the materials presented to the Board on this date and incorporated herein, during construction, it was determined that additional work was necessary in connection with the existing skylight structure requiring a modification to the scope and additional DCA approvals; and

WHEREAS, this change order, which is in the amount of \$166,530 and exceeds 10% of the contract value, is necessary to authorize Grafas to proceed with implementation of the revised design; and

WHEREAS, upon Board approval of this change order and consistent with the SDA Operating Authority, CEO approval will be sought for a release of funds from the Program Reserve for emergent projects in the amount of \$166,530 and such action will be memorialized through a revision to the emergent project charter; and

WHEREAS, documents supporting this change order have been reviewed by the associated SDA project team members, the Program Director and Deputy Program Director, and the Contract Management Department (CMD) for adherence to current NJSDA policy and procedures and all reviewing SDA staff members have determined that the change order is justified and that the amount is reasonable and appropriate; and

WHEREAS, the needed release of funds from the Program Reserve for emergent projects has been reviewed by the Authority's Capital Planning & Grants Administration staff and it has been determined that sufficient funds are available within the reserve to fund this increase.

WHEREAS, consistent with the SDA Operating Authority, this change order has been forwarded to the SDA Special Projects Division for review for possible cost recovery.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby approve Change Order No.1 in the amount of \$166,530 for Grafas Painting Contractors, T/A GPC, Inc. (Contract No. EP-0044-C02) and authorize the SDA Chief Executive Officer and associated staff to take all necessary steps in furtherance of this change order.

BE IT FURTHER RESOLVED THAT, this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Change Order #1—Grafas Painting Contractors, T/A GPC, Inc.
Contract No. EP-0044-C02, Trenton High School, Trenton School District, dated
March 7, 2012

Dated: March 7, 2012

DESIGN IDEAS GROUP, LLC



MEMORANDUM

TO: Members of the Authority
FROM: Ritchard J. Sherman
 Program Director, Program Operations
DATE: March 7, 2012
SUBJECT: Design Amendment No.1 – Design Ideas Group Architecture & Planning, LLC

COMPANY NAME:	Design Ideas Group Architecture & Planning, LLC
DISTRICT:	Trenton
CONTRACT NO.:	EP-0044-A01
CM:	SDA Managed
SCHOOL NAME:	Trenton Central High School
AMENDMENT NO.:	1
REASON:	Unforeseen Conditions
AMOUNT:	\$10,000
CONTRACT STATUS:	76.8% Paid to Date Against Current Contract Value
DELIVERY DATE:	TBD

INTRODUCTION

I am writing to recommend approval by the Members of the Authority of a contract amendment to Design Ideas Group Architecture & Planning, LLC (DIG) in the amount \$10,000. Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, an amendment valued in excess of \$100,000 or 10% of the contract value, requires approval by the Members of the Authority. Funding for this amendment is available within the Project Charter Budget, in accordance with the most recent Project Charter, dated August 2, 2010. The value of this amendment exceeds 10% of the contract value.

BACKGROUND

A partial roof replacement project was initiated in 2008 to address an emergent condition at the Trenton Central High School in the Trenton School District. Consistent with procedures in place at the time of this project's initiation, the scope was developed through an agreement that preceded DIG's involvement. On October 2, 2009, DIG was given a Notice to Proceed to provide design and construction administration services related to this emergent project. The project scope included removal of an existing skylight structure above the stage and enclosing it with roofing materials.

A contract for construction services for this project was awarded to Grafas Painting Contractors, T/A GPC, Inc. on August 4, 2010, and work commenced in August 2010.

REASON FOR CHANGE

Neither the initial scoping engagement for the project nor the DIG scope included destructive/invasive investigation, and as-built documents describing existing conditions were unavailable. During construction, it was discovered that the existing skylight structure included a manually operated smoke vent for the auditorium stage below, something not addressed in the scope of work and which required

Members of the Authority
 Amendment No. 1 – Design Ideas Group Architecture & Planning, LLC
 Trenton School District – Trenton Central High School
 March 7, 2012
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modification to address the venting need. In the interest of resolving this issue, DIG proceeded at its own risk to investigate the condition and to prepare design documents to address the differing site conditions.

SUMMARY OF CHANGE

This amendment provides for additional design services related to the replacement of the combined existing skylight structure/smoke vent with an automatic smoke vent conforming to all applicable codes.

All documents supporting this amendment have been reviewed by the associated Program Director, Deputy Director and the NJSDA Contract Management Department (CMD), and the Division of Chief Counsel for adherence to current NJSDA policy and procedure. All reviewing SDA Staff have determined that the amendment is justified and that the amount is reasonable and appropriate.

CALCULATIONS

a.	Original Contract Amount	\$	62,425
b.	Amendments to Date (excluding proposed Amendment)	\$	-
c.	Proposed Amendment Amount	\$	10,000
d.	Total Amendments to Date including this Amendment (Total of Line (b.) and Line (c.))	\$	10,000
e.	Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))		16%
f.	Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$	72,425

RECOMMENDATION

The Members of the Authority are asked to approve this amendment in accordance with operating authority limits adopted by the Board on December 1, 2010 which requires approval by the Members of the Authority of any amendment which exceeds \$100,000 or 10% of the contract value. This amendment exceeds 10% of the contract value.

Recommended by:

/s/ Ritchard Sherman
 Ritchard J. Sherman, Program Director, Program Operations

Reviewed and Recommended by: Andrew Yosha, Vice President, Program Operations
 Recommended by: Gary Cleveland, Deputy Program Director, Program Operations
 Prepared and Recommended by: Richard Ferrara, Program Operations

Resolution—6a6.

COMPANY NAME: Design Ideas Group Architecture & Planning, LLC
 DISTRICT: Trenton
 CONTRACT NO.: EP-0044-A01
 CM: SDA Managed
 SCHOOL NAME: Trenton Central High School
 AMENDMENT NO.: 1
 REASON: Unforeseen Conditions
 AMOUNT: \$10,000
 CONTRACT STATUS: 76.8% Paid to Date Against Current Contract Value
 DELIVERY DATE: TBD

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) provides that an amendment valued in excess of \$100,000 or 10% of the contract value requires approval by the Members of the Authority; and

WHEREAS, in 2008, a partial roof replacement project was initiated to address an emergent condition at the Trenton Central High School in the Trenton School District; and

WHEREAS, consistent with procedures in place at the time of this project’s initiation, the scope was developed through an agreement that preceded involvement of Design Ideas Group Architecture & Planning, LLC (DIG); and

WHEREAS, as set forth in the materials presented to the Board on this date and incorporated herein, the need for scope modification was revealed during construction; and

WHEREAS, to advance the work, DIG proceeded at its own risk at that time to investigate the condition and to prepare necessary design documents; and

WHEREAS, on October 2, 2009, DIG was given a Notice to Proceed to provide design and construction administration services related to this emergent project; and

WHEREAS, the value of this amendment, in the amount of \$10,000, is necessary to compensate DIG for the design and construction administration services and exceeds 10% of the contract value; and

WHEREAS, funding for this amendment is available within the Project Charter Budget, in accordance with the most recent Project Charter, dated August 2, 2010; and

WHEREAS, all documents supporting this amendment have been reviewed by the associated Program Director, Deputy Director, Contract Management Department (CMD), and Office of Chief Counsel for adherence to current SDA policies and procedures and all reviewing SDA Staff have determined that the amendment is justified and that the amount is reasonable and appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve a contract amendment to Design Ideas Group Architecture & Planning, LLC (Contract No. EP-0044-A01) in the amount \$10,000 for design and construction administration services for the Trenton Central High School emergent project.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Contract amendment, Design Ideas Group Architecture & Planning, LLC, Trenton High School, Trenton School district, (Contract No. EP-0044-A01), dated March 7, 2012
Dated: March 7, 2012

ERNEST BOCK & SONS, INC.



MEMORANDUM

TO: Members of the Authority

FROM: Corrado Minervini
Program Director, Program Operations

DATE: March 7, 2012

SUBJECT: Change Order 102– Ernest Bock & Sons, Inc.

COMPANY NAME: Ernest Bock & Sons, Inc.
 DISTRICT: Elizabeth
 CONTRACT #: EL-0016-C03
 PMF/CM: NJSDA Managed
 SCHOOL NAME: Victor Mravlag Elementary School No. 21
 CHANGE ORDER #: 102
 REASON: Time Extension and Extended General Conditions
 AMOUNT: \$270,000
 CONTRACT STATUS: 51% Paid to Date against the Current Contract Value
 PROJECTED SCHOOL OCCUPANCY DATE: January 2013

I am writing to recommend approval by the Members of the Authority for Change Order No. 102 in the amount of \$270,000 for a 180 calendar day time extension and extended general conditions costs for Ernest Bock & Sons, Inc. (EBS), General Contractor for the Victor Mravlag Elementary School No. 21 project. Pursuant to the Operating Authority adopted by the Board on December 1, 2010, a change order that singularly or in the aggregate is greater than 10% of the contract value requires Board approval. The aggregate value of this and prior change orders is greater than 10% of the contract value.

Project Background

The Victor Mravlag Elementary School No. 21 project consists of a new 80,164 square foot facility to educate 500 students in grades Pre-K to Eight. On November 16, 2006 a construction contract was awarded to Ernest Bock & Sons, Inc. in the amount of \$20,587,000 for the addition and renovation of the existing Victor Mravlag Elementary School No. 21 a project scope that has since been modified. The initial substantial completion date for the project was June 18, 2008.

In March 2008, during renovation to the front facade of the original building, the contractor encountered conditions that varied from those anticipated in the construction documents. These unforeseen conditions, which could not have been discovered prior to demolition, necessitated significant changes to the structural design of the building.

After extensive investigation into the structural integrity of the façade, in May 2009 it was decided that the appropriate course was to completely demolish the existing structure, and to replace the old school building with all new construction.

Members of the Authority
Change Order – Ernest Bock & Sons, Inc.
March 7, 2012
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In July 2009, the Members of the Authority approved a revised Project Charter to reflect a change in project scope from addition/renovation to new construction and in anticipation of additional services to be provided by the General Contractor to effectuate that change in scope.

To date there has been significant prior change order activity on this engagement, including several change orders that have been reviewed and approved by the Members of the Authority.

REASON FOR CHANGE

During the course of construction, project delays beyond the control of EBS have necessitated several revisions to the construction completion schedule, with corresponding change orders representing these schedule revisions inclusive of costs for extended general conditions to EBS and resulting in a revised substantial completion date of January 24, 2010.

With the decision in May 2009 to modify the project scope from addition/renovation to new construction, and while related re-design was performed, the contractor was unable to proceed with contract work from the period from May 16, 2009 to November 15, 2009. It was determined by the NJSDA that EBS was unable to perform contractual work during this time period. NJSDA analysis has concluded that this period represents a compensable delay of 180 calendar days. The substantial completion date of January 24, 2010 was again revised to a substantial completion date of July 23, 2010 inclusive of the 180 calendar delay period, at that time.

It must be noted that since the last approved revision to the substantial completion date of July 23, 2010 mentioned above, the project has continued to experience delays. EBS has submitted requests for additional delays which are under review.

Documents supporting this Change Order have been reviewed by the associated NJSDA project team members as well as the Program Director, Deputy Program Director and the NJSDA Contract Management Division (CMD) for adherence to current NJSDA policy and procedures. All reviewing NJSDA staff members, including CMD, have determined that the Change Order is justified and the amount is reasonable and appropriate.

SUMMARY CHANGE

This Change Order No. 102 seeks to address the One Hundred and Eighty (180) calendar day delay encountered during a time period between May 16, 2009 and November 15, 2009 only, and compensate EBS for extended general conditions costs incurred in the lump sum amount of \$270,000. The agreement is exclusive of sub-contractor/supplier impacts resulting from the delay.

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 Change Order – Ernest Bock & Sons, Inc.
 March 7, 2012
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CALCULATIONS

a. Original Contract Amount	\$ 20,587,000.00
b. Change Orders to Date (Excluding proposed Change Order)	\$ 7,381,057.53
c. Proposed Change Order Amount	\$ 270,000.00
d. Total Change Orders to Date including this Change Order (Total of Line (b.) and Line (c.))	\$ 7,651,057.53
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	37.2%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$ 28,238,057.53

RECOMMENDATION

The Members of the Authority are requested to approve the Change Order No. 102 for Ernest Bock & Sons, Inc., in the amount of \$270,000. In accordance with the Operating Authority, approval is required by the members of the Authority of any change order which singularly or in the aggregate is greater than 10% of the current contract value. The aggregate value of this and prior change orders is greater than 10% of the contract value.

Recommended by:

/s/ Corrado Minervini
 Corrado Minervini, Program Director

Reviewed and Recommended by: Vincent Lechmanick, Deputy Program Director
 Prepared by: Gabriel Salas, Program Officer, Program Operations

Resolution—6a7.

COMPANY NAME: Ernest Bock & Sons, Inc.
 DISTRICT: Elizabeth
 CONTRACT #: EL-0016-C03
 PMF/CM: NJSDA Managed
 SCHOOL NAME: Victor Mravlag Elementary School No. 21
 CHANGE ORDER #: 102
 REASON: Time Extension and Extended General Conditions
 AMOUNT: \$270,000
 CONTRACT STATUS: 51% Paid to Date against the Current Contract Value
 PROJECTED SCHOOL OCCUPANCY DATE: January 2013

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) provides that a change order or credit change order that exceeds \$500,000 or (singularly or when aggregated) exceeds ten percent (10%) of the contract value, requires approval by the Members of the Authority; and

WHEREAS, the Victor Mravlag Elementary School No. 21 project (“the Project”) consists of a new 80,164 square foot facility to educate 500 students in grades Pre-K to Eight; and

WHEREAS, in 2006 a construction contract was awarded to Ernest Bock & Sons, Inc. in the amount of \$20,587,000 for the addition and renovation of the existing Victor Mravlag Elementary School No. 21 a project scope that has since been modified; and

WHEREAS, as set forth in the memorandum presented to the Board on this date and incorporated herein, in 2008, during renovation activities, conditions that varied from those anticipated in the construction documents arose; and

WHEREAS, these unforeseen conditions, which could not have been discovered prior to demolition, necessitated significant changes to the structural design of the building; and

WHEREAS, in 2009, following extensive additional investigation, it was determined appropriate to completely demolish the existing structure, and to replace the old school building with all new construction; and

WHEREAS, in July 2009, the Members of the Authority approved a revised Project Charter to reflect a change in project scope from addition/renovation to new construction and facilitate the provision of additional services by the General Contractor; and

WHEREAS, the Members have reviewed and approved significant prior change order activity on this engagement with the result that the aggregate value of this and prior change orders is greater than 10% of the contract value; and

WHEREAS, the details of the challenges, delays and change orders experienced on this Project are comprehensively set forth in the memorandum presented to the Board on this date and incorporated herein; and

WHEREAS, this Change Order No. 102 pertains to the One Hundred and Eighty (180) calendar day delay encountered during a time period between May 16, 2009 and November 15, 2009 only, and serves to compensate EBS for extended general conditions costs incurred in the lump sum amount of \$270,000, exclusive of sub-contractor/supplier impacts resulting from the delay.

WHEREAS, documents supporting this change order have been reviewed by the associated SDA project team members as well as the program director, deputy program director and the SDA Contract Management Division (CMD) for adherence to current SDA policy and procedures and all reviewing SDA staff members have determined that the Change Order is justified and the amount is reasonable and appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve Change Order No. 102 for Ernest Bock & Sons, Inc. (Contract No. EL-0016-C03) in the amount of \$270,000 for a 180 calendar day time extension and extended general conditions in connection with the Victor Mravlag Elementary School No. 21 project in the Elizabeth School District, consistent with the memorandum presented to the Board on this date.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Change Order for Ernest Bock & Sons, Inc. (Contract No. EL-0016-C03), Victor Mravlag ES No. 21 project, Elizabeth School District, dated March 7, 2012

Dated: March 7, 2012

CONSTRUCTION AWARD

PACKAGE NO. EL-0006-N01- ELIZABETH ACADEMIC HS - EARLY SITE PREPARATION



MEMORANDUM

TO: Members of the Authority

FROM: Sean Murphy
Procurement Director

RE: District: Elizabeth
School: Academic H.S.
Description: Early Site Preparation
Package No.: EL-0006-N01
CCE: \$ 2,215,000
Award: \$ 1,587,500
CM: NJSDA (Phase I)
Bovis Lend Lease (Phase II)
Design Consultant: Langan Engineering (Phase I)
Skidmore, Owings & Merrill, LLP (Phase II)

DATE: March 7, 2012

SUBJECT: Construction Award

INTRODUCTION

I am writing to recommend the Members of the Authority approve the award of a contract in the amount of \$1,587,500 to Luzon, Inc. for Early Site Preparation work for the Academic High School project in the Elizabeth School District, the first phase of construction for a project that will advance in two phases. The work consists of preparing the project site for the construction of the high school building as set forth in the bid documents. It includes clearing the site, removal of sub-surface footings and foundations, removal of unsuitable soils, remediating areas of concern and importation of certified clean fill to be compacted and graded.

At the March 2, 2011 SDA Board Meeting, the Members approved the Authority’s 2011 Capital Program. That Program identified the Elizabeth Academic High School project for final validation and advancement into construction. For reasons discussed below, the SDA is now seeking to advance the described work. The work and funding for this project phase is consistent with the previously approved project charter.

Pursuant to the SDA Operating Authority adopted by the Board on December 1, 2010, Board approval is required for the award of construction contracts greater than \$500,000.

BACKGROUND

The Elizabeth Academic High School is a new 183,822 square foot facility designed to educate 1,091 students ninth through twelfth grade.

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Elizabeth Academic H.S. – Early Site Preparation
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Following Board approval of the 2011 Capital Program in March 2011, SDA staff undertook a final review and validation of the design of the Elizabeth Academic High School project, inclusive of design documents relative to site development and environmental considerations, to ensure conformance with the current required approach. The review identified some design modifications to more closely conform to current standards, and determined that project cost and schedule efficiencies would be supported by a two phase construction process: Phase I: Early Site Preparation and Phase II: Construction of Academic High School.

On August 29, 2011, the SDA issued a Task Order assignment to Langan Engineering & Environmental Services under an existing Task Order Contract to perform additional Environmental and Geotechnical Site Investigations, to develop site preparation plans and specifications, and to provide Bid and Award Phase Services, Construction Administration Services and Close-out Services for the Phase I Early Site Preparation Package. Design work is being finalized for Phase II which is expected to advance to construction procurement in June 2012.

PROCUREMENT PROCESS

This package was advertised on December 5, 2011 on the SDA website, NJ State website, and in selected newspapers for interested firms to participate in the bidding process. A mandatory pre-bid conference was held on December 20, 2011.

Project Rating Proposals were received on December 27, 2011. Bidders were evaluated based on the largest of four projects completed in the past seven years, safety records as well as reference checks. Based on evaluation of the information submitted, eleven (11) bidders received a Project Rating Limit.

Requests for Information (RFI) were received by December 28, 2011. The addendum containing the responses to the RFI's was issued to the bidders on January 4, 2012.

Price Proposals were received on January 18, 2011. The Price Proposals were publicly opened and the lump sum base bids were read aloud as required by law.

Following the public bid opening, the SDA performed a review of the Price Proposals to determine the responsiveness of each bidder to the solicitation. The review determined that five (5) bidders were qualified and responsive. The results of the review are listed below:

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Contractor	Bid Amount	Comments
Site Contractors, Inc.	\$1,295,000.00	Bid rejected. Irregular bid.
Luzon, Inc.	\$1,587,500.00	Qualified and responsive bidder.
Underground Utilities Corporation	\$1,693,140.00	Bid rejected. Non-responsive bidder.
Brockwell & Carrington	\$1,732,000.00	Qualified and responsive bidder.
Aurora Environmental, Inc.	\$1,769,740.00	Bid rejected. Non-responsive bidder.
Tricon Enterprises, Inc.	\$1,799,000.00	Qualified and responsive bidder.
Tomco Construction, Inc.	\$1,954,900.00	Qualified and responsive bidder.
D&K Construction Co., Inc.	\$2,298,000.00	Qualified and responsive bidder.

On February 21, 2012, I recommended, to the School Review Committee, the award of this contract to Site Contractors, Inc. (SCI). On February 22, 2012, Procurement staff was contacted by Theresa DiNatale of SCI who indicated that SCI was “withdrawing” its bid for this project due to “unforeseen circumstances.” Procurement staff was informed that one of SCI’s principals faced a severe medical issue that arose unexpectedly and that SCI’s chief estimator had recently resigned from the company. Procurement staff was further informed that these factors would greatly jeopardize SCI’s ability to complete the project.

After consulting with the SDA Division of Chief Counsel on February 22, 2012, Procurement staff issued a letter on February 23, 2012 to Ms. Theresa DiNatale requesting that SCI clarify the reason(s) for their bid withdrawal request in an affidavit signed by an officer of SCI and notarized. The affidavit was received by SDA Procurement staff on February 24, 2012.

On February 29, 2012, after careful consideration, the SDA denied SCI’s bid withdrawal request. However, based on New Jersey court decisions that permit the rejection of a bid when a bidder’s responsibility is called into question, Section 7 of the Instructions to Bidders, and Section 19:38-3.11(13) of the New Jersey Administrative Code that allows the SDA to reject as “irregular” any bid it deems “advisable to do so in the interest of the State or public interest,” it has been determined that the public interest cannot be served by the award of this contract to Site Contractors, Inc.

The qualified contractor submitting the lowest responsive and responsible Price Proposal was Luzon, Inc.

Since the lowest bid amount submitted by a qualified and responsive bidder was 28.33% below the CCE, a conference was conducted with Procurement, Program Operations, the Design Consultant and Luzon, Inc. to review the bid. It was determined that the major differentials between the CCE and the bid price were due to:

- The contractor’s ability to self-perform the majority of the construction activities, plus a more accurate and lower estimated volume quantity, contribute to lower excavation and removal costs of rubble and soil. This accounts for 34% of the variance between the lowest qualified bid price and the CCE.
- The smaller size, organizational business structure and excellent insurance experience modification rate (EMR) of the contractor lends it to lower costs in general conditions, overhead

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and profit. This accounts for 30% of the variance between the lowest qualified bid price and the CCE.

- The contractor's ability to purchase clean aggregate at a low price, along with its low self-performed installation costs accounts for 12% of the variance between the lowest qualified bid price and the CCE.

Luzon, Inc. confirmed they understood the scope of these line items and their ability to perform the work for the project.

The Design Consultant recommended award of the project to Luzon, Inc. The Program Officer and Program Operations Director concurred with the recommendation of the Design Consultant and requested that we proceed with the award to Luzon, Inc.

RECOMMENDATION

The Members of the Authority are requested to approve the award of a contract to Luzon, Inc. for Package No. EL-0006-N01 in the amount of \$1,587,500. Such approval is conditioned upon the agreement and related documentation being reviewed and approved by the SDA Division of Chief Counsel.

/s/ Sean Murphy

Sean Murphy, Procurement Director

Resolution—6bi.**Approval of Award
EL-0006-N01 – Elizabeth Academic High School –Luzon, Inc.****Resolution**

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (“SDA” or “the Authority”) provides that approval by the Members of the Authority is required for the award of construction contracts greater than \$500,000; and

WHEREAS, the Elizabeth Academic High School (Academic) is a new 183,822 square foot facility designed to educate 1,091 students ninth through twelfth grade; and

WHEREAS, following inclusion of Academic in the Board approved 2011 Capital Program in March 2011, SDA staff undertook a final review and validation of the design of the Elizabeth Academic High School project to ensure conformance with the current required approach; and

WHEREAS, this review identified some design modifications to more closely conform to current standards, and determined that project cost and schedule efficiencies would be supported by a two phase construction process, Early Site Preparation (Phase I) and: Construction of Academic High School (Phase II); and

WHEREAS, on August 29, 2011, the SDA issued a task order assignment under an existing task order contract to perform additional environmental and geotechnical site investigations, to develop site preparation plans and specifications, and to provide bid and award phase services, construction administration services and close-out services for the Phase I Early Site Preparation Package; and

WHEREAS, this award, if approved, would advance the Phase I Early Site Preparation work; and

WHEREAS, as set forth in the memorandum presented to the Board on this date and incorporated herein and consistent with all applicable laws and regulations, on December 5, 2011, SDA staff commenced a procurement process, for early site preparation work; and

WHEREAS, as set forth in the memorandum presented to the Board on this date and incorporated herein, following completion of the procurement process, SDA staff and executive management recommend Board approval of a contract award in the amount of \$1,587,500 to Luzon, Inc. for early site preparation work; and

WHEREAS, approval of the agreement and related documentation is conditioned upon review and approval of same by the SDA Office of Chief Counsel.

WHEREAS, the work and funding for this project phase is consistent with the previously approved project charter.

NOW THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve the award of a contract to Luzon, Inc. (Package No. EL-006-N01) in the amount of \$1,587,500, with such approval conditioned upon review and approval of the agreement and related documentation by the SDA Office of Chief Counsel.

BE IT FURTHER RESOLVED THAT, this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Contractors Award, Luzon, Inc. (Package No. EL-006-N01), Elizabeth Academic High School, Elizabeth School District, dated March 7, 2012

Dated: March 7, 2012

READOPTION w/AMENDMENTS: 19:36

**MEMORANDUM**

TO: Members of the Authority

FROM: Jane F. Kelly, Vice President
Division of Corporate Governance and Operations

DATE: March 7, 2012

RE: Readoption with Amendments: Title 19, Chapter 36
Procurement of Design Build Projects

Management of the New Jersey Schools Development Authority (the "Authority") is seeking the Members' approval to proceed with readoption and amendment of N.J.A.C. 19:36, Procedures for Procurement of Design Build Contracts for School Facilities Projects for the Schools Construction Program ("Chapter 36" or "the Rules"). The Rule proposal is attached hereto for your review.

Chapter 36 was originally adopted by the New Jersey Schools Development Authority as special new rules, published as R. 2009 d. 102, effective February 27, 2009. As special rules with a one-year effective period, Chapter 36 was originally due to expire on February 27, 2010. However, pursuant to Executive Order 1 (2010), the Rules were indefinitely extended pending readoption.

Shortly after the adoption of Chapter 36, in April of 2009, the Rules were the subject of a legal challenge before the New Jersey Superior Court, Appellate Division, in a matter captioned O'Shea v. New Jersey Schools Development Authority, Docket No. A-3943-08T1. The suit questioned the Authority's ability to utilize a design-build methodology to procure the design and construction of a school facilities project. In a decision of April 7, 2010, the Appellate Division upheld the NJSDA's ability to utilize design-build, but criticized the Authority's procedures governing the creation of a shortlist of offerors, for failure to include statutory selection criteria and for a lack of delineation of the size of the shortlist. The Court invalidated those portions of Chapter 36 pertaining to the creation of a shortlist of potential offerors, and instructed the Authority to either abandon the use of a shortlisting procedure, or revise the rules regarding shortlisting to conform to statutory criteria and provide definition for the size of the shortlist to eliminate improper discretion in shortlist selection.

In response to the determination of the Appellate Division, the New Jersey Schools Development Authority has determined that the use of a shortlist procedure is a valuable component of an effective procurement process, and thus Management of the Authority proposes readoption of the Rules with amendments to the shortlisting provisions to comply with the direction of the Appellate Division. Furthermore, the Authority has proposed certain additional amendments to other sections of Chapter 36, with significant revisions described below.

Brief Outline of Significant Revisions

Deletion of References to Pilot Program

As special new rules with a one-year expiration period, the Rules expressed an intent to govern a six-project design-build pilot program. The current readoption proposal deletes references to a limited pilot program, as upon readoption of the special rules as ordinary rules subject to a seven-year expiration period, and in light of the Appellate Division's determination that the NJSDA has full statutory authority and ability to utilize a design-build procurement methodology, Management of the Authority believes that limiting the Rules' application to a prescribed pilot program is unnecessary.

Major Changes to Definitions

The term "Offeror" has been replaced with the term "Bidder," as this term is more consistent with existing procurement law.

The definitions of "Construction Manager" and "Substantial Completion" have been streamlined to eliminate excess detail unnecessary to the function of these regulations.

The term "DCA building permit" is proposed for modification to become "building permit."

The definition of "guaranteed maximum price" ("GMP") has been amended to indicate that a guaranteed maximum price is a method of compensation for the design builder, which does not preclude the use of lump-sum compensation for a design build procurement under these rules.

The term "price proposal" has been amended to reflect that a GMP is an optional method of compensation for a design build project.

The term "protest" has been added to describe a formal challenge to an Authority decision or action.

The terms "Request for Qualifications" and "shortlisting" are proposed for modification to delete references to the selection of the "most qualified" offerors, because the Appellate Division had rejected a "most qualified" standard as inconsistent with the Authority's statutory mandate requiring selection of the offeror whose proposal is judged "most advantageous to the development authority, price and other factors considered."

The term "Selection Coordinator" has been added to define the Authority employee charged with the administration of the selection and evaluation process for a design-build procurement.

Records Retention and Production

Proposed new language clarifies the design-builder's obligation to comply with requests for information and documents from the Authority, and from state and federal investigative agencies. The changes clarify the design-builder's obligation to maintain records of the design-build project for the specified period of ten years, with return of such records to the Authority at the end of this period, unless the Authority has requested an earlier return of the files or transfer

of such files to another entity. Language has been added to require the design-builder to provide documents within four business days of the request from the Authority.

Stipend

Proposed amendments to the Rules clarify that payment of a stipend in connection with a design-build procurement is not mandatory. SDA regulations have allowed for the provision of stipends to unsuccessful bidders since their adoption in 2009, and prior to the adoption of formal regulations, SDA policy has included the payment of stipends in design-build procurements since 2003. Indeed, in each of the two prior design-build procurements issued by the Authority's predecessor NJSCC (in 2009 and in 2003), a stipend was offered. At the time the original regulations were developed, the technical parameters and submission requirements for design build procurements were open-ended and afforded bidders significant latitude in preparing submissions. The availability of a stipend to unsuccessful bidders was an attempt to ensure a wider bidder pool by defraying some of the expense of producing elaborate, highly creative and labor intensive technical submissions.

With the advent of the Authority's standardization efforts, the increased Authority guidance and constrained requirements for design build procurements provided under the Authority's materials and systems standards and kit of parts models will effectively streamline the process of generating a responsive technical proposal, and minimize the expenses incurred in preparation of such submissions. Under this new paradigm, the justification for offering a stipend is less compelling and it is the Authority's current intent that design-build projects contemplated under the Authority's current program will not include a stipend component. For the foregoing reasons, language was added to Sections 19:36-3.3.c.6 and 19:36-5.1c to emphasize the optional, non-mandatory nature of a stipend component in a design build procurement.

Prequalification Requirement

A proposed amendment clarifies that offerors (and their design-build teams) will be required to be prequalified in the particular discipline or disciplines as specified in the RFQ.

Shortlisting Provisions

Proposed changes to the Rules are intended to fulfill the Appellate Division's requirements. Specifically, the language referencing a shortlisting selection of the "most qualified" offerors, is proposed for deletion, as the Appellate Division has rejected use of a "most qualified" standard as inconsistent with the Authority's statutory mandate to select the offeror whose proposal is judged "most advantageous to the development authority, price and other factors considered." Additional proposed amendments delete reference to the establishment in the RFQ of a "maximum" number of offerors to be selected for the shortlist, in favor of language that indicates that the RFQ will specify the number of offerors to be selected for the shortlist. Language has been added to include demonstrated affirmative action experience as an explicit selection criterion, as required by the Authority's authorizing statute.

Changes to Reflect Staff Vacancies

References to the Authority's Senior Director of Procurement and Chief Counsel have been changed in favor of more general references to the Authority staff, due to vacancies in those positions.

Performance Evaluations

New provisions have been proposed to implement performance evaluations of design builders with respect to the performance of construction responsibilities, in order to comply with the Authority's statutory mandate to conduct performance evaluations on construction contracts. The newly-included performance evaluation provisions are based upon, and are nearly identical to those standards included in the Authority's recently-adopted regulations for Price and Other Factors construction procurement, at N.J.A.C 19:38B. The new provisions state that design builders will be evaluated periodically throughout a project on their construction performance, and that the performance evaluation "will consider the design-builder's performance as a contractor in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out."

Changes to Hearing Procedures

Proposed changes to the hearing procedures for protests under Chapter 36 include a change to indicate that if an informal hearing is warranted, the hearing officer would be selected by the Authority's Chief Executive Officer or by a designee of the CEO, instead of being selected by the Senior Director of Procurement; and a change to the time period for issuance of a written decision after such hearing from ten to thirty days.

Requested Board Action

The Members of the Authority are requested to approve the readoption with substantive amendments and the filing of the Rules with the OAL, subject to OAL review and possible revision.

/s/ Jane F. Kelly

Jane F. Kelly, Vice President
Corporate Governance & Operations

JFK/ceh

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procedures for Procurement of Design Build Contracts for School Facilities Projects for the Schools Construction Program

Proposed Readoption with Amendments: N.J.A.C. 19:36

Authorized By: New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.

Authority: P.L. 2007, c.137, § 4k (N.J.S.A. 52:18A-238k) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); 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 2012-

Submit written comments by _____ 2012 to:

Cecelia Haney, Administrative Practice Officer

New Jersey Schools Development Authority

PO Box 991

Trenton, NJ 08625-0991

The agency proposal follows:

Summary

The New Jersey Schools Development Authority (“Authority” or “SDA”) proposes to readopt with amendments N.J.A.C. 19:36 (the “Rules”). The Rules establish the requirements, standards and procedures for the Authority’s procurement of design-build contracts for the construction of school facilities projects.

Chapter 36 was originally adopted by the New Jersey Schools Development Authority as special new rules, published as R. 2009 d. 102, effective February 27, 2009. The rules were set to expire on February 27, 2010, however, pursuant to Executive Order 1 (2010), which “froze” all existing regulations until the completion of the review of administrative regulations and rules by the Red Tape Review Group, the expiration date for Chapter 36 was extended until such time as the extended regulations are readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

In April of 2009, Chapter 36, and the NJSDA’s ability to utilize a design-build methodology to procure the design and construction of a school facilities project, were the subject of a legal challenge before the New Jersey Superior Court, Appellate Division, in a matter captioned O’Shea v. New Jersey Schools Development Authority, Docket No. A-3943-08T1. In a decision of April 7, 2010, the Appellate Division upheld the NJSDA’s ability to utilize the design-build procurement methodology, but criticized the Authority’s procedures for creation of a short list of bidders, finding that the process failed to conform to statutory criteria and lacked sufficient delineation of the size of the short list. The Court invalidated those portions of Chapter 36 pertaining to the creation of a short list of potential bidders competing for a design-build

contract, and instructed the Authority to either abandon the use of a short listing procedure, or revise the rules regarding short listing to conform to statutory criteria and provide sufficient structure for selecting the size of the short list to eliminate excessive discretion. In response to the decision of the Appellate Division, the New Jersey Schools Development Authority has determined that the use of a short list procedure is a valuable component of an effective procurement process, and has proposed several amendments to the Chapter 36 rules governing the short list procedures in order to comply with the direction of the Appellate Division. Furthermore, the Authority has proposed certain additional amendments to other sections of Chapter 36 to achieve conformity with other existing and proposed rules, and to better reflect the practices and procedures of the Authority.

The Authority proposes to readopt the balance of the Rules without amendment. The Authority has reviewed Chapter 36 and has determined that it remains adequate, reasonable and necessary for the purposes for which it was originally promulgated, with the addition of the proposed amendments.

As the Authority 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 description of the proposed amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

19:36-1.1 Purpose and applicability of rules

This section has been proposed for readoption with amendments. Significantly, changes

proposed for subsection 1.1(a) delete references to a limited pilot program for design-build projects. The original Rules were adopted as special new rules, with a one-year expiration period, and made reference to a six-project pilot program for design-build projects. With this proposed readoption, the Rules would convert to regular rules with a seven-year effective period, and in light of the Appellate Division's ruling that the Authority has full statutory authority and ability to utilize a design-build procurement methodology, the Authority has determined that limitation of the Rules to a formal pilot program is not necessary.

Proposed amendments to subsection 1.1(b) include stylistic changes to replace the phrase "These rules provide for the Authority to retain a design professional" with the phrase "These rules allow for the Authority to procure a design professional" and the relocation of the reference to N.J.A.C. 19:38C to reflect that rule's effect on the procurement process for a design professional, rather than on the designation of a design professional as a "bridging architect"

19:36-1.2 Definitions

Amendments to the section include changes to previously defined terms, the deletion of obsolete terms, and the addition of new terms, as set forth below.

The definition of "Act" has been amended to reflect that the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 and its amendments authorize the school construction program.

The definition of "best value selection" has been amended to replace the phrase "a selection process in which proposals contain both a price proposal and a technical proposal," with "a

selection process in which consideration is given to both a price proposal and a technical proposal”.

The term “bidder” has been added to replace the term “offeror,” and the definition of “Bidder” remains the same as the former definition of “offeror,” namely “any legal entity classified by the Department of the Treasury, Division of Property Management and Construction, and prequalified by the Authority, that may submit an offer in response to a request for qualifications or request for proposals for an award of a design-build contract.”

The term “Board” has been added to refer to the governing body of the Authority.

The definition of the term “Bridging Architect” has been amended to correct prior language that erroneously suggested that an entity could be registered to practice architecture and to clarify that the Bridging Architect refers to a firm that may be retained by the Authority and which employs persons registered to practice architecture.

The term “Commissioner” has been added to refer to the head of the Department of Education.

The definition of “Construction Manager” has been amended to eliminate unnecessary descriptions of functions inherent to construction management services, namely “oversight and reporting services,” and to insert language indicating that a Construction Manager “may be” engaged by the Authority, in recognition of the fact that the engagement of a Construction Manager is optional and the Authority retains the ability to self-manage its design-build projects.

The term “DCA building permit” has been deleted as superfluous.

The definition of the term “Design-Build contract” has been amended to specify that the Design-Build contract is a “written, integrated” agreement. Further amendments to the definition eliminate extraneous language (deleting “governing the design and construction of the school facilities project and all other documents” and replacing the phrase “the obligations of the design builder with respect to the design and construction of the project” with the more concise and accurate “the obligations of the parties”). A further amendment deletes the reference to the Design Builder’s technical proposal as part of the Design-Build contract, as the technical proposal need not be considered part of the contract documents. Finally, language has been added to reflect that the obligations described in the Design-Build contract reflect “the performance of Work and Services and the basis for payment.”

The definition of the term “Design-Build information package” has been amended to replace the reference to “offerors” with “bidders.”

The definition of the term “Design build project delivery” has been stylistically amended to move the location of the phrase “into a single contract” from the end of the sentence to more accurately modify the phrase “all or some portions of the design and construction phases of a school facilities project.”

The definition of “Development Authority” has been amended to replace the phrase “an entity which undertakes and funds” with “an entity which is statutorily charged with undertaking and

funding” school facilities projects under the Act.

The definition of the term “guaranteed maximum price” has been amended to indicate that a guaranteed maximum price is “a method of compensation for the design builder, including but not limited to the design-builder’s fee, the costs of all work, and any other prices as set forth in accordance with the design build contract” and to replace the language that a GMP is “a dollar amount including but not limited to the design-builder’s fee, the costs of all work, and any other prices, set forth in an offeror’s prices proposal, as adjusted in accordance with the design-build contract.”

The definition of the term “key team member” has been amended to: relocate language that a key team member is identified as “having a responsible role in the successful completion of the design-build contract” to more accurately reflect the nature of a “key team member”; to replace the term “offeror” with “bidder”; and to indicate that the bidder’s response regarding key team members “is made part of the contract.” Further changes eliminate redundant language that formerly specified that “upon award, key team members are part of the team of the design builder.”

The definition of the term “Notice of award” has been amended to replace the term “offeror” with “bidder”; to specify that the Notice of award must be a “written” notice issued to the bidder “prior to award”; to indicate the notice sets forth the Authority’s intention to enter into a design-build contract with the bidder; and to delete superfluous language that the contract is for “the services and work set forth in the request for proposals.”

The term “offeror” has been deleted and replaced with the term “bidder,” which is more commonplace in procurement law.

The term “performance specifications” has been amended to specify that the performance specifications are part of the design-build information package, and has been further amended to delete language that the specifications describe an end result, objective or standard that the design builder is expected to “exercise its ingenuity to achieve, selecting the means and assuming a corresponding responsibility for that selection” in favor of clearer language indicating that the specifications describe an end result, objective or standard that the design builder is expected to “achieve in designing and constructing the project.”

The term “Prequalification” has been amended to replace the term “offeror” with “bidder.”

The term “prescriptive specifications” has been amended to specify that the prescriptive specifications are a “document provided in the design-build information package”.

The term “Price proposal” has been amended to indicate that a GMP is an optional method of compensation for a design build project, in that the price may be submitted as a “Guaranteed maximum price” if required by the RFP for the procurement.

The definition of the term “Professional consultants” is amended to refer to “Professional services consultants” which is a term that has been proposed for amendment in the Authority’s regulations. Changes have been made to the definition of “Professional consultants” to conform

to the definition of “Professional services consultants” in the Authority’s regulations proposed at 43 N.J.R. 3153(a). Such changes include amendments to specify “the architect, engineer, land surveyor or other individual or professional firm” as types of professional services consultants, and to indicate that a professional services consultant provides services “relating to its respective occupation,” which services “require unique professional or technical skills, licenses, or other credentials.” Further changes include adding “appraisals”, “commissioning” and “provision of insurance” to the types of services provided by professional services consultants. Finally, the definition has been amended to “include those consultants who provide ‘professional architectural, engineering, or land surveying services’ within the meaning of N.J.S.A. 52:34-9.2.

The term “protest” has been added to describe a formal challenge to an Authority decision or action.

The term “ranking” has been added to refer to the action of listing bidders “in order of highest to lowest total scores, based upon selection criteria set forth in the RFQ and/or RFP.”

The term “Request for Qualifications” has been amended to replace the term “offeror” with “bidder” and to eliminate references to the selection of the “most qualified offerors,” which language had been deemed problematic by the Appellate Division as inconsistent with the Authority’s statutory mandate to select the bidder whose proposal is judged “most advantageous to the development authority, price and other factors considered.” Other amendments include the inclusion of language indicating the information requested by the RFQ, namely information “regarding the qualifications, experience and organizational structure of the bidder’s proposed

design-build team, which information can be used by the Authority to select a short list of bidders to compete for a design-build contract.”

The term “Schedule” has been amended to replace references to “offeror” with “bidder.”

The term “SDA school district” has been amended to insert a statutory citation.

The term “selection coordinator” has been added to mean “the administrator of the operations and procedures of the selection process, whose activities shall include, but are not limited to, scheduling of meetings, preparing agendas, recording scores, verifying submittal information, preparing minutes of selection committee meetings, and other similar administrative duties.”

The term “short-listing” has been amended to replace the reference to “offerors” with “bidders” and to replace the language regarding the selection of “most qualified offerors who have responded to an RFQ,” which language had been criticized by the Appellate Division as inconsistent with the Authority’s statutory mandate, with the phrase “bidders who are evaluated on qualification factors other than price, as indicated in the RFQ, and whose proposals are judged most advantageous to the Authority in terms of qualifications other than price.”

The term “specification” has been amended to delete reference to being “prepared by the design-builder” in recognition of the terms “performance specifications” and “prescriptive specifications” which are types of specifications that are prepared by the Authority or the Authority’s agents; and to replace the phrase “setting forth” with the language “which sets

forth.”

The term “Statement of Qualifications” has been amended to replace references to “offerors” with “bidders.”

The term “Substantial Completion” has been streamlined to eliminate excess detail unnecessary to the function of these regulations, and which details are specified elsewhere as contractual obligations. Language has been added to the text to summarize such obligations, such as the obligations to secure a temporary certificate of occupancy, to create a punch list, and to deliver a facility that is ready for occupancy in accordance with its intended use.

The term “technical evaluation committee” has been amended to specify that it is a selection committee, and to replace the term “offerors” with “bidders.”

The term “weighted criteria process” has been amended to replace the phrase “total points earned by an offeror” with the phrase “total points awarded to a bidder.”

The term “work” has been amended to replace reference to “the design builder and its subcontractors and suppliers” with the phrase “the design-builder and its team.”

19:36-1.3 Disclosure and Publicity

This section has been proposed for repeal and replacement. The former text under this section indicated that “applications and submissions received by the Authority under this chapter are government records as defined in the Open Public Records Act, P.L. 2001, c. 404. The proposed

replacement text indicates that all submissions, made in response to an RFQ or RFP under these rules, are subject to the provisions of the Open Public Records Act, codified at N.J.S.A. 47:1A-1 et seq., and the exceptions from disclosure provided therein. This change is intended to indicate that the submissions are government records when they satisfy the Open Public Records Act's definition of same, and if defined as government records, such submissions shall be subject to the exclusions and exceptions from disclosure as provided in that statute. This section is also proposed for modification to replace language requiring school districts and design builders issuing press releases and public information regarding the school facilities project to include recognition of the Authority's approval and financing of the project. The replacement language is intended to require the Design-builder to notify the Authority prior to issuing press releases or public dissemination of information about the school facilities project, and to include in any such public dissemination of information recognition of the Authority's financing and assistance in the undertaking of the project.

19:36-1.4 Access and record retention

This section has been proposed for readoption with amendments. Proposed changes to this section include the addition of language making explicit the design-builder's obligation to comply with requests for information and documents from state and federal investigative agencies; and the addition of language that clarifies the design-builder's obligation to maintain records of the design-build project for the specified period of ten years, and then return such records to the Authority, unless the Authority has requested an earlier return of the files or transfer of such files to another entity. Additional language has also been added to require the design-builder's subconsultants and subcontractors to retain project records for ten years, and to

require the design-builder to provide to the Authority upon request any records relating to the design-build project, and to provide such documents within four business days of the request from the Authority. Finally, language has been added to require the design-builder to retain all required documents during the pendency, and until resolution of, any litigation, claims, audit findings, document requests and related appeals.

19:36-1.5 Fraudulent Statements

This new section has been proposed for adoption. The new section specifies that any firm or individual that makes or causes to be made a false, deceptive or fraudulent statement in its submittal in response to an RFQ or RFP, or in the course of any hearing under this chapter may be disqualified from bidding, suspended and/or debarred, and may be subject to prosecution pursuant to applicable law.

SUBCHAPTER 2. TECHNICAL EVALUATION COMMITTEE

19:36-2.2 Composition and responsibilities of technical evaluation committee

This section has been amended to reference the designation of a selection coordinator to administer the selection process, and to require that each member of the selection committee shall have the relevant experience required to evaluate submissions, as indicated in N.J.S.A. 52:34-1.3(c). Additionally, language has been added as subsection (c) to reflect that once the identity of bidders and their teams is known, but before commencement of any evaluation of submissions, the members of the selection committee must certify that they have no personal interest in any of the bidders to be evaluated, or the subcontractors or subconsultants of any bidder, or the principals, subsidiaries or parent companies of any bidder, or any subcontractor or

subconsultant of a bidder. If a conflict is discovered, the language added to this section provides that the selection committee member with a conflict may not serve, and may be replaced. Finally, language has been added as subsection (d) to indicate that the names of the members of the selection committee shall be made public once the contract is awarded.

SUBCHAPTER 3. PROFESSIONAL CONSULTANT SERVICES

19:36-3.2 Engagement of bridging architect

This section has been proposed for readoption with amendment to delete the former name of the Authority's regulations governing professional consultant procurements, as the title of that section is proposed to be changed pursuant to a pending rule proposal.

19:36-3.3 Design-build information package

This section has been proposed for readoption with amendments. Proposed changes to this section include the inclusion of language that clarifies that the payment of a stipend in connection with a design-build procurement is not mandatory.

19:36-3.4 Engagement of construction manager

This section has been proposed for readoption with amendment. The proposed amendment would correct the caption of regulations codified at N.J.A.C. 19:38C, to conform to a title change proposed by a pending rule proposal.

SUBCHAPTER 4. TWO PHASE SELECTION PROCESS FOR DESIGN BUILDERS

19:36-4.2 Necessity for prequalification

This section has been proposed for readoption with amendment. The proposed amendment

provides clarification of the prequalification notice requirement of Subchapter 4.2, such that bidders (and their design-build teams) will be required to be prequalified in the particular discipline or disciplines as specified in the RFQ.

19:36-4.3 Request for qualifications

This section has been proposed for readoption with amendments. Proposed changes to this section include deletion of language referencing a short listing selection of the “most qualified” bidders, which language had been deemed problematic by the Appellate Division as inconsistent with the Authority’s statutory mandate to select the bidder whose proposal is judged “most advantageous to the development authority, price and other factors considered.” Additional proposed amendments delete reference to the establishment in the RFQ of a “maximum” number of bidders to be selected for the short list, in favor of language that indicates that the RFQ will specify the number of bidders to be selected for the short list, and the deletion of the word “anticipated” from the description of the criteria for the technical evaluation to be referenced in the RFQ, as such criteria will be finalized by the time the RFQ is issued.

19:36-4.4 Short listing of bidders

This section has been proposed for readoption with amendments. Proposed changes to this section include the modification of the heading to reflect the change from “offeror” to “bidder,” the addition of language indicating that the bidder will be evaluated not only on its own experience, but on the experience of the bidder and the entire design build team, and the addition of provisions specifying that the bidders will be evaluated based on their demonstrated affirmative action experience, which is a criterion required by the Authority’s authorizing statute that the Appellate Division had noted was not included in the original Chapter 36 regulations.

Further amendments include deletion of language referencing a short listing selection of the “most qualified offerors”, in favor of language tracking the Authority’s statutory mandate to select the bidder whose proposal is judged “most advantageous to the development authority, price and other factors considered,” as well as changes to replace references to the Authority’s Senior Director of Procurement with more general references to the Authority staff.

19:36-4.5 Request for proposals

This section has been proposed for readoption with amendments. Proposed changes to this section include replacement of “offerors” with “bidders” and the replacement of “proposal bond” with “bid bond” to conform to standard terminology.

19:36-4.6 Selection process

This section has been proposed for readoption with amendments. Proposed changes to this section include the addition of language indicating that the price proposal submitted shall provide a price for all design services and construction work required to complete construction of the school facilities project, and indicating that the price may be submitted in the form of a GMP, if required by the RFP; the replacement of “proposal bond” with “bid bond” to conform to standard terminology, as well as the replacement of references to the Authority’s Senior Director of Procurement with reference to the selection coordinator, or more general references to the Authority’s staff, where appropriate. Further proposed amendments include replacement of language describing the scoring process for price proposals with a clearer formulation of the scoring process. Language indicating that adjustments to the price proposal may be made by the Authority to establish a correct proposal has been deleted. Language has been added to indicate

that amounts in price proposals must be submitted in words and figures, and in the event of a discrepancy between the words and figures, the amount expressed in words shall govern.

19:36-4.7 Rejection of proposals

This section is proposed for re adoption with amendments. Proposed amendments include replacement of prior language justifying rejection of proposals for lack of responsiveness, or for other enumerated reasons in the public interest, in favor of a more expansive formulation of “any reason, in accordance with law.” Further amendments include replacement of “award” with the more precise “Notice of Award”, and a modification to indicate that cancellation of an award may occur at any time before execution of the contract by the Authority “if the Authority deems it advisable to do so in the interest of the State or the public interest,” rather than merely “at any time before the execution of the design-build contract by all parties”

SUBCHAPTER 5. PAYMENT OF STIPENDS BY THE AUTHORITY

19:36-5.1 Criteria for payment of a stipend

This section is proposed for re adoption with amendments to replace the term “offeror” with the term “bidder.” Additional changes include deletion of language indicating that the stipend is offered as consideration for use by the Authority of the information in the bidder’s technical proposal, and the addition of language indicating that regardless whether a stipend is offered, the submission of a proposal by a bidder constitutes the bidder’s acceptance and agreement that the Authority is entitled to use the information contained therein in the project for which it was submitted, or in other future projects.

SUBCHAPTER 6. CONTRACTS

19:36-6.1 Contract approval and execution

This section has been proposed for readoption with amendments. Proposed amendments include replacement of the term “offeror” with “bidder” and replacement of “proposal bond” with “bid bond” to conform to standard terminology. Further amendments include a clarification that the Notice of Award will specify the time in which the contract must be executed, and the addition of language specifying that if the winning bidder fails to return the executed contract in time, the Authority may opt to withdraw or cancel the notice of award to the winning bidder and awarding to the next-highest-ranked bidder, or cancelling the procurement, in addition to proceeding to recover under the bid bond. Language has been added to indicate that no agreement is valid or binding on the Authority unless and until it is executed by the appropriately authorized representative of the Authority, and that any work performed prior to the execution of the contract by the Authority is volunteered, and represents a gift to the Authority, and that in the event the Notice of Award is cancelled or withdrawn, the bidder is not entitled to any remuneration for any work performed prior to the execution of the contract.

Finally, language has been proposed to replace the statement “After execution by the Authority, a copy of the signed contract will be sent to the design-builder” with language indicating that the Authority will execute and return a signed copy of the agreement only after the bidder’s submission of all required documentation as specified in the Notice of Award, and the Authority’s acceptance of such documentation.

SUBCHAPTER 7. PROTESTS

19:36-7.1 Scope and purpose

This section has been proposed for reoption with amendments. Amendments are proposed to clarify that this subchapter sets forth procedures for protests and administrative hearings regarding the Authority's conduct of design-build procurements.

19:36-7.2 Subject matter, time limitations, and who may request hearings [Formerly "Protests, hearing procedures, time limitations"]

This section has been proposed for reoption with amendments. Proposed changes to this section include the replacement of references to the Authority's Senior Director of Procurement with more general references to the Authority staff, and changes to clarify the intent of the procedures for conducting protests. Language has been added to replace "A challenge to the following actions of the Authority shall be made as follows" with the more accurate "Administrative hearings before the Authority may include the following subject matter and may be requested by the following entities." Other changes to procedures include specifying that a challenge may be made by requesting an informal hearing before the Authority, requiring that hearing requests include all legal and factual arguments supporting the request, and extending certain time frames for submission of the hearing request. Additional changes are proposed to allow the Authority to clearly "deny" rather than "disregard" an untimely or improperly submitted hearing request. Finally, additional sections have been added to explicitly provide procedures for protests of performance evaluations and the award of contracts.

19:36-7.3 Hearing procedures

This section has been proposed for readoption with amendments. Proposed changes to this section include: an extension of the time for the Authority to issue a written decision from 48 hours to five business days if an informal hearing is not deemed warranted; the extension of the time to hold an informal hearing from five to fourteen days; the replacement of references to the Authority's Senior Director of Procurement with reference to the Chief Executive Officer or more general references to the Authority staff; a change to indicate that if an informal hearing is warranted, the hearing officer would be selected by the Authority's Chief Executive Officer or a designee of such CEO, instead of being selected by the Senior Director of Procurement; and a change to the time period for issuance of a written decision after such hearing from ten to thirty days. Additional language has been added to indicate that if formal hearings are required because of the nature of a given dispute, such hearings will be held by the Authority's CEO or a designee, or by an Administrative Law Judge, pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable. Finally, language is proposed for addition to indicate that the Board of the Authority or the CEO, as the Board's designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, and to indicate that upon filing of an initial pleading in a contested case, the Board of the Authority may, by resolution, either retain the matter directly for hearing or transmit the matter to the Office of Administrative Law for hearing, and to indicate that such hearings will be governed by the provisions of the Administrative Procedures 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 et seq.

SUBCHAPTER 8. ROLES AND GENERAL REQUIREMENTS FOR DESIGN-BUILDERS

19:36-8.1 Design and construction

This section has been proposed for readoption with amendments. Amendments include the replacement of the term “approval” with the term “acceptance,” to better reflect the Authority’s response to design submissions, and the addition of language specifying that the Authority must accept the completed plans and specifications before the design builder submits completed plans and specifications to the Department of Education.

19:36-8.2 Costs in excess of guaranteed maximum price

This section has been proposed for readoption with amendments to clarify that a GMP is not the sole method of pricing for a design-build project, but if a GMP is used, any cost savings will accrue to the Authority, and may be shared, at the option of the Authority, with the design-builder if so specified in the design-build contract.

19:36-8.3 Deletion or substitution of key team members

The text of this section is proposed for repeal and replacement with clearer, more forceful language indicating that no substitutions may be made to the design-builder’s key team members either during the selection process or after award, without the prior written approval of the Authority; and that any unauthorized changes to the bidder’s key team members during the selection process may result in the elimination of the bidder from further consideration.

SUBCHAPTER 9. PERFORMANCE EVALUATIONS

19:36-9.1 Applicability and effect

This subchapter 9 is proposed to allow the Authority to fulfill its statutory obligation under N.J.S.A. 18A:7G-36 to conduct contractor performance evaluations on its construction projects, when construction work is performed as part of a design-build contract. This proposed new section specifies that firms awarded design-build contracts will be subject to performance evaluations regarding the firm's performance as a construction contractor, in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out. The section further provides that the design-builder's performance will be evaluated periodically during the course of a project, and that each such evaluation will be performed by a reviewer with direct involvement in the management or supervision of the project. Finally, this section specifies that the performance evaluations performed under this chapter will be utilized by the Authority in future procurements which may require the evaluation of bidders as to their prior experience, under the provisions of any of the following: N.J.A.C. 19:36, 19:38; or 19:38B.

19:36-9.2 Evaluation rating values

This proposed new section provides that design-builders will be scored on their construction performance in accordance with five numerical categories: Outstanding, Very Good, Satisfactory, Marginal or Unsatisfactory. In addition, the proposed new section provides that the numerical scores may be subject to special adjustment factors, and the numerical ratings for each

category shall be tabulated to arrive at an overall numerical evaluation score for each performance evaluation.

19:36-9.3 Consideration of performance evaluations

This proposed new section provides that, for future design-build projects under N.J.A.C. 19:36, or price and other factors projects under N.J.A.C. 19:38B, the process for evaluating a firm's prior performance on Authority projects in a selection process shall be specified in the RFP for such procurement, and may consist of a mathematical averaging of all prior performance evaluations; consideration of particularly favorable or unfavorable evaluations individually and with reference to other evaluations; consideration of multiple evaluations during a given project, to show consistency of performance, deterioration of performance or efforts at improvement and recovery; or combination of such methodologies.

Social Impact

The Rules proposed for readoption establish the standards and procedures for the Authority's procurement of design-build contracts for the construction of school facilities projects. Previously, the Rules had been the subject of a legal challenge that questioned the Authority's ability to utilize a design-build methodology for the construction of school facilities, and that challenged the Authority's ability to promulgate Rules governing design-build procurements. However, the Authority's statutory ability to pursue a design-build procurement process has been validated by the Superior Court, Appellate Division, in its decision in O'Shea v. New Jersey Schools Development Authority, Docket No. A- A-3943-08T1 (April 7, 2010). Moreover, to the extent that the Appellate Division noted deficiencies in the Authority's regulations describing the

procurement process, the proposed amendments seek to remedy those deficiencies in the manner directed by the Appellate Division.

The proposed Rules should establish public confidence in the Authority's ability to ensure that the public's interest in the Authority's selection of design-build teams for school construction projects is adequately protected and that the Authority fairly obtains the design build services of the bidder whose proposal is most advantageous to the Authority, price and other factors considered. The proposed Rules will affect those construction companies and the architects and engineers that would partner with them to bid on school facilities projects as a design-build team, in that the proposed Rules specify the requirements of advertisement of proposals, selection procedures, proposal evaluation, and contract approval and execution for design-build contracts. If the proposed rules are not readopted, the Authority will lack an efficient and robust procedural framework for design-build procurements, which may effectively limit the use of design-build procurements despite validation of the design-build method by the New Jersey courts.

Economic Impact

The Authority has no current way of estimating the costs of the Rules proposed for readoption with amendments, though the economic impact of the proposed Rules is expected to be limited to those firms that choose to participate in the Authority's future design-build procurements, as the proposed Rules outline the process that will be used by the Authority in the selection of bidders for design-build procurements. This information should be beneficial to all private firms wishing to provide design-build services to the Authority. The proposed Rules establish a bidding process which entails certain incidental costs associated with the preparation and submission of proposals. Such costs may include professional staff time associated with preliminary planning,

as well as the costs associated with the production and reproduction of proposals. The design build activities to be procured are to be funded with the State share of the eligible costs of a school facilities project, which may be funded with State contract bonds issued by the NJEDA pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. Additional activity in the construction, planning, architecture and engineering professions may directly result from these Rules, providing State-wide economic benefits in the short term. In addition, proposed amendments to the Rules require the winning design-builder to promptly produce records relating to the design-build project, within four business days of the request from the Authority. This requirement for prompt production of documents may entail a staffing and administrative cost to the winning bidder, but the regulations do no more than codify the document production responsibilities inherent in the Authority's contract with the successful design-build bidder.

The Authority will incur direct and indirect costs for advertisement of Requests for Qualifications and Requests for Proposals, and will incur staff and administrative expense arising from the preparation of such Requests, the evaluation of the proposals received, and the award of contracts and agreements. However, the proposed Rules contain amendments designed to streamline the Authority's procurement processes, which should permit some cost savings in staff time.

Federal Standards Statement

The proposed Rules implement a State statute, specifically P.L. 2007, c.137 (N.J.S.A. 52:18A-235 et seq.). There are no Federal standards or requirements applicable to these Rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The proposed Rules modify the Authority's process for procurement of design-build services. Thus to the extent the 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 proposed Rules will have no direct impact on the agriculture industry. However, implementation of the Rules with respect to the Authority's activities in selection and acquisition of proposed school facility sites will be coordinated with the Farmland Preservation Program.

Regulatory Flexibility Analysis

The proposed Rules impose some compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but only for those small businesses that choose to seek to do business with the Authority. The Rules outline the criteria and procedures the Authority will consider for the selection of proposals for design-build services. The proposed Rules at N.J.A.C. 19:36-4.2 specify that bidders of design-build services be prequalified by the Authority, a requirement that is imposed by public contracting provisions set forth in N.J.S.A. 52:18A-235 et seq. As implemented by the Authority, all firms seeking prequalification will be required to submit audited financial statements, a cost which these firms might not otherwise need to incur. In the interests of financial probity, however, no exemption

for small businesses would be warranted.

Housing Affordability Impact

The proposed Rules address the requirements and the process for the procurement of design-build contracts for school facilities projects and, therefore, will not have an impact on affordable housing or evoke a change in the average costs of housing in the State of New Jersey.

Smart Growth Development Impact

The proposed Rules govern the process by which the Authority procures design-build services, and thus the proposed readoption with amendments will have no impact on Smart Growth Development because the scope of the regulation is minimal, and because it is extremely unlikely that the readoption of the rules would evoke a change in the average price or availability of housing in the State of New Jersey, and unlikely that the proposed readoption with amendments would in any way affect new construction in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the Rules proposed for readoption with amendments follows (additions indicated in boldface text **thus**; deletions indicated in brackets [thus]):

CHAPTER 36

PROCEDURES FOR PROCUREMENT OF DESIGN BUILD CONTRACTS

FOR SCHOOL FACILITIES PROJECTS

FOR THE SCHOOLS CONSTRUCTION PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

19:36-1.1 Purpose and applicability of rules

(a) These rules are adopted by the New Jersey Schools Development Authority (the “Development Authority,” “Authority” or “SDA”) to establish requirements and procedures [for a pilot program] for the procurement of design-build contracts [for up to six school facilities projects]. Section 4 of P.L. 2007, c. 137 confers broad powers on the Development Authority to enter into contracts for the “planning, design, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance” of a school facilities project. This statutory authority includes the procurement of design, construction and other project-related services in one contract when the Authority determines that a single point of responsibility for a combination of these services is in the best interests of a school facilities project. [The Development Authority shall audit the design-build projects under the pilot program on a semi-annual basis.]

(b) These rules [provide] **allow** for the Authority to [retain] **engage** a design professional **pursuant to N.J.A.C. 19:38C**, as a “bridging architect,”[pursuant to N.J.A.C. 19:38C,] for the duration of the school facilities project, to prepare a design-build information package, which outlines the conceptual program, schematic design and performance specifications to be followed by the design-builder, and review the work of the design-builder to ensure that the design meets the requirements of the Authority and the SDA school district. The rules further [provide] **allow** for the engagement of a construction manager (CM) by the Authority to serve as the Authority’s

representative during the school facilities project and provide such services as project oversight and reporting, value engineering services and cost estimating.

(c) These rules provide for the Authority to select design-builders according to the proposals that [offer the “best value”] **are the most advantageous** to the SDA, based upon a “**best value selection” process premised on a** combination of cost and qualitative factors, with consideration given to price at least equal to the consideration given to all other factors combined. The rules provide for the following two-phase selection process:

1. The public advertisement of a request for qualification (RFQ) that describes the school facilities project, outlines the scope of work for the project and solicits responses outlining the qualifications of **bidders** [offerors]; and
2. The issuance of a request for proposals (RFP) to a “short list” of **bidders** [offerors], selected on the basis of their responses to the RFQ, which outlines the criteria to be used for selection and the weight that will be given to each of these criteria in the evaluation process, and which solicits technical and price proposals.

(d) These rules further provide for a technical evaluation committee, comprised of representatives of the Authority and the SDA school district, to provide technical review and evaluation services, including evaluating and ranking the qualifications of **bidders** [offerors] during the RFQ process and evaluating and scoring technical proposals submitted to the Authority in response to an RFP.

(e) Design-build project delivery offers the potential for such benefits as a shorter overall design and construction process, greater cost reliability and reduced risk through enhanced project coordination. In order to achieve such results, these rules provide the Authority with the flexibility to adjust the design-build process, for example, to vary the level of design in the initial design-build information package and/or select and weight the qualitative factors to be addressed in a technical proposal according to the specific needs and complexities of the school facilities project.

19:36-1.2 Definitions

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

(N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137, **which authorizes the school construction program.**

"Best value selection" means a selection process in which [proposals contain] **consideration is given to** both a price proposal and a technical proposal, and the award of the design-build contract is based upon a combination of price and qualitative considerations.

"Bidder" means **any legal entity classified by the Department of the Treasury, Division of Property Management and Construction, and prequalified by the Authority, that may**

submit an offer in response to a request for qualifications or request for proposals for an award of a design-build contract.

“Board” means the governing body of the Authority, consisting of the members of the Authority, as outlined in N.J.S.A. 52:18A-237.

“Bridging architect” means the [person, or entity] firm employing persons duly licensed and registered in the State of New Jersey to practice architecture or engineering, [that is] **which firm may be** engaged by the Authority to develop preliminary design work and performance criteria, as well as provide other services, such as construction administration services, in connection with the design and construction of the school facilities project.

“Commissioner” means the Commissioner of the Department of Education.

“Compensation” means payment(s) due to the design-builder for services rendered or work performed or pursuant to the design-build contract.

“Construction documents” means the plans, specifications and other documents prepared by the design-builder which set forth in detail the design for, and other necessary requirements relating to, the construction of the school facilities project, based on the requirements set forth in the design-build information package.

“Construction manager” or “CM” means the [person or] firm that may be engaged by the Authority to act as the Authority’s representative for the school facilities project and to provide construction management services, [including oversight and reporting services,] in connection with construction of the project.

“Contract milestones” means the dates identified in the school facilities project schedule by which the design-builder must complete certain critical activities to advance the project.

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

[“DCA building permit” means the building permits issued by DCA pursuant to the New Jersey Uniform Construction Code.]

“Deliverables” means any documents required to be produced by, or work product generated by the design-builder, pursuant to the design-build contract.

“Department” means the New Jersey Department of Education.

“Design-build contract” means [an] **the written, integrated** agreement between the Authority and the design-builder [governing the design and construction of the school facilities project and all other documents] setting forth the obligations of the [design-builder with respect to the design and construction of the project] **parties**, including, but not limited to, [a design-builder’s technical proposal] **the performance of Work and Services and the basis for payment**.

“Design-build information package” means the package of information that is included in the RFP, which sets forth the minimum design requirements, performance specifications and other project requirements, for the purpose of furnishing sufficient information so that **bidders** [offerors] may prepare technical and price proposals.

“Design-build project delivery” means a project delivery method that combines all or some

portions of the design and construction phases of a school facilities project **into a single contract**, including, without limitation, design, regulatory permit approvals and utility relocation and construction [into a single contract].

“Design-builder” means the entity contractually responsible for delivering the design and construction and, if applicable, other services for the school facilities project in accordance with the design-build contract.

“Development Authority,” “Authority” or “SDA” means the New Jersey Schools Development Authority, an entity which **is statutorily charged with** [undertakes] **undertaking** and [funds] **funding** school facilities projects under the Act and which is the entity formed pursuant to P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation.

“Guaranteed maximum price” or “GMP” means [the dollar amount] **a method of compensation for the design builder**, including but not limited to, the design-builder’s fee, the costs of all work, and any other prices[, set forth in an offeror’s price proposal], as [adjusted] **set forth** in accordance with the design-build contract, which is the maximum price the Authority shall pay the design-builder.

“Key team member” means **an** individual[s] identified **as having a responsible role in the successful completion of the design-build contract**, in the **bidder’s** response [by the offeror] to the Authority’s RFQ or RFP, **which response is made part of the contract**. [and upon award, are part of the team of the design-builder. Key team members have a responsible role in the successful completion of the design-build contract.]

“Legal requirements” means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the design-builder’s performance of services or work under the agreement, including, but not limited to, the current versions of the Building Design Services Act, the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools under Construction or Being Planned for Construction, the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of local or national authorities having jurisdiction over the project, as applicable.

“Notice of award” means a **written** notice from the Authority to the [offeror] **bidder prior to award, setting forth** [that the Authority intends] **the Authority’s intention** to enter into a design-build contract with [it for the services and work set forth in the request for proposals] **the bidder.**

“Notice to proceed” means a written notice from the Authority setting the commencement date on which the design-builder is authorized to commence performing services and work pursuant to the design-build contract.

[“Offeror” means any legal entity classified by the Department of the Treasury, Division of Property Management and Construction, and prequalified by the Authority, that may submit an offer in response to a request for qualifications or request for proposals for an award of a design-build contract.]

“Performance specifications” means a **document provided in the design-build information package, setting forth a** description of an end result, objective or standard of performance that

the design-builder is expected to **achieve in designing and constructing the project** [exercise its ingenuity to achieve, selecting the means and assuming a corresponding responsibility for that selection].

“Prequalification” means the approval of [an offeror] **a bidder** by the Authority, pursuant to N.J.A.C. 19:38A, for the submission of a statement of qualifications and proposals for a design-build contract. The prequalification process is separate from short listing as elsewhere provided in these rules.

“Prescriptive specifications” means a **document provided in the design-build information package that contains a** description of the materials to be employed and/or the manner in which the work is to be performed that the design-builder is required to follow.

“Price proposal” means the [GMP] **price** submitted by the [offeror] **bidder** to provide the required design and construction and other services described in the RFP, **which may be submitted in the form of a GMP, if so required by the RFP.**

“Professional **services** consultants” or “consultants” means **the architect, engineer, land surveyor or other individual or professional firm** [consultants] providing [professional] services **related to its respective occupation, which require unique professional or technical skills, licenses, or other credentials, which services are** associated with research, development, design, construction, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These **professional services** consultants may provide services

including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, **appraisals**, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal reviews, testing, **commissioning, provision of insurance**, preparation of operating and maintenance manuals, and other related services, **and shall include those consultants who provide “professional architectural, engineering or land surveying services” within the meaning of N.J.S.A. 52:34-9.2.**

“Protest” means a challenge to a decision, statement, action or alleged inaction of the Authority.

“Punchlist” means the list of incomplete or defective work, including work that does not comply with applicable code or legal requirements, to be performed or remedied by the design-builder. Punchlist(s) shall be prepared by the bridging architect in conjunction with the Authority and CM prior to the issuance of the certificate of substantial completion.

“Ranking” means the process of listing responsive bidders in order of highest to lowest total scores, based upon selection criteria set forth in the RFQ and/or RFP.

“Request for proposals” or “RFP” means the document issued by the Authority in the second phase of a two-phase selection process that describes the procurement process and forms the basis for the design-build proposals.

“Request for qualifications” or “RFQ” means the document advertised by the Authority in the first phase of the two-phase selection process that describes the school facilities project in

enough detail to [let] **allow** potential [offerors] **bidders to** determine if they wish to compete for a design-build contract and **that requests information from bidders regarding the qualifications, experience and organizational structure of the bidder's proposed design-build team, which information can be used by the Authority to select a short list of bidders to compete for a design-build contract.** [forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.]

“Schedule” means the schedule prepared and submitted by the [offeror] **bidder** in its technical proposal to the Authority, wherein the [offeror] **bidder** identifies all critical, and certain non-critical, activities, contract milestones and the projected and actual time periods for completing such activities and contract milestones.

"School facilities project" means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings, and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.

“SDA school district” means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, §39 (N.J.S.A. 18A:7G-3).

“Selection coordinator” means the administrator of the operations and procedures of the

selection process, whose activities shall include, but are not limited to, scheduling of meetings, preparing agendas, recording scores, verifying submittal information, preparing minutes of selection committee meetings, and other similar administrative duties.

“Short listing” or “short-listed” means the narrowing of the field of [offerors] **bidders** through the selection of [the most qualified offerors] **bidders** who [have responded to an RFQ] **are evaluated on qualification factors other than price, as indicated in the RFQ, and whose proposals are judged most advantageous to the Authority in terms of qualifications other than price.**

“Specification” means a written description [prepared by the design-builder] **included** as part of the construction documents, **which sets** [setting] forth the detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or work to be incorporated into the school facilities project, or a requirement of the work to be performed. A specification may include a statement of any of the Authority’s requirements and may provide for inspection, testing or the preparation of a construction item before procurement. Specifications shall augment and complement the drawings and plans prepared by the design-builder.

“Statement of qualifications” or “SOQ” means the document(s) submitted by [offerors] **bidders** in response to an RFQ that describes the qualifications and capabilities of the [offeror] **bidder** and its key team members to perform the scope of services to be included in [the] **a** design-build contract.

“Stipend” means a monetary amount which may be paid to unsuccessful [offerors] **bidders**.

“Substantial completion” means that point in time **in the progress of** [on] the school facilities project when [all of the following] **certain conditions specified by the Design Build Contract** have occurred[:], **including, but not limited to, the issuance of a temporary certificate of occupancy, the creation of a punchlist, and the determination that the school facilities project is ready for occupancy in accordance with its intended use.**

[1. All essential requirements of the design-build contract have been performed so that the purpose of the design-build contract is accomplished;]

[2. A temporary certificate of occupancy has been issued by the Department of Community Affairs;]

[3. The punch list has been created;]

[4. The design-builder has delivered to the Authority the key(s) and/or code(s) for operation of the elevators;]

[5. There are no material omissions or technical defects or deficiencies, as identified by the Authority; and]

[6. The school facilities project is 100 percent ready for occupancy in accordance with its intended use.]

“Technical evaluation committee” means [the] **a selection** committee comprised of a majority of Authority representatives and an SDA school district representative(s) who are responsible for reviewing and evaluating responses by [offerors] **bidders** to [the] **an** RFQ and RFP.

“Technical proposal” means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to [the] **an** RFP.

“Two-phase selection process” means a procurement process in which the first phase consists of short listing, based on qualifications submitted in response to an RFQ, and the second phase consists of the submission of price and technical proposals in response to an RFP.

“Uniform Construction Code” means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23, and all applicable subcodes, as such codes are amended from time to time.

“Weighted criteria process” means a form of best value selection in which a percentage of evaluation weight is pre-established for qualitative factors and for price, and the award of a design-build contract is based upon the highest total points [earned by an offeror] **awarded to a bidder.**

“Work” means all design and construction services performed by the design-builder and its **team** [subcontractors and suppliers], including providing all material, equipment, tools and labor, necessary to complete the construction, as described in and reasonably inferable from the construction documents and the design-build contract.

19:36-1.3 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 SDA school district and

the design-builder concerning the school facilities project shall acknowledge Department approval and Authority funding of the school facilities project.]

(a) Any and all submissions made in response to any RFQ and any RFP are subject to the provisions of the Open Public Records Act, P.L. 2001, c. 404, N.J.S.A. 47:1A-1 et seq., and the exceptions from disclosure provided therein.

(b) The Design Builder shall notify the Authority prior to the issuance of press releases and other public dissemination of information concerning a school facilities project, and such shall acknowledge Authority financing and assistance in the undertaking of the school facilities project.

19:36-1.4 Access and record retention

(a) The [Authority] **design-builder** shall make available records and accounts pertaining to school facilities projects to the State Comptroller and the State Auditor in their investigations, examinations and inspections of the activities related to the financing and undertaking of school facilities projects. The **design-builder** [Authority] shall also cooperate, upon request, in sharing information with other **state or federal** entities.

(b) [Either the Authority or t]The design-builder, [in the sole discretion of the Authority,] shall **be responsible to keep and maintain** [some or] all of those records and accounts, including records and accounts of subcontractors and subconsultants, [and shall require all contracted parties to keep those records and accounts,] for school facilities project activities as necessary in

order to evidence compliance with the Act and all applicable regulations and **contractual** requirements. Such records shall be retained **by the design-builder** for **ten (10) years** following substantial completion of a school facilities project, and any additional period required for the resolution of litigation, claims or audit findings. **Thereafter, those records shall be transferred to the Authority, unless the Authority, in its sole discretion, requests an earlier transfer of such records from the design-builder to the Authority or another designated entity. At any time, upon request of the Authority, the design-builder shall make records relating to the design-build project available to the Authority, within four business days of the request for documents, at no cost to the Authority.**

(c) In the event that any litigation, claim, audit or request pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., relating to the procurement or the performance of work under the Agreement is commenced prior to expiration or termination of the Agreement, all records relating to the procurement and the contract shall be retained until all litigation, claims, audit findings, document requests, and related appeals, if any, have been resolved with finality.

19:36-1.5 Fraudulent Statements

Any firm or individual who makes, or causes to be made, a false, deceptive, or fraudulent statement in its submittal in response to the RFQ or RFP or in the course of any hearing, litigation, mediation, or other proceeding may be disqualified from bidding, suspended and/or debarred and may be subject to prosecution pursuant to applicable law.

SUBCHAPTER 2. TECHNICAL EVALUATION COMMITTEE

19:36-2.1 Applicability

This subchapter establishes the technical evaluation committee and outlines its responsibilities for the evaluation and scoring of the qualifications of [offerors] **bidders** that have submitted responses to an RFQ, and the evaluation and scoring of the technical proposals of [offerors] **bidders** that have submitted proposals in response to an RFP.

19:36-2.2 Composition and responsibilities of technical evaluation committee

(a) When the design and construction of a school facilities project will be undertaken pursuant to [a design-build contract] **this chapter**, the Authority will designate a technical evaluation committee to review and evaluate responses by [offerors] **bidders** to **an** [the] RFQ and RFP, **and will designate a selection coordinator to administer the selection process.** The members of the technical evaluation committee shall consist of a majority of Authority representatives and a representative[(s)] of the SDA school district in which the school facilities project is located, if such district elects to participate. **Each member of the technical evaluation committee shall have the relevant experience as set forth in N.J.S.A. 52:34-10.3(c), necessary to evaluate the submissions.**

(b) Each member of the technical evaluation committee shall be responsible for:

1. Independently evaluating and scoring the statements of qualifications submitted by [offerors] **bidders** in response to an RFQ; and
2. Evaluating and scoring, in consultation with the other members of the technical evaluation committee, the technical proposals submitted by **bidders** [offerors] in

accordance with the weighted criteria process set forth in **an** [the] RFP.

(c) Once the responses are received and the identity of the bidders is ascertained, the members of the technical evaluation committee will be given a list of all firms that submitted a bid. Each member of the technical evaluation committee, prior to the evaluation of any submission, shall execute a certification that he or she has no personal interest, financial or familial, in any of the bidders to be evaluated, or any of the named subcontractors or subconsultants to the bidders, or the principals, subsidiaries or parent companies of the bidder or any subcontractors or subconsultants. Furthermore, should any of the technical evaluation committee members indicate that a conflict or personal interest exists once the identity of the bidders is revealed, that member shall not serve on the technical evaluation committee and may be replaced.

(d) The names of the members of the technical evaluation committee shall be made public once the contract is awarded, pursuant to N.J.S.A. 52:34-10.3(c).

SUBCHAPTER 3. PROFESSIONAL CONSULTANT SERVICES

19:36-3.1 Applicability

This subchapter provides for the retention by the Authority of professional consultants to act in the SDA's interests during the school facilities project; namely, a bridging architect to develop minimum design requirements, performance specifications and other project requirements and a construction manager to provide management and technical support during the school facilities project.

19:36-3.2 Engagement of bridging architect

(a) The Authority may retain a bridging architect, pursuant to **the provisions of** [the Authority's rules, Procedures for the Selection of Architects, Engineers and Land Surveyors, at] N.J.A.C. 19:38C, for the duration of the school facilities project, to prepare a design-build information package, review the documents prepared by design-builders and provide other professional services on behalf of the Authority.

19:36-3.3 Design-build information package

(a) A design-build information package shall be prepared by the Authority, using a design professional either on staff of the Authority and/or the bridging architect.

(b) As a prerequisite to the completion of the design-build information package, the schematic design for the school facilities project must have been approved by the SDA school district, the Authority and the Department, in accordance with the requirements of N.J.A.C. 6A:26, and the Department shall have issued the preliminary project report approving the school facilities project, pursuant to N.J.S.A. 18A:7G-5(h)(2).

(c) The design-build information package may include, but need not be limited to, the following:

1. A description of the school facilities project, including:
 - i. Building type and size;
 - ii. Site development requirements, such as, parking and site requirements and playground equipment;

- iii. Description of physical relationships between building spaces and between buildings and other site elements; and
 - iv. Specific architectural style or concept;
2. Educational specifications and schematic design documents for the school facilities project;
 3. Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs and environmental issues;
 4. Assignment of responsibility for obtaining required approvals and permits;
 5. Engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment); and
 6. The terms and conditions for the payment of a stipend, **if a stipend is offered**.

19:36-3.4 Engagement of construction manager

- (a) The Authority may retain a construction manager, pursuant to the **provisions of** [Authority's rules, Procedures for the Selection of Architects, Engineers, [and] Land Surveyors **and Other Professional Consultants**, at] N.J.A.C. 19:38C, for the duration of the school facilities project.
- (b) The services of the construction manager may include, but need not be limited to, technical support in the area of scheduling, cost estimating, document control and inspection of construction during all phases of the school facilities project.

19:36-3.5 Conflicts of interest

Professional consultants who assist the Authority in the preparation of an RFQ or an RFP will not be permitted to participate as [an offeror or join a team] **a bidder or subconsultant to a bidder** submitting a statement of qualifications in response to the RFQ or a proposal in response to the RFP.

SUBCHAPTER 4. TWO PHASE SELECTION PROCESS FOR DESIGN-BUILDERS

19:36-4.1 Applicability

This subchapter establishes the Authority's criteria and procedures for the use of a two-phase design-build selection process [, in which it]. **In the first phase, the Authority** initially ranks [offerors] **bidders** based on statements of qualifications and then selects a short list of [offerors] **bidders** to receive the RFP **based on the ranking. In** [The] **the** second phase, [involves] **the Authority receives** the submission of price and technical proposals in response to the RFP and [an award of] **awards** the design-build contract to the [offeror] **bidder** whose [proposals receive] **proposal receives** the highest overall score.

19:36-4.2 Necessity for prequalification

(a) Only those [offerors] **bidders** holding a valid notice of prequalification, issued by the Authority[,] in accordance with the procedures in N.J.A.C. 19:38A, **in such trade(s) or discipline(s) as specified by the RFQ**, shall be eligible to submit a statement of qualifications in response to an RFQ or proposals in response to an RFP. The prequalification of [an offeror] **a bidder** must be valid on the due date for the submission of a statement of qualifications and on the due date for the submission of technical and price proposals.

(b) The Authority may establish appropriate and special prequalification requirements as may be necessary in order to ensure competitive technical and price proposals, or as may be dictated by the unique or specialized nature of the work to be performed under the design-build contract.

19:36-4.3 Request for qualifications

(a) The Authority shall publicly advertise an RFQ. The RFQ shall contain the following information:

1. A general description of the school facilities project;
2. The scope of work;
3. The minimum qualification requirements for [offerors] **bidders**, including, but not limited to, the appropriate classifications and aggregate rating limits assigned by the New Jersey Department of Treasury, Division of Property Management and Construction;
4. A request for the submission of a statement of qualifications which will describe the qualifications of prospective [offerors] **bidders**;
5. The phase one evaluation factors **to be used in the determination of a short list of bidders** [upon which the most qualified offerors will be determined];
6. The [anticipated] technical evaluation factors to be utilized in the second phase of the selection process;
7. A statement of the [maximum] number of [offerors anticipated] **bidders** to be selected [to submit phase two proposals] **for the short list**; and
8. Any other requirements, as determined in the sole discretion of the Authority.

(b) [Offerors] **Bidders** desiring to submit technical and price proposals shall submit a statement of qualifications and an organizational chart of the [offeror] **bidder** and its key team members and the other information required by the RFQ.

19:36-4.4 Short listing of [offerors] **bidders**

(a) The technical evaluation committee shall review and evaluate the responsive submissions of [offerors] **bidders** and determine the relative ability of each such [offeror] **bidder** to perform the work under the design-build contract. The evaluation of the qualifications of each [offeror] **bidder** may include, but need not be limited to, consideration of the following factors:

1. Experience of the prospective [offeror] **bidder and proposed design-build team** on projects of similar size, scope and complexity;
2. Experience of key team members on projects of similar size, scope and complexity;
3. Experience of the prospective [offeror] **bidder and proposed design-build team** on design-build projects of similar size, scope and complexity;
4. Experience of the key team members on design-build projects of similar size, scope and complexity;
5. Experience of the prospective [offeror] **bidder** or its key team members on projects [in New Jersey of similar size, scope and complexity] **for the Authority, as evidenced by performance evaluations as specified in the RFP; [and]**
6. **The prior affirmative action experience of the prospective bidder and the design build team;**

7. Consideration of the bidder's aggregate rating from the Department of Treasury, Division of Property Management and Contracts, which is affected by prior affirmative action experience; and

8. Any other pertinent information necessary to establish the qualifications of the prospective [offeror] bidder and proposed design-build team to undertake the design-build contract.

(b) At the conclusion of the first phase of the selection process, the technical evaluation committee shall develop a short list of the [most highly qualified offerors] **bidders whose qualifications are deemed most advantageous to the Authority in terms of qualification factors other than price, as indicated in the RFQ. The bidders selected for the short list** [who] shall be invited to participate in the second phase of the process. The short list will be **published** [submitted to the Authority's Senior Director of Procurement who shall publish the short list] on the Authority's website at www.njsda.gov and [notify] **all bidders that supplied submissions will be notified** in writing of the [offerors] **bidders** selected for the short list.

19:36-4.5 Request for proposals

(a) Only [offerors] **bidders** that have been short listed during the RFQ process will be permitted to submit a proposal in response to an RFP.

(b) The RFP shall include, without limitation:

1. The design-build information package,
2. Technical and price proposal forms;

3. The design-build contract;
4. Instructions to [offerors] **bidders**;
5. The criteria for evaluation of proposals and their relative weight;
6. A description of the drawings, specifications, or other submittals to be submitted with the technical proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;
7. Budget limits for the work;
8. Requirements for [proposal] **bid** bonds, performance bonds, payment bonds and insurance;
9. Schedule requirements, as set forth in the RFQ;
10. Amount of the stipend, if any; **and**
11. The documents required to be submitted upon the notice of award, pursuant to N.J.A.C. 19:36-6.1(c); and
12. Any other information that the Authority in its discretion chooses to supply].

19:36-4.6 Selection process

(a) The Authority shall issue an RFP for the school facilities project to the [offerors] **bidders** who were short listed in the phase one RFQ process.

(b) The Authority may provide for a pre-proposal conference at a designated date, time and location at which [offerors] **bidders** that have been short listed may ask questions and seek clarification concerning any of the information, data or documents contained within the RFP.

Pre-proposal conferences may be mandatory or optional, as stated in the RFP.

(c) The RFP shall require the submission of a proposal in two **separate** parts: a technical proposal and a [separate] price proposal. The technical and price proposals shall be evaluated separately, in accordance with the evaluation factors and process set forth in the RFP. The evaluation factors may include, but need not be limited to, design concepts, management approach, proposed technical solutions and the other factors listed at N.J.S.A. 52:18A-243(d), as applicable.

(d) The technical proposal shall include preliminary design drawings, outline specifications, technical reports, calculations, permit requirements, a management plan, schedule and other information and/or data requested in the RFP.

(e) The price proposal shall be submitted in a separate sealed envelope and **shall provide a price for all design services and construction work required to complete construction of the school facilities project. If required by the RFP, the price shall be submitted in the form of** [include] a guaranteed maximum price for all design and construction of the school facilities project. The envelope **containing the price proposal** shall indicate clearly that it is the price proposal and shall identify the [offeror's] **bidder's** name, project number and any other information required by the RFP. The price proposals shall remain sealed until such time as provided in (g) below.

1. Each price proposal shall be accompanied by a [proposal] **bid** bond as specified in the RFP.

2. The Authority shall examine all documents required to be submitted with the technical proposal for completeness and conformity with the requirements of the RFP. If the Authority determines that a technical proposal received must be rejected as non-responsive, it shall notify the [offeror] **bidder** in writing of the rejection of its proposal and the reason for the rejection within 10 business days of its receipt, unless there are circumstances that require additional time.

3. The submission of technical and price proposals is conclusive evidence that the [offeror] **bidder** has completely reviewed the RFP and the design-build contract and fully understands and agrees to all of the requirements, terms and conditions set forth therein.

(f) The technical evaluation committee may conduct interviews with each [offeror] **bidder** prior to ranking the [offerors] **bidders**. The technical evaluation committee shall evaluate each technical proposal in accordance with the evaluation criteria and the weight assigned to each, as set forth in the RFP. The technical review committee shall then total and submit the scores for each technical proposal to the **selection coordinator** [Authority's Senior Director of Procurement Services].

(g) [The Senior Director of Procurement Services] **After the technical proposals have been reviewed and scores are submitted, Authority staff** shall open the price proposals and assign the maximum price points to the lowest total dollar proposal. [Each higher price proposal will have a point deduction equal to the amount which is the percentage difference by which the price

exceeds the low price proposed, multiplied by the weight assigned for price in the RFP.] **All other responsive proposals shall be scored based upon the percentage that each proposal exceeds the lowest proposal.**

1. The Authority shall examine all documents required to be submitted with the price proposal for completeness and conformity with the requirements of the RFP. [Adjustments will be made by the Authority where necessary to establish the correct total price proposal.]
2. **The bidder shall show all amounts in words and figures. In the event of a discrepancy between the words and figures, the amount shown in words shall govern.**
3. If the Authority determines that a price proposal received must be rejected as being non-responsive, it shall notify the [offeror] **bidder** in writing of the rejection of its proposal as being non-responsive and the reason for the rejection within five business days of the opening of price proposals, unless there are circumstances that require additional time.

(h) The [Senior Director of Procurement Services] **selection coordinator** shall determine the combined scores for each [offeror] **bidder** based on their technical and price proposals, with consideration of price at least equal to the consideration given to all other factors. The [offeror] **bidder** with the highest overall score shall be recommended to the Board of the Authority for an award of the design-build contract. If the recommendation is approved, the Authority will notify the successful design-builder.

19:36-4.7 Rejection of proposals

(a) Proposals received after the submission date and time prescribed in the advertisement and RFP shall be rejected[, except where the Authority, in its sole discretion, finds good cause].

(b) The Authority may reject any proposal for [lack of responsiveness or] **any reason, in accordance with law**, when it is otherwise deemed to be in the **interest of the State or the public interest** to do so. The Authority may reject all proposals for excessive cost, insufficient competition or any other reason, **in accordance with law**, that it determines to be in the **interest of the State or the public interest**.

(c) The Authority may cancel [an award] **a Notice of Award** at any time before the execution of the design-build contract by [all parties] **the Authority, if the Authority deems it advisable to do so in the interest of the State or the public interest**.

[(c) Proposals will be considered irregular and may be rejected for failure to comply with the RFP for reasons that may include, but are not limited to, the following:

1. If the proposals are on forms other than those furnished by the Authority, or if the forms are altered or any part thereof is detached or incomplete;
2. If the proposals are not properly signed or sealed;
3. If there are unauthorized additions, conditions or alternate proposals, or irregularities of any kind that may tend to make the proposal incomplete, indefinite or ambiguous as to its meaning;

4. If the proposal contains any provisions reserving the right to accept or reject an award, or in any way submits a contingent proposal to enter into a design-contract pursuant to any award;
5. If the proposals contain any alterations to any prices or amounts that have been established by the Authority in the RFP;
6. If the price proposal fails to contain a price for an alternate or allowance required by the RFP;
7. If the price proposal is not accompanied by a bond as required by the RFP;
8. If the offeror fails to acknowledge addenda, letters and other notices required to be acknowledged that have been sent by the Authority or the construction manager;
9. If the offeror fails to identify subcontractors in the proposals required to be named by the RFP;
10. If the offeror submits a price proposal that exceeds the firm's aggregate rating; or
11. If the Authority deems it advisable to do so in the interest of the State or the public interest.]

SUBCHAPTER 5. PAYMENT OF STIPENDS BY THE AUTHORITY

19:36-5.1 Criteria for payment of stipend

- (a) At the discretion of the Authority, a stipend may be paid to eligible [offerors] **bidders** who submit responsive but unsuccessful proposals in response to the RFP. The decision to do so shall be based on the Authority's analysis of the estimated proposal development costs, the complexity

of the school facilities project and the anticipated degree of competition during the procurement process. The purpose of the stipend is to encourage competition by offering to compensate responsive, but unsuccessful [offerors] **bidders**, for a portion of the estimated proposal development costs [and as consideration for the future use of the offeror's work product by the Authority].

(b) The terms and conditions for the payment of a stipend shall be included in the RFP.

(c) [If] **Whether or not** a stipend is provided to an unsuccessful [offeror] **bidder, submission of a technical proposal by a bidder shall indicate the bidder's agreement and consent that** the work produced within that [offeror's] **bidder's** technical proposal shall be provided to the Authority for its use in connection with the design-build contract awarded, or in connection with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful [offeror] **bidder**.

(d) [Offerors] **Bidders** submitting a response to the RFP which is determined by the Authority in its sole discretion to be non-responsive or irregular, pursuant to N.J.A.C. 19:36-4.7, will not be entitled to a stipend.

SUBCHAPTER 6. CONTRACTS

19:36.6.1 Contract approval and execution

(a) Except as may otherwise be specifically provided in this chapter, the engagement of a design-builder shall be subject to approval by the **Board of the** Authority [or its staff] and **may only be** executed [by staff] in accordance with Authority procedures.

(b) Prior to the execution of a design-build contract, the [offeror] **bidder** that was provided a notice of award shall exist in the legal status in which it will perform its responsibilities pursuant to the design-build contract.

(c) The Authority will send the successful design-builder a notice of award letter. The notice of award letter shall contain a list of the additional documents required to be submitted by the design-builder with the executed contract. The [Authority] **Notice of Award** will specify the time within which the executed contract and required documents must be returned.

(d) Each payment and each performance bond must be in an amount at least equal to the total contract price.

1. All bonds shall comply with the requirements of this chapter and relevant State statutes. All bonds submitted by the design-builder shall be issued only in accordance with N.J.S.A. 2A:44-143 through 147 to the design-builder and shall indicate aggregate bonding limits.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

(e) If the design-builder fails to return the executed contract and performance and payment bonds and other required documents within the time specified by the Authority, the Authority may take whatever action is appropriate and authorized by law including, but not limited to,

withdrawing or canceling the notice of award to the delinquent bidder and awarding the contract to the next-highest ranked bidder; cancelling the procurement; or proceeding to recover under the [proposal] bid bond submitted with the price proposal in accordance with N.J.A.C. 19:36-4.6(e).

(f) All contracts executed pursuant to this chapter shall provide for, among other things, termination for the convenience of the Authority and for cause.

(g) **No agreement is valid or binding on the authority unless and until it is executed by an appropriately authorized representative of the Authority. Any work performed prior to the execution of the contract by the Authority is volunteered, and represents a gift to the Authority. In the event the Notice of Award is cancelled or withdrawn, the bidder is not entitled to any remuneration for any work performed prior to the execution of the contract.**

(h) **Upon the successful bidder's submission of all required documentation or materials as specified in the NOA, and the Authority's acceptance of such documentation, the Authority will execute the agreement and provide the successful bidder with a fully-executed agreement.** [After execution by the Authority, a copy of the signed contract will be sent to the design-builder.]

SUBCHAPTER 7. PROTESTS

19:36-7.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern [challenges to] **protests and administrative hearings regarding design-build procurements, including protests challenging** the form of the RFQ or the RFP, the ranking of [offerors] **bidders** during the RFQ phase and the scoring of technical proposals of [offerors] **bidders**.

(b) For purposes of this subchapter, protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

19:36-7.2 [Protests, hearing procedures,] **Subject matter, time limitations, and who may request hearings**

(a) [A challenge to the following actions of the Authority shall be made as follows:] **Administrative hearings before the Authority may include the following subject matter and may be requested by the following entities:**

1. RFQ process or documents: [An offeror] **A bidder** that intends to submit **or has submitted** a statement of qualifications for the first phase of the design-build procurement, **may request an informal hearing before the Authority to protest** [and that objects to] the RFQ process or documents[, must] **by submitting** a written protest to the Authority[’s Senior Director of Procurement] at least [three] **five** business days prior to the **date and time scheduled for** opening of the statements of qualifications, setting forth in detail the grounds for such protest. The protest must contain all **legal and factual** arguments, materials or other documents that [may] support the protestor's position, **and must indicate whether the protestor requests an informal hearing**. The Authority

may [disregard] **deny** any [such] protest [,which] **that** is filed less than [three] **five** business days prior to the scheduled opening of statements of qualifications, or [which] **that** fails to provide the specific reasons for and arguments supporting the protest.

2. RFP process or documents: [An offeror] **A bidder** that intends to submit **or has submitted** proposals for the second phase of the design-build procurement, **may request an informal hearing before the Authority to protest** [and that objects to] the RFP process or documents[, must] **by submitting** a written protest to the Authority[’s Senior Director of Procurement] at least [three] **five** business days prior to the **date and time scheduled for** opening of the technical proposals, setting forth in detail the grounds for such protest. The protest must contain all **legal and factual** arguments, materials or other documents that [may] support the protestor's position, **and must indicate whether the protester requests an informal hearing.** The Authority may [disregard] **deny** any [such] protest [, which] **that** is filed less than [three] **five** business days prior to the scheduled opening of technical proposals, or [which] **that** fails to provide the specific reasons for and arguments supporting the protest.

3. Short listing: [An offeror] **A bidder** protesting its failure to be short listed, or the short listing of another [offeror, must] **bidder may request an informal hearing before the Authority to protest the selection of the short list by submitting** a written protest to the **Authority** [Senior Director of Procurement] setting forth the specific grounds for challenging the short listing. The protest must contain all **factual and legal** arguments, materials or other documents that [may] support the protestor's position, **and must**

indicate whether the protester requests an informal hearing [and a statement as to whether the protestor requests the opportunity for an informal hearing]. A [firm] **bidder** protesting the short list must submit a written protest within five business days of the public announcement of the short list on the Authority's website, www.njsda.gov. **The Authority may deny any protest that is filed more than five business days after the public announcement of the short list, or any protest that fails to provide the specific reasons for and arguments supporting the protest.**

4. Technical and price proposal scoring: [An offeror] **A bidder** protesting the scoring of its technical and/or price proposals, or those of another [offeror] **bidder, may request an informal hearing before the Authority to protest the scoring of technical and/or price proposals,** [must] **by** submitting a written protest to the [Senior Director of Procurement] **Authority** setting forth the specific grounds for challenging such scorings. The protest must contain all **factual and legal** arguments, materials or other documents that may support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing. The protestor must submit a written protest within five business days of the public [advertisement] **announcement** of the [offerors'] **bidders'** scores. **The Authority may deny any such protest that is filed more than five business days after the public announcement of the bidder's scores, or any protest that fails to provide the specific reasons for and arguments supporting the protest.**

5. Award of Contract: A bidder that has submitted a proposal in response to an RFQ or RFP may request an informal hearing before the Authority to protest the award of a contract to another bidder by submitting to the Authority a written protest, setting forth the specific grounds for challenging such award, within five business days of the public announcement of the award. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

6. Performance Evaluation: A firm that is dissatisfied with its performance evaluation on an Authority project may request an informal hearing before the Authority by submitting to the Authority a written protest setting forth the specific grounds for such protest, within 15 calendar days after the date of receipt of written notification of the performance evaluation. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than fifteen calendar days after the firm's receipt of written notification of the performance evaluation, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

19:36-7.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant [the opportunity for] an informal hearing regarding [a] **any** protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold [a] **an informal** hearing. Alternatively, the Authority may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the Authority may waive the hearing and issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within [48 hours] **five business days** of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within [five] **fourteen** business days of the receipt of the request. Hearings will be heard, where practicable, by a[n impartial] hearing officer designated by the [Senior Director of Procurement] **Chief Executive Officer**. The hearing officer shall issue a final written decision within [10] **thirty (30)** calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written decision will issue prior to the opening of statements of qualification or proposals, respectively. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed to all potential [offerors] **bidders** by addendum.

3. In an informal hearing, the [Senior Director of Procurement] **Authority** may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements provided in this [section] **N.J.S.A. 19:36-7**. In these instances, the [Senior Director of Procurement] **Authority** shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq. 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.

SUBCHAPTER 8. ROLES AND GENERAL REQUIREMENTS FOR DESIGN-BUILDERS

19:36-8.1 Design and construction

(a) The design-builder shall employ or contract with the architect of record and shall be responsible for the technical integrity of final project design, constructability, extensions of the design, and operability and maintainability, pursuant to the design-build information package and/or [in] the design-build contract.

(b) The role of the design-builder may include, but need not be limited to, the management and control of quality, cost and the integrated schedule for design, permit applications, material and equipment acquisition, construction, training for operation and maintenance, inspection and close out of the school facilities project.

(c) The Authority's review and [approval] **acceptance** of interim design submissions and/or construction documents is for the purpose of mutually establishing a conformed set of contract documents compatible with the requirements of the work. Neither the Authority's nor the construction manager's review and [approval] **acceptance** of interim design submissions or construction documents shall be deemed to transfer design liability from the design-builder to the Authority.

(d) **Once the plans and specifications are complete, and have been accepted by the Authority,** [The] **the** design-builder shall submit the completed plans and specifications for the school facilities project to the Department for approval of final educational adequacy, pursuant to N.J.A.C. 6A:26-5.4. Upon the approval of the plans and specifications by the Commissioner, the design-builder shall submit them to the DCA for review and approval in accordance with N.J.A.C. 5:23-4.24.

19:36-8.2 Costs in excess of guaranteed maximum price

If a design-build contract is procured as a GMP contract, [The] **the** design-builder shall be responsible for cost overruns in excess of the GMP, as properly adjusted, pursuant to the terms of

the design-build contract. If the design-builder's cost of work and fee are less than the GMP as properly adjusted, the cost savings shall **accrue to the Authority, but may** be shared by the design-builder and the Authority in accordance with the terms of the design-build contract.

19:36-8.3 Deletion or substitution of key team members

(a) [If at any time during the design-build selection process or after award of the design-build contract, an offeror or design-builder, as applicable, wishes to delete or substitute a key team member that was specifically identified by name in the response to the RFQ or RFP, it must request and receive written approval from the Authority.] **No substitutions or deletions of key team members may be made during the selection process or after award of the contract, without prior written approval from the Authority.**

(b) [Unauthorized changes to key team members of the offeror or design-builder that were specifically identified in the response to the RFQ and/or RFP at any time during the design-build selection process may result in the elimination of the offeror from further consideration.] **Unauthorized changes to a bidder's key team members who were specifically identified in the response to the RFP at any time during the selection process may result in the elimination of the bidder from further consideration.**

SUBCHAPTER 9. PERFORMANCE EVALUATIONS

19:36-9.1 Applicability and effect

Notwithstanding any provisions of N.J.A.C. 19:38 to the contrary, the following provisions will apply to the process and consideration of performance evaluations for contracts procured under this N.J.A.C. 19:36.

(a) Every design-builder awarded a design build contract procured pursuant to this chapter will be subject to evaluation in accordance with N.J.S.A. 18A:7G-36. The performance evaluation will consider the design-builder's performance as a contractor in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out.

(b) The design-builder's performance will be evaluated periodically during the progress of the project. The evaluation will be performed by a reviewer with direct involvement in the management or supervision for the project.

(c) The design-builder's performance evaluations will be used by the Authority in evaluating and scoring bidders as to their prior experience on Authority projects, in accordance with the provisions of this chapter, N.J.S.A. 19:38, or N.J.S.A. 19:38B.

19:36-9.2 Evaluation rating values

(a) Notwithstanding any provisions of N.J.A.C. 19:38 to the contrary, design-builders shall be evaluated on their construction performance with respect to the various evaluation categories using the following evaluation ratings:

- 1. Outstanding (O) or 100 percent--far exceeds the contract requirements by consistently exhibiting excellent performance. Always meets, and almost always exceeds the contract requirements;**

- 2. Very Good (VG) or 90 percent--often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;**

- 3. Satisfactory (S) or 80 percent--provides an acceptable level of performance consistently meeting the contract requirements;**

- 4. Marginal (M) or 70 percent--performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and**

- 5. Unsatisfactory (U) or 60 percent --fails to meet important contract requirements, resulting in a negative impact on the entire project.**

(b) These numerical scores may be subject to special adjustment factors for certain categories deemed by the Authority to be particularly critical to contractor performance. The numerical ratings for each category shall be tabulated to arrive at an overall numerical evaluation score for each performance evaluation.

19:36-9.3 Consideration of performance evaluations

(a) For contracts procured pursuant to the provisions of N.J.A.C. 19:38, performance evaluations shall be considered in accordance with that chapter.

(b) For contracts procured pursuant to this N.J.A.C. 19:36, or N.J.A.C. 19:38B, the process for evaluating a firm's prior performance on Authority projects in a selection process shall be specified in the RFP. Such process may consist of:

- 1. a mathematical tabulation and averaging of the scores of all prior performance evaluations within a relevant time period;**
- 2. consideration of particularly favorable or unfavorable evaluations individually and with reference to other evaluations;**
- 3. consideration of multiple evaluations over the course of a given project, to show consistency of performance, deterioration of performance or efforts at improvement and recovery; or**
- 4. a combination of the above methodologies.**

Resolution—6ci.

Re-adoption with Amendments: Title 19, Chapter 36
Procurement of Design Build Projects

Resolution

WHEREAS, N.J.A.C. 19:36, as adopted by the New Jersey Schools Development Authority (“SDA” or “the Authority”) sets forth Procedures for Procurement of Design Build Contracts for School Facilities Projects for the Schools Construction Program (“Chapter 36” or “the Rules”); and

WHEREAS, Chapter 36 was originally adopted by the Authority as special new rules, published as R. 2009 d. 102, effective February 27, 2009 (“special rules”); and

WHEREAS, the special rules, with a one-year effective period and originally due to expire on February 27, 2010, were indefinitely extended pending re-adoption pursuant to Executive Order 1 (2010); and

WHEREAS, as set forth in the memorandum presented to the Board on this date and incorporated herein, the special rules were the subject of litigation resulting in a court decision upholding the Authority’s ability to utilize the design-build methodology to procure the design and construction of a school facilities project; and

WHEREAS, the court decision further provided guidance regarding the Authority’s utilization of a shortlist in connection with its implementation of the design-build methodology; and

WHEREAS, as set forth in the memorandum and the Rules presented to the Board on this date and incorporated herein, executive management requests that the Members of the Authority approve re-adoption of the Rules with amendments to the shortlisting provisions to comply with the direction of the court, and with additional amendments to other sections of Chapter 36; and

WHEREAS, the Members of the Authority have reviewed the memorandum and the Rules presented to the Board on this date wherein these amendments are set forth and described in detail; and

WHEREAS, all associated staff, the Office of Chief Counsel and executive management have reviewed the Rules and recommend their adoption by the Members of the Authority as a means for maximizing program efficiencies and as in the best interest of the school construction program and the Authority.

NOW, THEREFORE, BE IT RESOLVED THAT, the Members of the Authority hereby authorize and approve to approve the readoption with substantive amendments of Title 19, Chapter 36, Procurement of Design Build Projects and the filing of same with the New Jersey Office of Administrative Law.

BE IT FURTHER RESOLVED THAT, this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Chapter 36, Procurement of Design Build Projects, dated
March 7, 2012

Dated: March 7, 2012

READOPTED w/AMENDMENTS: 19:38C

MEMORANDUM**6**

TO: Members of the Authority

FROM: Jane Kelly, Vice President
Division of Corporate Governance and Operations

DATE: March 7, 2012

RE: Rule Readoption with Amendments: Title 19, Chapter 38C
Procurement of Architects, Engineers, Land Surveyors and Other Professional Services Consultants

On October 5, 2011, the Members of the Authority approved for proposal and publication the readoption and amendment of regulations at Title 19, Chapter 38C, Procurement of Architects, Engineers, Land Surveyors and Other Professional Services Consultants (the "Rules"). Management of the New Jersey Schools Development Authority ("Authority" or "SDA") now seeks the Members' approval to formally readopt the Rules as previously approved for proposal and publication. The Rules to be readopted have not changed since the Board's initial approval on October 5, 2011, with the exception of minor edits suggested by the Office of Administrative Law prior to publication. The Rules are attached hereto as published in the New Jersey Register.

As previously briefed in a Board Memorandum of October 5, 2011, the Rules were originally adopted on February 7, 2005 to govern the Authority's procurement of architects, engineers, land surveyors and other consultants, and were set to expire on February 7, 2010. By action of Executive Order No. 1, the rules were exempted from expiration until readoption by the Authority. The Authority undertook a substantial revision of the original Rules, as part of an effort to overhaul its procurement regulations to provide additional clarity, conform to statutory requirements, and reflect procurement best practices influenced by case law and advocated by the Office of the Comptroller.

The proposed Rules appeared in the New Jersey Register on December 5, 2011 at 43 N.J.R. 3153(a), and were subject to a sixty (60) day public comment period ending February 3, 2012. Additional notice of the rule proposal was published on the Authority's website and provided to news outlets and by mail to consultants and vendors that had done business with the Authority.

Only one comment on the rule proposal was received on the last day of the public comment period. The comment was supportive of the rule proposal, and requested clarification of the Authority's procedures for prequalification of consultants, which is a process governed by separate regulations at 19:38A. Specifically, the comment requested clarification whether a consultant would be precluded from Authority prequalification if the consultant reports a prior

debarment from public bidding or violation of law. The response will indicate that the prequalification process depends upon a case-by-case factual analysis, and while prior debarment or violation of law can and may justify a denial of prequalification, the Authority's prequalification regulations indicate that certain safeguards and remedial steps might apply which would allow the Authority to consider prequalification of a consultant despite a prior debarment or violation of law. Moreover, failure to disclose the debarment or violation is itself justification for denial of prequalification.

While the comment received did not require any modification of the rule text, the comment and the Authority response will be reproduced as part of the adoption notice for the rules.

Accordingly the text of the Rules remains unchanged from the form previously approved by the Board for publication on October 5, 2011 (with the exception of minor technical edits from the Office of Administrative Law).

Requested Board Action:

The Members of the Authority are requested to approve completion of the readoption process for these Rules, which requires filing the attached Notice of Readoption with Amendments with the Office of Administrative Law, and subsequent publication of the final approved Rules and Notice of Adoption in the New Jersey Register.

/s/ Jane F. Kelly

Jane F. Kelly, Vice President
Corporate Governance & Operations

JFK/ceh

[Notice of Adoption for N.J.A.C. 19:38C]

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procurement of Architects, Engineers, Land Surveyors and Other Professional Services Consultants

Proposed: December 5, 2011 at 43 N.J.R. 3153(a)

Adopted: March 7, 2012 by the New Jersey Schools Development Authority,

Marc Larkins, Chief Executive Officer

Filed: [date] as R. 2012 d. __, **without change**.

Authority: P.L. 2007, c.137, § 4k (N.J.S.A. 52:18A-238k) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); P.L. 2007, c.137, (N.J.S.A. 52:18A-235 et seq.) (enabling statutes); and P.L. 1997, c. 399 (N.J.S.A. 52:34-9.1 et seq.) (related authority).

Effective Date: [Date of submission to OAL for readopted rules;
date of publication for new rules and amendments]

Expiration Date: [7 years from Publication Date]

Summary of Public Comment and Agency Response:

COMMENT: A comment was received from Paul J. St. Onge of the law firm Gibbons, P.C., expressing support of the rule proposal and requesting clarification of the prequalification requirements referred to in the proposed amended language of N.J.A.C. 19:38C-2.2, as they relate to the Authority’s prequalification regulations at N.J.A.C. 19:38A-4.1. Mr. St. Onge stated queried whether a “past debarment of a professional services consultant’s right to bid or contract by a state agency (other than the SDA) [would] automatically preclude that firm from being pre-qualified by the SDA” or

whether the SDA intends to “afford a professional services consultant an opportunity to demonstrate that it has implemented measures to prevent future violations, as set forth in N.J.A.C. 19:38A-4.1.”

RESPONSE: The commenter’s query does not concern the substance of the rule proposal at issue, but rather seeks clarification of the Authority’s implementation of the prequalification rules at N.J.A.C. 19:38A-4.1. The Authority states in response to the query that the prequalification process depends upon a case-by-case factual analysis of the submissions made by the applicant, and the results of the moral integrity review conducted regarding the applicant. The Authority notes that while prior debarment or violation of law by an applicant firm can justify a denial of prequalification, the Authority’s prequalification regulations indicate that certain safeguards and remedial steps may be applied or required which may allow the Authority to permit prequalification of a consultant despite a prior debarment or violation of law. However, the determination to grant prequalification in such circumstances is subject to an analysis of the facts and circumstances of the events disclosed in the application and the results of the moral integrity review of the applicant. Of course, the Authority would strongly urge that an applicant disclose any prior debarment or violation of law in the prequalification application, as failure to disclose the debarment or violation is itself justification for denial of prequalification.

In light of the fact that the commenter’s question relates to the interpretation of a separate set of Authority regulations and is therefore beyond the scope of this adoption, no changes to the Rules as proposed will be made in response to this comment.

Federal Standards Statement

The proposed new Rules implement a State statute, specifically P.L. 2007, c.137, (N.J.S.A. 52:18A-235 et seq.). There are no Federal standards or requirements applicable to these Rules. A Federal standards analysis, therefore, is not required.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:38C.

Full text of the adopted amendments follows: [Published version of rule proposal attached for Board review; final text to be added by publisher]

PROPOSALS

OTHER AGENCIES

(b) The following disciplinary sanctions may be imposed upon a juvenile subject to Tier 2 internal discipline:

1. Withdrawing a privilege or an individual or group activity, for example, recreation, television, or radio privileges, for no more than five days; withdrawal of meals and snacks provided by the facility are not permitted to be used as a sanction;
2. Requiring a juvenile to pay for repair of damaged property, to repair the damage, or to complete a work task;
3. Restriction to the residential community home until given permission to participate in off-unit activities.
 - i. Restriction to the residential community home shall not exceed 48 hours without approval of the Superintendent or designee.
 - ii. Restriction to the residential community home shall not apply to medical appointments, religious activities, educational obligations, or outside employment, unless reasonable security or therapeutic concerns would restrict these as well;
4. Formal reprimand communicated to a juvenile by the shift coordinator or above; or
5. Up to seven hours of extra work duty to be served within a period of 10 days;

(c) Prior to completion of disciplinary sanctions imposed under this section, designated staff shall counsel the juvenile with respect to the reason for the rules and policies related to his or her violation or violations, and any elements of the his or her behavior or attitude that are in need of improvement.

(d) The Commission prohibits the following from being used as disciplinary measures:

1. Room restriction, isolation, or any other seclusion in a locked or unlocked room;
2. Any type or threat of corporal punishment;
3. Deprivation of meals, snacks, sleep, mail, clothing appropriate to the season or time of day, or verbal communication;
4. Mechanical or chemical restraint;
5. Assignment of overly strenuous physical work or exercise; and
6. Exclusion from any essential program or treatment service, such as education or clinical treatment.

13:103-14.8 Recommendation that a juvenile be judged in violation of probation or be transferred to another residential community home

(a) Subject to approval by the Director of Community Programs or designee, when a juvenile demonstrates an ongoing inability to benefit from the program at the residential community home, the Superintendent may recommend that the juvenile:

1. Be judged to be in violation of his or her conditions of probation;
2. Be transferred to another residential community home; or
3. Be referred to Mental Health Services or to another program or treatment regimen for appropriate care and/or treatment.

OTHER AGENCIES

(a)

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procurement of Architectural, Engineering, Land Surveying, and Related Professional Consulting Services

Proposed Readoption with Amendments: N.J.A.C. 19:38C

Proposed Repeals and New Rules: N.J.A.C. 19:38C-2.1, 2.7, 2.9, 2.10, 5.1, 5.2, 5.3, 5.5, 5.6, 6.3, 7.1, and 7.2

Proposed Repeals: N.J.A.C. 19:38C-2.4, 4, 7.3, and 7.4

Proposed New Rules: N.J.A.C. 19:38C-5.9, 5.10, 8, 9, 10, and 11

Proposed Recodification with Amendment: N.J.A.C. 19:38C-5.4 as 2.4

Authorized By: New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.
 Authority: P.L. 2007, c. 137, § 4k, N.J.S.A. 52:18A-238k; P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq.; P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq.; and P.L. 1997, c. 399, N.J.S.A. 52:34-9.1 et seq.

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

Proposal Number: PRN 2011-250.

Submit written comments by February 3, 2012 to:

Cecelia Haney, Administrative Practice Officer
 New Jersey Schools Development Authority
 PO Box 991
 Trenton, NJ 08625-0991

The agency proposal follows:

Summary

The New Jersey Schools Development Authority (“Authority” or “SDA”) proposes to readopt with amendments, new rules, and repeals, N.J.A.C. 19:38C. The chapter establishes the requirements, standards, and procedures for the Authority’s procurement of architects, engineers, land surveyors, and other professional services consultants.

Chapter 38C was originally effective on February 7, 2005 by the New Jersey Schools Construction Corporation (SCC). The SCC was created pursuant to the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.). The SCC was abolished in 2007 by P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), which simultaneously created the Authority to assume all of the functions, powers, and duties of the former SCC.

Chapter 38C was scheduled to expire on February 7, 2010, but was extended by action of Executive Order No. 1 (2010), which “froze” all existing regulations until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Authority has reviewed Chapter 38C and has determined that it remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated, with the addition of the proposed amendments. The rules proposed for readoption with amendments, new rules and repeals:

- (a) comply with N.J.S.A. 52:34-9 et seq., which governs the Authority’s procurement of architects, engineers, and land surveyors;

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(b) implement Executive Order No. 37 (2006), which sets guidelines for the procurement of professional services by State authorities; and

(c) provide assurance to vendors and other stakeholders that the SDA procurement process is fair, transparent, and results in the retention of quality professional services consultants at competitive prices.

As the Authority 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 section-by-section description of the chapter follows:

The Authority has proposed to change the heading of the chapter from "Procedures for Procurement of Architectural, Engineering, Land Surveying and Related Professional Consultants" to "Procurement of Architects, Engineers, Land Surveyors and Other Professional Services Consultants" to reflect the new definition of "professional services consultants" and the expansion of the rules to cover professional consultant procurements of all types, not just those consultants relating to design and land surveying.

Subchapter 1. General Provisions

N.J.A.C. 19:38C-1.1 Purpose and scope of rules

This section has been proposed for readoption, with amendments, to provide that, in addition to the original reference to the implementation of P.L. 1997, c. 399 (N.J.S.A. 52:34-9.1 et seq.), the rules also serve to implement P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.). The codification of procedures for the procurement of professional services consultants in Chapter 38C provides the Authority with the regulatory framework to carry out its broad statutory mandate to plan, design, and construct school facilities projects and effectively administer the schools construction program.

N.J.A.C. 19:38C-1.2 Definitions

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

New definitions include:

"Act," which refers to the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) as amended, and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.);

"Agreement," which is the title of the contractual document executed by and between the Authority and its professional services consultants, and which replaces the term "contract" when used to denote reference to the contractual document, to comport with the Authority's current practices;

"Appraiser," which has been relocated from Chapter 38D without modification and describes a provider of appraisal services;

"Authority" or "SDA," which reflects the creation of a new governmental entity by P.L. 2007, c. 137 as the successor to the New Jersey Schools Construction Corporation, which was simultaneously abolished in that same legislation. Accordingly, throughout N.J.A.C. 19:38C, references to "Corporation" and "SCC" have been replaced, where appropriate, with references to the "Authority" and "SDA";

"Board" has been replaced to refer to the members of the Authority, rather than referring to the board of directors of the now-abolished SCC;

"Commissioner," which term brings the rules into conformity with N.J.A.C. 6A:26, by recognizing the role of the Commissioner of the Department of Education in the approval of school facilities projects;

"Emergent project" is amended to be defined in accordance with the Department of Education's definition at N.J.A.C. 6A:26-1.2, to mean a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff;

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"Expert," which term has been relocated from Chapter 38D and modified to refer to the Authority and describes a consultant engaged for litigation support and/or as a trial witness;

"Key team member," which refers to an employee identified in a consultant's response to a request for qualifications (RFQ) or a request for proposals (RFP) as having a responsible role in the successful completion of services sought by the RFQ or RFP;

"Moral integrity review," which refers to the background investigation that each prospective professional services consultant is subject to as a condition of participating in an Authority procurement;

"NJEDA," which refers to the New Jersey Economic Development Authority, and has been added to distinguish that entity, which had previously been referred to in the rules as the "Authority," from the "SDA";

"Notice of award," which refers to the written document indicating a professional services consultant has been selected to enter an agreement with the Authority;

"Other facilities," a definition taken from the Act, which refers to types of facilities excluded from the definition of "school facilities" under the Act;

"Preliminary eligible costs," which means the initial eligible costs of a school facilities project as defined in N.J.S.A. 18A:7G-5 or 18A:7G-7;

"Protest," which means a challenge or objection to an Authority decision or action;

"Ranking," which describes the process of listing responsive professional services consultants in order of their evaluation scores with respect to the selection criteria for a given procurement for engagement of professional services consultants by the Authority;

"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";

"Services," which references the duties and responsibilities of a professional services consultant, pursuant to the Agreement;

"Task order," which is the contractual document issued by the Authority to a professional services consultant that defines and authorizes specified services and payment therefor, pursuant to a term agreement;

"Title insurance," which term has been adopted without modification from Chapter 38D and describes a type of insurance procured by the Authority; and

"Title insurance company," which term has been adopted without modification from Chapter 38D and describes a provider of title insurance.

The following definitions have been amended:

"Compensation" is amended to clarify that payment is for services rendered by a professional services consultant in accordance with the Agreement, and to eliminate reference to "allowances";

"Corporation" is amended to reflect the abolition of the former New Jersey Schools Construction Corporation and the Authority's status as a successor entity to the NJSCC;

"Fee proposal" has been amended to specify that the fee proposal is to be submitted in the form and manner provided by the RFQ or RFP, and to reflect the deletion of the term "Request for fee proposal";

"Pre-development activities" is amended to replace the term "pre-development" with "preconstruction," in conformity with the reference to "preconstruction activities" in N.J.S.A. 18A:7G-5 and N.J.A.C. 19:34. In addition, the list of examples in the definition of such types of activities, which included land acquisition, feasibility studies, remediation, and site development, has been amended to reference N.J.S.A. 18A:7G-5;

"Pre-qualified" is amended to reflect the codification of the Authority's rules governing the prequalification of professional services consultants at N.J.A.C. 19:38A;

"Professional services consultant" is amended to emphasize the unique technical skills, licenses, or credentials that may be held by such consultants, to expand the enumerated categories of professional services to include feasibility studies, appraisals, and the provision of title insurance, to replace the reference to "shop drawings" with the more general term "submittals," to indicate that a design consultant is required to review documents that may include more than just shop drawings, and to reflect the deletion of "project management firms";

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"Proposal" has been amended to mean the submission of a professional services consultant in response to an RFQ or RFP, and to eliminate distinctions regarding technical or fee proposals;

"Request for proposals" is amended to streamline the definition to eliminate reference to the deleted term "pre-development activity" and to further delete the enumeration of types of contracts for which a professional consultant may be sought, as unnecessarily limiting, and to eliminate references to the Corporation;

"Request for qualifications" is amended to reflect the deletion of the term "preliminary proposal," as discussed below, and to describe the information that may be requested therein;

"School construction program" is amended to delete a superfluous reference to the Act and to replace the reference to "Corporation" with "Authority";

"School facilities project" is amended in conformity with N.J.S.A. 52:18A-236 to include planning activities associated with a school facilities project, to clarify that maintenance activities that come within the definition are confined to capital maintenance projects, and to delete from the definition the "repair" of a school facility;

"School facility" is amended to bring the term into conformity with its statutory definition pursuant to P.L. 2007, c. 137 (N.J.S.A. 18A:7G-3) by adding references to facilities that "support educational buildings and structures," such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, and to include to the statutory distinction of "other facilities," which are defined as structures or improvements that do not constitute school facilities and which are elsewhere defined to include 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;

"Selection committee" is amended to recognize that such committee's role in evaluation of proposals is limited to proposed contracts with compensation in excess of the State bid threshold;

"Selection coordinator" is amended to delete reference to responsibilities for "day-to-day" activities, which reference was deemed ambiguous as the selection coordinator's role is not intended to be a permanent one with daily activities; and also to delete specific reference to "advertising" activities, as advertising of a procurement may be facilitated by other Authority staff within the Authority's procurement division;

"Small business enterprise" is amended to reflect the change in the name of the governmental entity for small business registration and to refer to the recodified rules for registration; and

"Term contract" is amended to replace "contract," with "agreement" as the contractual document governing the terms of engagement between the Authority and professional services consultants; and to replace the reference to the "Corporation" with the "Authority."

The following terms are proposed for deletion:

"Allowance" is proposed for deletion, as the term was referenced in the former rules only to define an "allowance" as an exception to the contract value limit of \$2 million for the now-obsolete "category two contract." As the rules have now been revised to eliminate the system of numerical categories for contracts, defined by contract type, or value, the reference to an "allowance" is no longer necessary;

"Category one contract," "category two contract," "category three contract," "category four contract," and "category five contract," each of which classified certain types of professional services by numerical categories, have been proposed for deletion throughout Chapter 38C. In lieu of these numerical categories, the Authority has proposed rules categorizing agreements according to the type of professional services engagement they entail, or whether the engagements referenced therein contemplate compensation above or below the State threshold pursuant to N.J.S.A. 52:34-7b;

"Client school district" is proposed for deletion and replacement with the term "SDA district" in conformance to the terminology used in the School Funding Reform Act of 2008, P.L. 2007, c. 260 (N.J.S.A. 18A:7G-3);

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The definition of "early childhood education facilities project," has been deleted to reflect the deletion of N.J.S.A. 18A:7G-5s, pursuant to P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.);

The term "Educational Facilities Construction and Financing Act" has been subsumed within the definition of the Act and the reference is amended to reflect that the statutory parameters for the schools construction program encompass the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.)

"Member," referring to a member of the Selection Committee, has been deleted as superfluous;

The term "pre-development approval" has been deleted as the regulatory references to the term have been deleted;

The term "project management firm," has been deleted, as its reference in the definition of "professional services consultant" has likewise been deleted, in light of the Authority's trend toward engagement of "construction managers," rather than "project management firms," to perform construction administration services;

"Preliminary project report (PPR)" has been deleted to reflect the operational effect of the Commissioner's approval, which precedes the PPR, pursuant to N.J.A.C. 6A:26;

"Preliminary proposal" has been deleted as the regulatory reference to the term has been deleted;

The terms "request for fee proposals" and "request for technical proposals" have been deleted and subsumed within the more general term "request for proposals";

"Scope of services" has been deleted as the regulatory references to the term have been deleted;

"Technical proposal" has been deleted in favor of the more general "proposal"; and

"Waiver," referring to the Authority's grant of a waiver of advertising, has been deleted as superfluous.

Subchapter 2. General Requirements**N.J.A.C. 19:38C-2.1 Scope**

This section has been repealed and replaced with language defining the scope of Subchapter 2, which sets forth the general requirements that are applicable to the Authority's procurement of professional services consultants, including the various methodologies for procurement and the types of qualitative factors used in evaluating proposals, as well as describing the process for the rejection of proposals, the selection of consultants and the approval and execution of agreements with such consultants, as well as requirements for termination of such agreements.

N.J.A.C. 19:38C-2.2 Pre-qualification requirement

This section has been amended to provide that, whenever Authority pre-qualification is required for a particular procurement by statute or rule, any proposed professional services consultant seeking to be engaged by the Authority with respect to such procurement must have Authority pre-qualification as of the time of submission of a response to either an RFQ or RFP, whichever is earlier. Previously, this section provided that pre-qualification requirements would be as specified throughout Chapter 38C. This section has also been amended to propose a new subsection (b), which provides that the Authority shall establish appropriate pre-qualification requirements as may be necessary in order to ensure competitive technical and fee proposals or as may be dictated by the unique or specialized nature of the scope of services. The section is further amended to add new subsection (c), which specifies that all prospective professional services consultants seeking to be engaged by the Authority are subject to a moral integrity review, even in the absence of a pre-qualification requirement, and that the results of the moral integrity review, if negative or unsatisfactory in a manner that would justify revocation of pre-qualification for a pre-qualified firm, may result in rejection of the firm's proposal.

N.J.A.C. 19:38C-2.3 Selection procedures based on type of engagement

This section has been amended to provide that the procedures applicable to a particular procurement vary depending on the nature of the services or contract value of a particular consultant engagement. The changes in this section reflect the elimination of the former structure of

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Chapter 38C, which assigned a numerical designation to each type of contract for professional services consultants, (for example, former categories one through five). Instead, the rules categorize agreements based on the type of professional services they entail. For example, unique procedures are authorized if the engagement is for appraisers or title insurance companies as contrasted with other professional services consultants, and procurement methods vary depending on whether the specified compensation either falls within, or exceeds, the statutory bid threshold set by the State Treasurer (currently \$36,000), pursuant to N.J.S.A. 52:34-7b.

N.J.A.C. 19:38C-2.4 Advertising

Existing N.J.A.C. 19:38C-2.4, Contract term; term contracts, is proposed for repeal, because new rules have been proposed in new Subchapter 7, which establish the parameters for the procurement of term agreements and the issuance of task orders. The language proposed at N.J.A.C. 19:38C-2.4, Advertising, is recodified from N.J.A.C. 19:38C-5.4, and requires advertising to be performed in accordance with N.J.S.A. 52:18A-243(h), which includes electronic means and/or newspapers, design and construction publications, and trade journals covering the construction industry in New Jersey; by written notice to New Jersey professional societies, or by use of direct mailings. This section further requires that any such advertisement must promote competitive bidding and also describe any specific information that a consultant must submit, provide the date and time for the receipt of submissions, as well as the evaluation criteria that will be applied to proposals. Amendments to subsection (a) delete the requirement that direct mailings are limited only to prequalified firms. Under the amended regulation, direct mailings may be sent to non-prequalified firms, in the hope that interested firms will seek prequalification and increase competition for Authority engagements. Additionally, the proposed amendment deletes existing subsection (d), which specified that in the case of a one-step procurement process, "the advertisement and request for proposals shall provide that consultants must be appropriately pre-qualified at the time of submission of a technical proposal in order to be eligible for an award." This language, which was improperly located in the "advertising" section, rather than the prequalification section, is now embodied correctly in the prequalification language of N.J.A.C. 19:38C-2.2, which specifies that a consultant interested in competing for an Authority engagement must have Authority prequalification as of the time of submission of a response to either an RFQ or RFP, whichever is earlier.

N.J.A.C. 19:38C-2.5 Evaluation

This section is amended to delete a specific list of evaluation criteria for professional services consultants, and provide that the criteria that the selection committee may use to evaluate proposals and the weights of such criteria that may be used to rank professional services consultants shall be specified in the RFQ and/or RFP. In addition, language pertaining to the Authority's compliance with other State laws has been deleted as redundant. The language providing that nothing in Chapter 38C shall be construed to limit the Authority's adherence to its small business set aside rules remains, although the cross-reference has been updated to account for the recodification of the small business set-aside rules, now located at N.J.A.C. 19:39.

N.J.A.C. 19:38C-2.6 Rejection of proposals; cancellation of procurement or award

In this amended section, the Authority makes provision for the rejection of individual proposals that are submitted late or that are deemed non-responsive and provides that an award may be cancelled at any time before the execution of an agreement by all parties. The section is amended to streamline the process for rejection of proposals, providing that the Authority may reject all proposals for any reason when otherwise in the public interest to do so.

N.J.A.C. 19:38C-2.7 Approval and execution of Agreement

This section is repealed and replaced to specify that a proposed agreement with the Authority is not valid until executed by the Authority. The section is further amended to replace references to "contract" with "agreement," and to delete references to the "Corporation."

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N.J.A.C. 19:38C-2.8 Termination

This section, which requires that all agreements entered into by the Authority pursuant to this chapter be terminable for convenience or cause, is amended to replace references to the "Corporation" with "Authority."

N.J.A.C. 19:38C-2.9 Disclosure and publicity

This section is proposed for repeal and replacement to acknowledge that all submissions made in response to an RFQ or RFP are subject to the provisions of the Open Public Records Act (OPRA), N.J.S.A. 47:1-1 et seq., including the exceptions from disclosure as provided within OPRA. The language contained in the former version of the rule, specifying records access by governmental bodies, and retention periods for documents, has been repealed as records access and retention requirements have been inserted into the Authority's standard forms of agreement for professional services consultants. Subsection (b) of the rule provides that consultants shall seek the permission of the SDA prior to their issuance of press releases concerning a school facilities project, and that such releases shall acknowledge Authority financing and assistance in undertaking the project.

N.J.A.C. 19:38C-2.10 Performance evaluation

Existing N.J.A.C. 19:38C-2.10, Appeals, is proposed for repeal, because the appeals process has been proposed as new rules in proposed new Subchapter 11. The proposed new section, "performance evaluations," codifies the right of the Authority to evaluate the performance of consultants and to use these evaluations in the ranking of consultants. The proposed new section further provides that such performance evaluations are to be based on qualitative factors including, but not limited to quality of work, scheduling, management, cost control/amendments, management of subconsultants, closeout, and any other factors affecting the consultant's performance.

Subchapter 3. Selection Procedures – Agreements Not Exceeding the State Bid Threshold Pursuant to N.J.S.A. 52:34-7b

Existing Subchapter 3, Selection Procedures—Category One Contracts, has been proposed for readoption, with amendments, to delete reference to the obsolete term "category one contracts" and to include the replacement of "Corporation" with "Authority," as stated above. Accordingly, the reference to "category one contracts" in the heading of Subchapter 3 is deleted and replaced with a descriptive reference of the type of agreements addressed in Subchapter 3; namely, agreements that individually do not exceed the public bid threshold, as established by N.J.S.A. 52:34-7b, and other contracts at the option of the Authority. The subchapter is further amended to reflect the increase in the State bid threshold from \$25,000 to \$36,000, and to provide that with respect to agreements under this chapter, public advertising is not required, and the Authority may waive any prequalification requirements for professional services consultants under such agreements. Finally, N.J.A.C. 19:38C-3.1 specifies that this subchapter does not govern the procurement of appraisers or title insurance companies.

Subchapter 4. Selection Procedures – Category Two Contracts

Existing Subchapter 4 is proposed for repeal, but the subchapter will be reserved to preserve the codification of the remaining rules. Subchapter 4 outlined a process pursuant to which the Authority could randomly select a predetermined number of prequalified professional services consultants to receive an RFP for a proposed "category two contract," which was a contract with compensation not exceeding \$2,000,000. The Authority has determined, consistent with Executive Order No. 37 (2006) that all interested professional services consultants shall receive notice of and a fair opportunity to submit proposals and be considered for the award of professional services agreements when compensation for a proposed agreement exceeds the State bid threshold. Because the Authority no longer employs a random selection process for agreements with compensation not exceeding \$2,000,000, Subchapter 4 is rendered obsolete.

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Subchapter 5. Selection Procedures – Agreements Exceeding the State Bid Threshold, as Adjusted, Pursuant to N.J.S.A. 52:34-7b

Subchapter 5, Selection Procedures – Category Three Contracts, has been proposed for readoption with amendments. The heading has been amended to delete the reference to “category three contracts” and replace the numerical reference with a descriptive reference to agreements for professional services consultants with compensation exceeding the State bid threshold (currently \$36,000, as adjusted by the State Treasurer), pursuant to N.J.S.A. 52:34-7b.

N.J.A.C. 19:38C-5.1 Scope and applicability

This section is proposed for repeal and replacement to specify that Subchapter 5 applies to agreements for professional services consultants with compensation exceeding the State bid threshold, but also applies to other engagements at the option of the Authority. This section also specifies that Subchapter 5 does not apply to the procurement of appraisers or title insurance companies.

N.J.A.C. 19:38C-5.2 Initiation

Existing N.J.A.C. 19:38C-5.2, which provided generally for the initiation of a procurement for a professional services consultant after receipt of preconstruction approval for a school facilities project from the Commissioner and the selection of either a one- or two-step procurement process, has been proposed for repeal. The proposed new rule deletes the former section’s reference to preconstruction approval from the Commissioner, in recognition that such approval may not be applicable to program-wide procurements not tied to a specific school facilities project. The new section provides that the procurement of a professional services consultant may be initiated by public advertisement of an RFQ or RFP, except in circumstances justifying a waiver of advertising, pursuant to proposed Subchapter 6.

N.J.A.C. 19:38C-5.3 Selection committee

Existing N.J.A.C. 19:38C-5.3, “Two-step process; request for qualifications” has been proposed for repeal and replacement. The new section establishes the role and responsibilities of the selection committee(s) as including review, evaluation, and scoring of proposals submitted in response to RFQs and RFPs. This section requires that the selection committee be established prior to the receipt of proposals. This section further requires that the selection committee members have relevant experience necessary to evaluate proposals, and specifies that the names of selection committee members will be made public after award, pursuant to N.J.S.A. 52:34-10.3(c).

N.J.A.C. 19:38C-5.4 Selection Evaluation Criteria

Existing N.J.A.C. 19:38C-5.4, One step selection process, has been proposed for repeal and replacement. The proposed new section provides that the selection criteria to be utilized for a particular professional services consultant procurement shall be established prior to advertisement and shall be disclosed in the RFQ or RFP for the procurement. This section enumerates the types of selection criteria that may be considered and indicates that in the case of professional services consultants other than architects, engineers or land surveyors, a fee proposal may be considered as part of the evaluation criteria.

N.J.A.C. 19:38C-5.5 Selection Evaluation Process

Existing N.J.A.C. 19:38C-5.5, Request for proposals, has been proposed for repeal and replacement. This proposed new section identifies various components of a professional services consultant evaluation, including the responses to the RFQ and/or RFP, responses to requests for additional information, participation in interviews, and other components at the discretion of the Authority. The section describes the role of the selection committee members in evaluating and scoring candidates for a professional services consultant engagement, and the role of the selection committee coordinator in compiling the scores and preparing a ranking, as well as the procedures for preparing a short list, if one is specified in the RFQ or RFP for a given procurement.

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N.J.A.C. 19:38C-5.6 Submission of Fee Proposals

Existing N.J.A.C. 19:38C-5.6, Ranking of technical proposals, has been proposed for repeal and replacement. This new section provides the procedure for the submission of fee proposals.

N.J.A.C. 19:38C-5.7 Consideration of fee proposals

This section is readopted with amendments. New subsection (a) specifies the treatment of fee proposals if they are a criterion in the evaluation, as in the case of a procurement of professional services consultants other than architects, engineers, and land surveyors. Subsection (a) provides that the Authority shall open the fee proposals and assign the maximum points to the lowest total fee proposal. Each higher fee proposal will be scored according to the percentage that each exceeds the lowest fee proposal. Subsection (b), which describes the process of utilizing the fee proposals as a guide in negotiating an agreement with the highest-ranking consultant, has been amended to incorporate minor modifications into the language of the original section, to clarify that the Authority may terminate the procurement during the negotiation process and to eliminate references to the “Corporation.”

N.J.A.C. 19:38C-5.8 Recommendation

This section is readopted with amendments to specify that the Authority’s selection coordinator shall recommend the most technically qualified professional services consultant, at fair and reasonable compensation, for the approval and execution of the professional services agreement. If the recommendation is approved, the Authority will issue the successful firm a notice of award.

N.J.A.C. 19:38C-5.9 Execution of Agreement

This proposed new section provides that upon acceptance by the SDA of any documents or materials submitted by the winning professional services consultant as required in the notice of award, the Authority will execute the agreement and provide a fully-executed agreement to the winning professional services consultant.

N.J.A.C. 19:38C-5.10 Confidentiality

This proposed new section provides that the selection evaluations, rankings, negotiations, and fee proposals of all firms, as well as all discussions and correspondence, relating to a consultant selection, shall remain confidential and exempt from production under the Open Public Records Act, N.J.S.A. 47:1-1 et seq., until the a notice of award has issued.

Subchapter 6. Waiver of Advertising

N.J.A.C. 19:38C-6.1 Scope

Existing Subchapter 6, Selection Procedures – Category Four Contracts, has been proposed for readoption, with amendments, to reflect the proposed deletion of the definition, “category four contracts.” Accordingly, the reference to “category four contracts” in the heading of Subchapter 6 is deleted and replaced with a descriptive reference of the types of agreements addressed; namely, agreements procured through the Authority’s grant of a waiver of advertising. Proposed amendments to N.J.A.C. 19:39C-6.1 include reference to the statutory justification for waiver of advertising for certain procurements, replacement of references to the “Corporation” with references to the “Authority,” and utilization of the term “agreement” rather than “contract.”

N.J.A.C. 19:38C-6.2 Circumstances justifying waiver of advertising; prequalification

This section, formerly headed “categories; pre-qualification” is readopted with amendments. The section heading has been amended to better describe the content. The section has been amended to clarify the nature of a public exigency as one in which professional services must be purchased immediately and are necessary to mitigate an emergency situation. Further amendments are proposed to streamline the language of the section, provide that the time for performance of the services is a factor in the Authority’s determination that only one consultant is capable or available, and to specify that the Authority may waive prequalification requirements for procurements under the public exigency exception to advertising. Finally, language has been added from the list of circumstances justifying the waiver of advertising in Chapter 38D, which

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exempts an existing government contract from advertising if it meets certain criteria. That language has been adopted from the original N.J.A.C. 19:38D-6.2(a)5 with minor amendments to reflect the change from “Corporation” to “Authority” and to eliminate references to “goods” for purposes of this chapter.

N.J.A.C. 19:38C-6.3 Solicitation

This proposed new section replaces existing N.J.A.C. 19:38C-6.3, Initiation of request. The new section specifies that proposals are to be evaluated based on proposed fees and on evaluation criteria appropriate for the particular procurement; that whenever practical, the Authority will undertake a competitive selection process using a less formal process, which may include obtaining at least three telephonic quotations or obtaining written quotations from at least three separate professional services consultants; and that the Authority may request clarifying technical and/or organizational information from any entity submitting a proposal prior to finalizing the scoring of the proposals. Lastly, the new section specifies that the method of the selection process shall be memorialized in the recommendation of award.

Subchapter 7. Selection Procedures – Term Agreements

Existing Subchapter 7, Selection Procedures – Category Five Contracts, is proposed for repeal. It addressed the circumstances in which the former SCC could assume an SDA school district’s existing agreement for professional architectural services for the design of a school facility project, if those services had been procured by an SDA school district prior to the enactment of the Act, and if the terms of the agreement did not prohibit an assignment of the contract. Since the time of the original promulgation of Subchapter 7, the need for assumption of an existing school district contract for design services has been obviated, and thus there is no further need for existing subchapter 7.

New Subchapter 7, Selection Procedures – Term Agreements, governs the circumstances and the process for the Authority’s procurement of term agreements and the issuance of task orders.

N.J.A.C. 19:38C-7.1 Scope

The proposed new section provides that the scope of the subchapter includes the circumstances for the use of term agreements and the process for their procurement, as well as the issuance of individual task orders.

N.J.A.C. 19:38C-7.2 General requirements

This proposed new section provides that term agreements may be used by the Authority to engage a professional services consultant for a defined period of time, rather than for a defined project or projects. The new section further specifies, in subsection (b), that term agreements may be used to serve a variety of consultant needs either for school facilities projects, or for program-wide services required by the Authority. More specifically, term agreements may be procured to expedite emergent projects or emergent project requirements, or when there exists a need to accomplish any study, evaluation, assessment, or other professional services on an “on call” basis; or for professional services consultants in order to address the program-wide requirements of the Authority. Proposed new subsection (c) provides that the procurement process for a term agreement must be in accordance with the selection procedures outlined in N.J.A.C. 19:38C-5, except that fees may be based upon hourly daily rates and/or other methods for determining costs over a specific time period. Proposed new subsection (d) provides that term agreements shall be for a specific time period and maximum contract value, which shall be set forth in the agreement. This subsection further provides that a budget and schedule shall be established for each task order prior to its assignment to a professional services consultant and that work performed under a task order may extend past the expiration date, as long as the task order was executed prior to the expiration date. Proposed new subsection (e) provides a three-year limit for professional consultant term agreements, unless otherwise authorized by law, and specifies that term agreements may specify a maximum contract value. Proposed new subsection (f) indicates that a term agreement for litigation services is subject to a two-year term, pursuant to Executive Order No. 37 (2006).

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N.J.A.C. 19:38C-7.3 and 7.4

Existing N.J.A.C. 19:38C-7.3, Initiation, and 7.4, Limitations, are proposed for repeal.

Subchapter 8. Engagement of Title Insurance Companies

Proposed new Subchapter 8 recodifies the procedures for the procurement of title insurance companies previously located at N.J.A.C. 19:38D-7. No substantive changes were made to the existing Chapter 38D rule text. The text has been amended to replace references to the “Corporation” with the “Authority” throughout the subchapter.

N.J.A.C. 19:38C-8.1 Scope

This section specifies that Subchapter 8 defines the exclusive process for retention of title insurance companies.

N.J.A.C. 19:38C-8.2 Master list

No substantive changes were made from the existing Chapter 38D rule text, which addresses the establishment and quarterly updating of a list of title insurance companies authorized by to write title insurance policies in New Jersey by the New Jersey Department of Banking and Insurance and having a credit rating of “A” or better.

N.J.A.C. 19:38C-8.3 Procurement by competitive bidding for individual engagement

This section, previously headed “competitive bidding” under Chapter 38D, has been renamed to clarify the process in question. The previous reference to “the property or area subject to the school program procurement” has been changed to “the property or area comprising and surrounding the site for the particular school facility at issue,” in order to eliminate the reference to the undefined term “school program procurement,” which seems to blur the line between project-specific procurements and program-wide initiatives of the Authority.

N.J.A.C. 19:38C-8.4 Procurement through term agreements specifying fixed rates

This section previously headed “term contracts” has been renamed to conform with the Authority’s use of “term agreements” to refer to such contracts for a specified duration, and to clarify the process in question. The previous reference to “the property or area subject to the school program procurement” has been changed to “the property or area comprising and surrounding the site for the particular school facility at issue” in an effort to eliminate the reference to the undefined term “school program procurement.” References to “task orders” have been inserted in the discussion of “assignments” under term agreements, in acknowledgment of the mechanism used to assign individual tasks under term agreements.

Subchapter 9. Engagement of Appraisers

Proposed new Subchapter 9 recodifies the procedures for the procurement of appraisers previously located at N.J.A.C. 19:38D-8. No substantive changes from existing Chapter 38D rule text are proposed. The text has been amended to replace references to the “Corporation” with the “Authority” throughout the subchapter.

N.J.A.C. 19:38C-9.1 Scope

This section specifies that Subchapter 9 defines the exclusive process for retention of appraisers.

N.J.A.C. 19:38C-9.2 Master list

This section maintains the language from existing Chapter 38D text, but is amended in intent to recognize that the former reference in the description of the creation of the “Master List” of appraisers to the list of appraisers previously engaged by the Authority had initially referred to the list of appraisers maintained by the NJEDA, (which was defined as “the Authority” in existing Chapter 38D). The language is now consistent with other amendments in Chapter 38C, to recognize that the term “Authority” now refers to the SDA, and the list in question is meant to capture the list of appraisers previously engaged by the SDA, in recognition that, at this point in the Authority’s management of the school construction program, the Authority has a sufficient history of engagement of appraisers to dispense with a reliance on NJEDA’s former appraisal engagements. The statement of qualifications criteria has been

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amended to replace “references from other governmental entities” with “experience with other governmental entities” to relieve such entities from the burden of providing a formal “reference.”

19:38C-9.3 Procurement by competitive bidding for individual engagement

This section previously headed competitive bidding under Chapter 38D has been renamed to clarify the process in question. The section has been amended to delete from the evaluative criteria the formal criterion of recommendation or advice from Authority condemnation counsel, in order to preserve privilege.

19:38C-9.4 Procurement through term agreements specifying fixed rates

This section previously headed term contracts under Chapter 38D has been renamed to conform with the Authority’s use of “term agreements” to refer to such contracts for a specified duration, and to clarify the process in question. References to “task orders” have been inserted in the discussion of “assignments” under term agreements, in acknowledgment of the mechanism used to assign individual tasks under term agreements. The section has been amended to delete from the evaluative criteria the formal criterion of recommendation or advice from Authority condemnation counsel, in order to preserve privilege.

Subchapter 10. Engagement of Experts

19:38C-10.1 General requirements

This section, previously located at N.J.A.C. 19:38D-9, has been amended to streamline the procedures for engagement of experts for litigation support and real estate transaction support. Existing Chapter 38D language was tailored to the retention of experts in condemnation actions and specified that the SCC would coordinate the procurement of experts after consultation with “special counsel engaged to handle the relevant real estate transactions, if any, and with the Attorney General’s Office.” The reference to consultation with the Attorney General’s office has been deleted, and the new language has been broadened to extend to all litigations and real estate transactions and specifies that experts may be retained through outside counsel on behalf of the Authority, or procured directly by the Authority, using any of the procurement methods of this chapter.

Subchapter 11. Protests and Hearing Procedures

N.J.A.C. 19:38C-11.1 Scope and purpose

Proposed new Subchapter 11 sets forth the procedures that govern challenges to the form of the RFQ or the RFP, the ranking of firms during the RFQ phase, and the scoring of proposals. This section is modeled on the hearing procedures promulgated by Department of the Treasury, Division of Property Management and Construction at N.J.A.C. 17:19-5.1 and 5.2. This subchapter further provides that protest of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

N.J.A.C. 19:38C-11.2 Subject matter, time limitations, and who may request hearings

This proposed new section outlines the procedures and requirements for challenging the actions of the Authority undertaken pursuant to this chapter, such as the RFQ process or documents; the RFP process or documents; the failure of a firm to be short listed or the short listing of another firm; the inclusion of a firm in, or omission of a firm from, the master list of appraisers or title insurers; the award of contracts, whether subject to public advertisement or not; the award of a task order assignment; and the conduct of performance evaluations.

N.J.A.C. 19:38C-11.3 Hearing procedures

This proposed new section outlines the procedures for requesting, and the time frames for undertaking, informal hearings conducted by the Authority. This section provides that the Authority may grant an informal hearing regarding a protest, which will result in a written decision. This section further provides that informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer or his or her designee. The hearing officer shall issue a final written decision within 30 calendar days of the conclusion of

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the hearing unless a greater time is required, due to the circumstances of the hearing. This section also addresses the adjustment of time frames within the rules, the procedures for formal hearings, if warranted, and the role of the Board of the Authority in determining the existence of contested cases and in retaining or referring such contested cases for hearing.

Social Impact

The rules proposed for readoption with amendments, repeals, new rules, and recodification should establish confidence in the Authority’s ability to ensure that the public’s interest in the Authority’s selection of professional services consultants is adequately protected and that the Authority fairly obtains the services of the most qualified professional services consultants. The rules will affect all private architects, engineers, and land surveyors, and other professional service consultants, such as construction management firms, appraisers, and title insurance companies, that desire to bid on school facilities projects constructed under the Act, as amended, in that the rules specify the requirements of advertisement of proposals, selection procedures, proposal evaluation, and contract approval and execution.

Economic Impact

The economic impact of the rules proposed for readoption with amendments, repeals, new rules, and recodification is limited; the rules outline the process that will be used by the Authority in the selection of professional services consultants. This information should be beneficial to all private firms wishing to provide architectural, engineering, land surveying, construction management, and other professional services to the Authority. The rules establish a bidding process that entails certain incidental costs associated with the preparation and submission of bids. Such costs may include professional staff time associated with preliminary planning, as well as the costs associated with the production and reproduction of proposals. The professional consulting activities are to be funded with the State share of the eligible costs of a school facilities project, which may be funded with State contract bonds issued by the NJEDA pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. Additional activity in the planning, architecture, and engineering professions may directly result from the rules, providing Statewide economic benefits in the short term.

The Authority will incur direct and indirect costs for bid advertisements and the staff and administrative expense arising from the preparation of bid requests, the evaluation of the bids received, and the award of contracts and agreements. However, the rules contain amendments designed to streamline the Authority’s procurement processes, which should permit some cost savings in staff time.

Federal Standards Statement

The rules proposed for readoption with amendments, repeals, new rules, and recodification implement a State statute, specifically P.L. 2007, c. 137, (N.J.S.A. 52:18A-235 et seq.). There are no Federal standards or requirements applicable to the rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The rules proposed for readoption with amendments, repeals, new rules, and recodification modify the Authority’s process for procurement of professional services, and thus to the extent the rules have an effect on jobs, it will be to create jobs in New Jersey, primarily in the consulting and service sectors, rather than eliminate positions. Moreover, the rules are likely to support job growth to the extent that they may foster participation in the school construction program by a broader class of professional services consultants.

Agriculture Industry Impact

The rules proposed for readoption with amendments, repeals, new rules, and recodification will have no direct impact on the agriculture industry. However, implementation of the rules will be coordinated with the Farmland Preservation Program for the acquisition of sites for new schools.

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Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, repeals, new rules, and recodification impose some compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but only for those small businesses that choose to seek to do business with the Authority. Inasmuch as the rules outline the criteria and procedures the Authority will consider for the selection of professional services consultants, the rules, at N.J.A.C. 19:38C-2.2, specify that professional consultants be prequalified by the Authority, a requirement that is imposed by public contracting provisions set forth in N.J.S.A. 52:34-9.1 et seq. As implemented by the Authority, all firms seeking prequalification will be required to submit audited financial statements, a cost which these firms might not otherwise need to incur. In the interests of financial probity, however, no exemption for small businesses would be warranted. In addition, the rules eliminate some regulatory burdens on potential consultants, in that the proposed rules eliminate the 10-year recordkeeping requirement imposed on winning bidders by the prior version of the rules, in favor of a more flexible recordkeeping requirement that varies according to the nature of the agreements and documents at issue, in compliance with the Authority's standard document retention policy. Thus, it is unlikely that a small business would have to employ professional services to comply with the records retention requirements of a contract under the rules.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, repeals, new rules, and recodification address the requirements and the process for the procurement of professional service consultants and, therefore, will not have an impact on affordable housing or evoke a change in the average cost of housing in the State of New Jersey.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, repeals, new rules, and recodification govern the process by which the Authority procures professional services, and thus the rules will have no impact on smart growth development because the scope of the rules is minimal, and because it is extremely unlikely that the rules would evoke a change in the average price or availability of housing in the State of New Jersey, and it is unlikely that the rules proposed for readoption with amendments, repeals, new rules, and recodification would in any way affect new construction in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:38C.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:38C-2.1, 2.4, 2.7, 2.9, 2.10, 4, 5.1, 5.2, 5.3, 5.5, 5.6, 6.3, and 7.

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

CHAPTER 38C

PROCUREMENT OF [ARCHITECTURAL, ENGINEERING, LAND SURVEYING AND RELATED] ARCHITECTS, ENGINEERS, LAND SURVEYORS, AND OTHER PROFESSIONAL [CONSULTANT] SERVICES CONSULTANTS

SUBCHAPTER 1. GENERAL PROVISIONS

19:38C-1.1 Purpose and scope of rules

This chapter is designed to implement the **Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended, and P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., by establishing procedures for the procurement of professional consulting services, so that the Authority may carry out its broad statutory mandate to plan, design and construct school facilities projects and effectively administer the Authority's schools construction program. This chapter is also designed to implement the provisions of P.L. 1997, [c.399] c. 399, N.J.S.A. 52:34-9.1 et seq., which govern procedures generally applicable to the [Corporation's]**

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Authority's award of contracts for professional architectural, engineering, and land surveying services[, and is also intended to establish procedures for the Corporation's procurement of related services, in its implementation of the school construction program].

19:38C-1.2 Definitions

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

["Allowance" means a fee allowance established by the Corporation to address a specific design, construction administration, testing, or monitoring service when the exact cost of any such service cannot be known by the Corporation at the time of a request for proposals or by the consultant at the time of submission of proposals. The exact cost or fee will be determined during administration of the contract, and will draw upon the allowance previously established by the Corporation. The amount of allowances may be excluded from the total amount of compensation, in accordance with provisions of this chapter.

"Authority" means the New Jersey Economic Development Authority, as established pursuant to the New Jersey Economic Development Authority Act, P.L. 1974, c.80, as amended.

"Board" means the board of directors of the Corporation.

"Category one contract" means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-3.

"Category two contract" means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-4.

"Category three contract" means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-5.

"Category four contract" means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-6.

"Category five contract" means an engagement between the Corporation and a professional services consultant that is procured pursuant to N.J.A.C. 19:38C-7.

"Client school district" means the school district in which services are provided.]

"Act" means the "Educational Facilities Construction and Financing Act," P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended, which mandates the school construction program.

"Agreement" means the written agreement between the Authority and the architectural, engineering, land surveying, or other professional services consultant for the provision of services.

"Appraiser" means a firm that provides an unbiased analysis, opinion, or conclusion on the value of real property.

"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. The Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.

"Board" means the governing body of the Authority, consisting of the members of the Authority as outlined in N.J.S.A. 52:18A-237.

"Commissioner" means the Commissioner of the Department of Education.

"Compensation" means the [estimated amount of fees] payment(s) due to [be paid to a] the professional services consultant [in connection with a school facilities project or pre-development activity or an engagement for the school construction program, but may exclude allowances where so provided by this chapter] for services rendered.

"Corporation" or "SCC" means the New Jersey Schools Construction Corporation, [which is] the entity formed pursuant to N.J.S.A. 34:1B-159 [as a subsidiary of the Authority for the purpose of implementing provisions of the Act. The Corporation is authorized to exercise all powers granted to the Authority under the Act, except the power to incur indebtedness] and the predecessor to the Authority, which was abolished by P.L. 2007, c. 137.

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["Early childhood education facilities project" means a school facilities project consisting of rehabilitation of or addition to existing facilities in which early childhood education programs are provided to three or four year old children under contract with an early childhood program aid district, as defined at N.J.A.C. 19:36-1.3, but which programs are owned and operated by a community provider, as defined at N.J.S.A. 18A:7G-3.

"Educational Facilities Construction and Financing Act" or the "Act" means P.L. 2000, c. 72, which mandates the school construction program.]

"**Emergent project**" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff, as defined by N.J.A.C. 6A:26-1.2.

"**Expert**" means an individual or firm with a high degree of skill or knowledge in a specific subject engaged or to be engaged by the Authority for purposes of litigation support, including, but not limited to, testimony as an expert witness.

"Fee proposal" means the proposal submitted by the professional services consultant in [response to] the form and manner provided for in the request for qualifications or request for [fee] proposals, which specifies the fees proposed for the provision of services.

"Member" means an individual appointed to serve on a selection committee.]

"**Key team member**" means a principal, partner, or officer of the professional services consultant, project executive, senior principal, studio head, project manager, project architect, construction administrator, job captain, or any other title required in the request for qualifications or request for proposals, and represented in a proposal as having a responsible role in the successful completion of services required in the agreement.

"**Moral integrity review**" means an investigation, performed by the Authority or members of the New Jersey State Police or other investigative body on behalf of the Authority, of a firm that seeks to enter an agreement with the Authority.

"**NJEDA**" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c. 80, N.J.S.A. 34:1B-1 et seq., as amended, or any successor thereto.

"**Notice of award**" means a written notice issued to a professional services consultant by the Authority indicating that the professional services consultant has been selected to perform certain services pursuant to an Authority procurement process and that upon the Authority's receipt of certain required documentation, the Authority intends to enter an agreement with the professional services consultant for the performance of those services.

"**Other facilities**" means those facilities that are not school facilities projects as defined by the Act, namely, 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.

"[Pre-development] **Pre-construction activities**" means the [activities] work that must be undertaken prior to submitting a school facilities project application to the Department for approval and calculation of preliminary eligible costs[, as defined at N.J.S.A. 18A:7G-3]. Such activities may include:

1. Site analysis;
2. Acquisition of land;
3. Remediation;
4. Site development;
5. Feasibility studies including studies to determine the viability of new construction versus rehabilitation;
6. Design work;
7. Acquisition of and design work for temporary facilities; and
8. Such other activities as may be specified in N.J.S.A. 18A:7G-5 or N.J.A.C. 19:34-1.2 [and] or 6A:26-1.2.

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["Pre-development approval" means an approval issued by the Department specifying pre-development activities that may be undertaken with respect to a proposed school facilities project.

"Preliminary project report" means the document prepared by the Department transmitting to the Corporation a school facilities project to be undertaken by the Corporation. In the case of an engagement of a professional services consultant to perform program-wide activities relating to the school construction program, any references in this chapter to a preliminary project report shall refer to the memorandum prepared by Corporation staff setting forth the need for and description of the engagement.

"Preliminary proposal" means a short-form proposal in the format prescribed by the Corporation submitted in response to an advertisement soliciting such proposals as the first of two steps in the selection of a professional services consultant, as set forth in N.J.A.C. 19:38C-5.3.]

"Pre-qualified" or "**pre-qualification**" means [pre-qualified] the approval of a professional services consultant by the [Corporation in accordance with provisions set forth in rules adopted by the Corporation] Authority pursuant to N.J.A.C. 19:38A.

"**Preliminary eligible costs**" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in section 7 of P.L. 2000, c. 72, N.J.S.A. 18A:7G-7 or as otherwise provided pursuant to section 5 of P.L. 2000, c. 72, N.J.S.A. 18A:7G-5 and which shall be deemed to include the costs of construction and other allowable costs.

"Professional services consultant[s]" or "consultant[s]" means [consultants] the architect, engineer, land surveyor, or other individual or professional firm providing [professional] services related to its respective occupation, which require unique professional or technical skills, licenses, or other credentials, associated with research, development, design, [and] construction, construction administration, alteration, or [renovation in connection with school facilities projects or pre-development activities or the school construction program] improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. [These] The professional services consultant[s] may provide services including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, appraisals, planning, programming, conceptual designs, plans, and specifications, cost estimates, construction management, inspections, [shop drawing] submittal reviews, testing, commissioning, provision of title insurance, preparation of operating and maintenance manuals, and other related services, [. Notwithstanding anything to the contrary, "professional services consultants" for the purposes of this chapter shall mean] and shall include those consultants who provide "professional architectural, engineering, or land surveying services" within the meaning of N.J.S.A. 52:34-9.2[, and shall also include project management firms].

"Project management firm" means a firm engaged by the Corporation, at its sole option, to provide overall construction management services, oversight, direction, coordination, and reporting in connection with the school construction program.]

"Proposal" means the [technical proposal or fee proposal, or both as the case may be,] response submitted by a professional services consultant [provider of goods or services in response] with respect to a request for qualifications or a request for proposals.

"Request for fee proposals" means the request for fee proposals issued by the Corporation in connection with the selection of a professional services consultant for a school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.]

"Protest" means a challenge to a decision, statement, action, or alleged inaction of the Authority.

"Ranking" means the process of listing responsive professional services consultants in order of highest to lowest total scores, based upon selection criteria set forth in the RFQ and/or RFP.

"Request for proposals" or "RFP" means [the] a request for technical proposals and/or fee proposals [issued by the Corporation in connection with] for the selection of a professional services consultant [for a school

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facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.]

“Request for qualifications” or “RFQ” means [the] a **written request** [for preliminary proposals (preceding the Corporation’s issuance of a request for proposals)] issued by the [Corporation] **Authority seeking submissions from professional services consultants, including statements of qualifications, experience, and/or organizational information, as well as any additional information deemed necessary by the Authority**, in connection with the selection of a professional services consultant for a school facilities project, [pre-development] **pre-construction** activity, or other type of engagement for the school construction program[, as the case may be].

[“Request for technical proposals” means the request for technical proposals issued by the Corporation in connection with the selection of a professional services consultant for a school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.]

“School construction program” means the program of school facilities projects and related [activity mandated by the Act, and] **activities undertaken by the [Corporation] Authority pursuant to the Act.**

“School facilities project” means the **planning, acquisition, demolition, construction, improvement, [repair,] alteration, modernization, renovation, reconstruction, or capital maintenance** of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs, and administrative costs and expenses incurred in connection with the project.

“School facility” means and includes any structure, building or facility used wholly or in part for [academic] **educational purposes** by a [client school] district, **and facilities that support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities**, but shall exclude [athletic stadiums, grandstands, and any structure, building or facility used solely for school administration] **other facilities as elsewhere defined in this section.**

[“Scope of services” means the scope of the services required from a professional services consultant for a particular school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be.]

“SDA school district” means a school district that received **education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39, N.J.S.A. 18A:7G-3.**

“Selection committee” means the [body] **group(s) responsible for [the] review[,] and evaluation [and recommendation] of [a] professional services consultants’ [for a specific school facilities project, for a group of school facilities projects, pre-development activities or other type of] responses to RFQs and/or RFPs in connection with a procurement of one or more professional services consultants for an engagement with the Authority [for the school construction program, as the case may be,] when the compensation for the engagement is anticipated to exceed[s] \$25,000) the State bid advertisement threshold pursuant to N.J.S.A. 52:18A-243.**

“Selection coordinator” means the administrator of the [day-to-day] operations and procedures of the selection process, whose activities shall include, but are not limited to, [advertising,] scheduling of meetings, preparing agendas, recording scores, preparing minutes of selection committee meetings, and other similar administrative duties.

“Services” means **the duties and responsibilities to be performed by the professional services consultant pursuant to the agreement, and includes all other labor, materials, and equipment provided or to be provided to fulfill such obligations.**

“Small business enterprise” or “SBE” means a firm that is registered as [such] a **“small business”** with the New Jersey [Commerce and Economic Growth Commission] **Department of the Treasury, Division of Minority and Women Business Development** pursuant to N.J.A.C. 17:14-3.1.

[“Technical proposal” means the proposal submitted by a professional services consultant in response to the request for technical proposals.]

“Task order” means a **contractual document, containing a scope of work, negotiated costs, and schedule, which the Authority issues to a professional services consultant, pursuant to a term agreement.**

“Term [contract] agreement” means [a contract] **an agreement** whereby the [Corporation] **Authority** may engage a professional services consultant for a defined period of time[, as provided in this chapter].

[“Waiver” means a waiver of advertising, as authorized pursuant to N.J.A.C. 19:38C-6.]

“Title insurance” means a **policy issued by a title insurance company insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title of the subject property and includes searches relating to the title of the subject property.**

“Title insurance company” means a **title insurance company duly authorized to transact the business of issuing title insurance in the State of New Jersey.**

SUBCHAPTER 2. GENERAL REQUIREMENTS

19:38C-2.1 Scope

This subchapter addresses the manner in which SDA shall engage a professional services consultant; provides for the methodologies; identifies the qualitative factors used in evaluating proposals; and provides the process for the rejection of proposals and the approval, execution, and termination of agreements.

19:38C-2.2 Pre-qualification requirement

(a) [Any] A professional services consultant [that wishes] **seeking to be engaged by the [Corporation] Authority** must be pre-qualified [as of] **by the Authority at the time [established in this chapter except that pre-qualification shall not be necessary for engagement pursuant to the category one contract procedures set forth in N.J.A.C. 19:38C-3] of submission of a response to an RFQ and/or an RFP, if pre-qualification is required by N.J.A.C. 19:38A, except if otherwise expressly provided in this chapter.**

(b) **The Authority shall establish pre-qualification requirements as may be necessary in order to ensure competitive proposals, or as may be dictated by the unique or specialized nature of the services to be performed under the agreement.**

(c) **All professional services consultants that seek to be engaged by the Authority are subject to a moral integrity review, even where Authority pre-qualification is not required. If the results of the moral integrity review are negative or unsatisfactory in that they indicate any circumstance that would justify a revocation of pre-qualification under N.J.A.C. 19:38A-4.1, the Authority shall reject the professional services consultant’s proposal pursuant to N.J.A.C. 19:38C-2.6.**

19:38C-2.3 Selection procedures based on type of engagement

[There] **The Authority** may [be] **establish** different procedures, **as set forth in this chapter**, for the selection of professional services consultants [deciding whether the engagement is for a category one contract (N.J.A.C. 19:38C-3), category two contract (N.J.A.C. 19:38C-4), category three contract (N.J.A.C. 19:38C-5), category four contract (N.J.A.C. 19:38C-6), or category five contract (N.J.A.C. 19:38C-7)] **based on the type of professional services consultant to be engaged or the contract value.**

19:38C-[5.4]2.4 Advertising

(a) [Advertising shall be performed in accordance with N.J.S.A. 52:34-12(a) and (b), in newspapers and/or by electronic means.] **The Authority shall advertise for all procurements in accordance with N.J.S.A. 52:18A-243(h).** In addition, such advertising may also be placed:

1.-2. (No change.)

3. By use of direct mailings to [appropriately pre-qualified firms] **consultants.**

(b) Any [such] advertisement shall be made in the form and in the time required to promote [competitive bidding] **competition** and shall describe any specific information that [a] **an interested professional services**

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consultant must submit, [by] **as well as** the date and time [specified in the advertisement] **of the deadline for submissions.**

(c) The advertisement shall specify the evaluation criteria that shall apply to [preliminary] **the proposals** [or to proposals, as the case may be].

[(d) When the Corporation has elected to follow a one-step procurement process, the advertisement and request for proposals shall provide that consultants must be appropriately pre-qualified at the time of submission of a technical proposal in order to be eligible for an award.]

19:38C-2.5 Evaluation

(a) The ranking of [technical proposals] **professional services consultants** shall be performed pursuant to evaluation criteria [developed] **established** by [Corporation staff] **the Authority** for each particular engagement, **and by the weights established for such criteria.** In selecting the most highly qualified professional services consultants, the selection committee [and Corporation staff] shall consider the [following] criteria[, where applicable:] **and relative weights of such criteria, as set forth in the RFP and/or RFQ.**

[1. The experience of the consultant and the key personnel on projects similar in scope, size and complexity;

2. The qualifications of the consultant and the key personnel to provide the required services for the school facilities project, pre-development activities or other type of engagement for the school construction program, as the case may be;

3. The approach set forth by the consultant to the school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be;

4. The proposed staffing, including, but not limited to, the extent to which the commitment of any proposed staffing under any other contract with the Corporation, or with any other public or private entity, may compromise the consultant's capacity to provide the services addressed in the technical proposal;

5. The consultant's performance on other work undertaken or funded by the Corporation;

6. The consultant's proximity to the site of the school facilities project, pre-development activity or other type of engagement for the school construction program, as the case may be; and/or

7. Such other criteria as the Corporation may determine to be appropriate to a specific procurement and which shall be set forth in the pertinent advertisement and request for proposals.

(b) Corporation staff shall establish weights for the evaluation criteria based on particular requirements of each school facilities project or pre-development activity, or the characteristics of the engagement required for the school construction program, as the case may be.]

[(c)] (b) The [evaluation process] **Authority** may [include] **require** the submission of [preliminary proposals, submission of technical] proposals, **requests for clarifying technical and/or organizational information**, interviews, site visits, and pre-proposal conferences; **however, all such requirements will be set forth in the RFP and/or RFQ.**

[(d)] (c) [To the extent required by law or by order of a court of competent jurisdiction, the Corporation shall abide by the provisions of N.J.S.A. 52:32-17 et seq., N.J.A.C. 12:10A, and all other applicable regulations, with respect to SBES.] Nothing in this chapter shall be construed to limit the [Corporation's] **Authority's** ability to obtain services pursuant to [a] **an SBE set-aside procurement under N.J.A.C. [19:32] 19:39.**

19:38C-2.6 Rejection of proposals; **cancellation of procurement or award**

(a) Proposals received after the submission date and time prescribed in the [advertisement and request for proposals] **RFQ and/or RFP** shall be rejected[, except where the Corporation, in its sole discretion, finds good cause].

(b) The [Corporation] **Authority** may reject any proposal for [lack of responsiveness or responsibility or] **any reason, in accordance with law**, when it is otherwise deemed to be in the public interest to do so. The [Corporation] **Authority** may reject all proposals **and cancel a procurement**, for excessive cost, insufficient competition, or any other reason, **in accordance with law**, that it deems to be in the public interest.

(c) The [Corporation] **Authority** may cancel an award at any time before the execution of an agreement by all parties.

19:38C-2.7 **Approval and execution of agreement**

No agreement is valid or binding on the Authority unless and until it is executed by the Authority.

19:38C-2.8 Termination

All [contracts] **agreements** executed pursuant to this chapter shall provide for, among other things, termination for the convenience of the [Corporation] **Authority** and for cause.

19:38C-2.9 **Disclosure and publicity**

(a) **Any and all submissions made in response to an RFQ and/or an RFP are subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., including the exceptions from disclosure provided therein.**

(b) **Consultants shall notify the Authority prior to the issuance of press releases and other public dissemination of information concerning a school facilities project and such shall acknowledge Authority financing and assistance in the undertaking of the school facilities project.**

19:38C-2.10 **Performance evaluation**

(a) **The Authority shall have the right to consider the performance of a professional services consultant as a factor in the ranking of the consultant when evaluating proposals.**

(b) **Performance evaluations may include, but are not limited to, the following factors:**

1. **Quality of work;**
2. **Scheduling;**
3. **Management;**
4. **Cost control/amendments;**
5. **Subconsultants;**
6. **Close out; and**
7. **Any other factors affecting a consultant's performance.**

SUBCHAPTER 3. SELECTION PROCEDURES—[CATEGORY ONE CONTRACTS] **AGREEMENTS NOT EXCEEDING THE STATE BID THRESHOLD PURSUANT TO N.J.S.A. 52:34-7b**

19:38C-3.1 Scope

This subchapter sets forth the procedural requirements applicable to the procurement of [category one contracts, which are contracts with] **agreements for professional services consultants where such agreements specify compensation not exceeding [\$25,000.] the State bid advertisement threshold of \$36,000, as adjusted, pursuant to N.J.S.A. 52:34-7b, except for those procurements in which the Authority, at its sole option, determines to apply the procedures of N.J.A.C. 19:38C-5. This subchapter shall not apply to the procurement of appraisers or title insurance companies.**

19:38C-3.2 Solicitation

[The Corporation] **In accordance with N.J.S.A. 52:34-7, the Authority** shall not be required to advertise [a category one] **the procurement** [. Wherever practicable, a competitive selection process shall be used.] **of agreements for professional services consultants where such agreements provide for compensation below the State bid threshold. The Authority reserves the right to waive any prequalification requirements for a procurement pursuant to this subchapter.**

19:38C-3.3 Evaluation

Proposals shall be evaluated based on [price] **fees and/or** the evaluation criteria appropriate for the particular procurement. The [Corporation] **Authority** may request clarifying technical and/or organizational information from any [entity submitting a proposal] **professional services consultant** prior to finalizing the evaluation.

19:38C-3.4 Selection

The [Corporation] **Authority** shall select the proposal that is in the best interest of the [Corporation and the] school construction program,

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based on [price] fees and/or the evaluation criteria established for the selection.

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SUBCHAPTER 5. SELECTION PROCEDURES—[CATEGORY THREE CONTRACTS] AGREEMENTS EXCEEDING THE STATE BID THRESHOLD, AS ADJUSTED, PURSUANT TO N.J.S.A. 52:34-7b

19:38C-5.1 Scope and applicability

This subchapter sets forth the procurement procedures that [may, at the option of the Corporation, apply to any engagement, but that] shall apply to [all category three contracts. A category three contract is an engagement] agreements for professional services consultants with compensation exceeding [\$2,000,000, exclusive of allowances.] the amount set forth in N.J.S.A. 52:34-7b. At the option of the Authority, the procedures specified in this subchapter may apply to an engagement with compensation below the amount set forth in N.J.S.A. 52:34-7b. This subchapter shall not apply to the procurement of appraisers or title insurance companies.

19:38C-5.2 Initiation

The procurement of a professional services consultant shall be initiated by the public advertisement of a request for qualifications, a request for proposals, or both, except in circumstances where a waiver of advertising is permitted under N.J.A.C. 19:38C-6.

19:38C-5.3 Selection committee

(a) Prior to the receipt of proposals, the Authority shall establish a selection committee or committees to review and evaluate the proposals. Each member of the selection committee shall have the relevant experience necessary to evaluate the proposals. Each member of a selection committee shall be responsible for independently evaluating and scoring the proposals.

(b) Once the responses are received and the identity of the vendors is ascertained and communicated to the members of the selection committee, each member of the selection committee, prior to the evaluation of any proposal, shall execute a certification that he or she has no personal interest, financial or familial, in any of the vendors to be evaluated, or the principals, subsidiaries, or parent companies thereof. Furthermore, should any of the selection committee members indicate that a conflict or personal interest exists once the identity of the vendors is revealed, that member shall not serve on the selection committee and may be replaced.

(c) The names of the members of the selection committee shall be made public once the contract is awarded, pursuant to N.J.S.A. 52:34-10.3(c).

(Agency Note: The text of N.J.A.C. 19:38C-5.4 is proposed for recodification with amendments as N.J.A.C. 19:38C-2.4.)

19:38C-5.4 Selection evaluation criteria

(a) The selection evaluation criteria may include the following: the firm's experience on projects of a similar size and nature; project team experience; past project performance; project approach; understanding of project needs and project schedule; and budget and cost estimating. Selection evaluation criteria may also include any other criteria as determined to be appropriate in the sole discretion of the Authority.

(b) The selection evaluation criteria and the specific weight assigned to each criterion for each professional services consultant procurement shall be established by the Authority prior to advertisement and the criteria and weights shall be incorporated into the RFQ and/or RFP for the procurement.

(c) When the procurement is for professional services consultants other than architects, engineers, and/or land surveyors, the Authority may provide that a fee proposal shall be one of the qualitative factors upon which professional services consultants will be evaluated.

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19:38C-5.5 Selection evaluation process

(a) The members of the selection committee will evaluate the submissions and other information comprising the evaluation process and shall assign scores based upon the evaluation criteria stated in the RFQ and/or RFP.

(b) In addition to the review of responses to an RFQ and/or RFP the evaluation process may include:

1. Review of responses to requests for additional or clarifying information;
2. Participation in interviews; and/or
3. Any other components determined, in the sole discretion of the Authority, to be appropriate.

(c) Site visits, pre-proposal conferences, and interviews may be scheduled. Attendance shall be mandatory when so stipulated in the RFP or RFQ.

(d) The selection coordinator shall compile the evaluation scores of the committee members, as well as any points assigned in the consideration of a fee proposal in accordance with N.J.A.C. 19:38C-5.7(a), if applicable, and shall prepare a ranking in accordance with the procedures specified in the RFQ and/or RFP, which shall be deemed a final ranking if no shortlisting process, as set forth in this section, is called for in the RFQ.

(e) If a shortlisting process is specified by the selection procedures described in the RFQ, the selection coordinator shall review the ranking and identify the short list of firms.

1. Once the short list is determined, the Authority shall publish the short list on the Authority's website and/or provide written notification to all firms that supplied responses to the RFQ of the names of the firms selected for the short list.

2. If additional information is required, the Authority shall request such information from all of the shortlisted firms prior to the final ranking. The members of the selection committee shall review and evaluate the additional information provided by the shortlisted firms, in accordance with the procedures specified in the RFQ and/or RFP, and shall assign scores based upon the evaluation criteria stated in the RFQ and/or RFP, as applicable. At the sole discretion of the Authority, interviews may be held with the shortlisted firms prior to the determination of the final ranking. The members of the selection committee shall evaluate the additional information, and interviews, if any, and shall assign scores to each. The selection coordinator shall combine all evaluation scores in accordance with the procedures outlined in the RFQ and/or RFP, and prepare a final ranking.

19:38C-5.6 Submission of fee proposals

A fee proposal shall be submitted in accordance with the process set forth in either an RFQ or RFP. A fee proposal shall be submitted in a separate sealed envelope. The envelope shall indicate clearly that it is the fee proposal and shall identify the firm's name, project number, and any other information required by the RFQ or RFP. The fee proposals shall remain sealed until such time as provided in N.J.A.C. 19:38C-5.7(a) or (b), as applicable.

19:38C-5.7 [Evaluation] Consideration of fee proposals

(a) In the event the fee proposal is one of the qualitative factors for the evaluation of the proposals, the Authority shall open the sealed fee proposals and assign the maximum points to the lowest total fee proposal. All other proposals shall be scored based upon the percentage that each proposal exceeds the lowest proposal. The scores of the fee proposals shall then be utilized to finalize the ranking undertaken by the selection committee, pursuant to N.J.A.C. 19:38C-5.5(d).

(b) [Fee proposals shall be opened and evaluated by Corporation staff.] In the event the fee proposal is not a qualitative factor for the evaluation of the proposal, the Authority shall open the sealed fee proposals at a predetermined date and time after the final ranking has been prepared. Using the fee proposals as a guide, [Corporation staff] the Authority shall negotiate [a contract] an agreement with the highest-ranked consultant [ranked highest pursuant to N.J.A.C. 19:38C-5.6.] at a fee determined by [Corporation staff] the Authority to be fair and reasonable. Should [Corporation staff] the Authority be unable to negotiate a satisfactory fee with the highest-ranked consultant,

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[Corporation staff] **the Authority** shall terminate negotiations with the highest-ranked consultant, and **may then terminate the procurement** or may then undertake negotiations with the second-highest ranked consultant. Failing accord with the second highest-ranked consultant, [Corporation staff] **the Authority** shall terminate negotiations with the second highest-ranked consultant and may then **terminate the procurement or may** undertake negotiations with the third highest-ranked consultant. In the event that [Corporation staff] **the Authority** is unable to agree to a satisfactory fee with any of the three highest-ranked firms, [Corporation staff] **the Authority** may select additional consultants in the order of their ranking and continue negotiations, until either an agreement is reached or the procurement is **canceled or** terminated.

19:38C-5.8 Recommendation

Based on the process set forth in this subchapter, [a recommendation shall be made as to] **the selection coordinator shall recommend** the most technically qualified consultant at final compensation determined to be fair and reasonable. **If the recommendation is approved, the Authority will issue a written notice of award to the successful professional services consultant.**

19:38C-5.9 Execution of agreement

Upon the successful professional services consultant's submission of any required documentation or materials as specified in the notice of award, and the Authority's acceptance of such documents, the Authority will execute the agreement and provide the successful professional services consultant with a fully-executed agreement.

19:38C-5.10 Confidentiality

The selection evaluations, rankings, negotiations, and fee proposals of all firms, as well as all discussions and correspondence, relating to the selection of a professional services consultant shall remain confidential and exempt from production under the Open Public Records Act, N.J.S.A. 47:1-1 et seq., until a notice of award has been issued.

SUBCHAPTER 6. [SELECTION PROCEDURES—CATEGORY FOUR CONTRACTS] WAIVER OF ADVERTISING

19:38C-6.1 Scope

This subchapter shall govern the procurement of [a contract] **an agreement** through the [Corporation's] **Authority's** grant of a waiver of advertising pursuant to N.J.S.A. 52:34-10. While the [Corporation] **Authority** shall normally procure professional services consultants through a competitive selection process initiated by advertising, in those limited situations where it is not possible, feasible or prudent to advertise, this subchapter shall apply to the procurement of [category four contracts] **professional services consultant agreements.**

19:38C-6.2 [Categories;] Circumstances justifying waiver of advertising; pre-qualification

(a) The [Corporation] **Authority** may grant a waiver [when the engagement to be awarded falls into one of the] **of public advertisement in the following [categories] limited circumstances:**

1. The engagement to be made is with the **Federal government**, or any State government or any agency or political subdivision thereof;
2. [Public] **A public exigency exists in which professional services must be purchased immediately and are necessary to mitigate an emergency situation; [or]**
3. Only one [source of supply is] **professional services consultant is capable of or available[.] to provide the services at the time they are required; or**
4. **When the services required are available through participation in an existing contract between a vendor and any department, division, office, agency, bureau, or section of the United States, or any authority or instrumentality created or chartered thereby and any department, division, office, agency, bureau, or section of New Jersey or any state of the United States other than New Jersey, or any political subdivision thereof including, but not limited to,**

municipalities, or any other authority or instrumentality created or chartered thereby, provided that:

- i. **The existing contract was the result of a competitive selection process;**
- ii. **The terms of the existing contract permit such Authority participation;**
- iii. **The price of the services being procured is no greater than the price offered to the original governmental unit party to the existing contract;**
- iv. **The Authority receives the benefit of any price reductions mandated by the original governmental unit party during the term of the existing contract and is protected from price increases during that time; and**
- v. **The price of services being procured is no greater than the price of the same or equivalent goods or services under any existing New Jersey State contract.**

(b) [A] **At the option of the Authority, the Authority may waive pre-qualification of a professional services consultant** procured pursuant to [this subchapter must be pre-qualified prior to the Corporation's execution of the resulting contract, except that pre-qualification shall not be necessary for an engagement pursuant to] public exigency under (a)2 above.

19:38C-6.3 Solicitation

(a) **With respect to a circumstance arising under N.J.A.C. 19:38C-6.2, whenever practical, the Authority will undertake a competitive selection process for agreements of this type to the extent it is feasible and economical to do so. This less formal process may include obtaining at least three telephonic quotations or obtaining written quotations from at least three separate professional services consultants.**

1. **Proposals shall be evaluated based on proposed fees and the evaluation criteria appropriate for the particular procurement. The Authority may request clarifying technical and/or organizational information from any entity submitting a proposal, prior to finalizing the evaluation.**

2. **The Authority shall select the proposal that is in the best interest of the Authority and the school construction program, based on proposed fees and the evaluation criteria established for the selection.**

3. **The competitive selection process used shall be memorialized in the recommendation of award.**

SUBCHAPTER 7. SELECTION PROCEDURES—[CATEGORY FIVE CONTRACTS] TERM AGREEMENTS

19:38C-7.1 Scope

This subchapter provides for the use of term agreements by the Authority to serve a variety of consultant needs in accordance with its statutory responsibilities to administer the schools construction program. This subchapter further provides for the issuance of task orders, in accordance with a term agreement.

19:38C-7.2 General requirements

(a) **A term agreement is an agreement whereby the Authority may engage a professional services consultant or consultants for a defined period of time, rather than for a defined project or projects.**

(b) **Term agreements may be used by the Authority to retain professional services consultants when:**

1. **There is a need to expedite emergent projects or emergent project requirements;**
2. **There is a need to accomplish any study, evaluation, review, assessment, or other professional services relating to a school facilities projects on an "on call" basis; or**
3. **There is a need to address the program-wide requirements of the Authority.**

(c) **Procurement of a term agreement shall be in accordance with the selection procedures set forth at N.J.A.C. 19:38C-5, except that fee proposals may be based upon hourly or daily rates and/or other methods for determining costs over a specific time period.**

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(d) Term agreements shall be for a specific time period and maximum contract value, which shall be set forth in the term agreement. The Authority shall set forth a budget and schedule for each proposed task order under a term agreement prior to its assignment to a professional services consultant. The time in which services are to be performed under a task order may extend past the expiration date of a term agreement, as long as the task order was executed prior to the expiration date.

(e) The Authority may enter into a term agreement with any consultant engaged pursuant to the provisions of this chapter for a term, not to exceed three years, unless a longer time period is expressly authorized by law, and for a value that shall not exceed a ceiling stated in the agreement.

(f) Notwithstanding the foregoing, term agreements for provision of professional services in litigation matters shall be for a term not to exceed two years, pursuant to Executive Order No. 37 (2006).

SUBCHAPTER 8. ENGAGEMENT OF TITLE INSURANCE COMPANIES

19:38C-8.1 Scope

This subchapter, exclusively, shall govern the Authority's engagement of title insurance companies.

19:38C-8.2 Master list

The Authority shall establish and maintain a master list of title insurance companies, which are on the list of title insurance companies authorized to write title insurance policies in New Jersey as compiled by the New Jersey Department of Banking and Insurance and rated "A" or higher by a major credit rating agency. The master list shall be updated by the Authority on a quarterly basis.

19:38C-8.3 Procurement by competitive bidding for individual engagement

(a) When the Authority deems it in the best interest of a school facilities project or the school construction program to make use of an individual competitive procurement to secure title insurance, it shall solicit proposals for title insurance by means of a request for proposals presented to at least three separate title insurance companies randomly selected from the master list. Authority staff shall prepare a memorandum indicating the number of entities contacted and the number of proposals received, including prices.

(b) The proposals shall be evaluated by the Authority based on price and the title insurance company's experience with the property or area comprising and surrounding the site for the particular school facility at issue. The Authority may request clarifying technical and/or organizational information from those entities submitting proposals prior to determining the final ranking.

19:38C-8.4 Procurement through term agreements specifying fixed rates

(a) In the event that the Authority determines that it would be in the best interest of the school construction program to make use of a term agreement approach to the procurement of title insurance, it may extend an offer to all title insurance companies on the master list to enter into an agreement that may extend for a term not to exceed three years. The compensation paid under any such term agreement shall be in accordance with a fixed schedule of rates and charges, and the contract value shall not exceed a stated ceiling during its term. The Authority may extend such term agreement offers at such frequency as it determines is in the best interest of the school construction program, provided that no title insurance company may be engaged under more than one such term agreement at a time. All term agreements with title insurance companies shall provide for, among other things, termination for the convenience of the Authority and termination for cause.

(b) During the term of such an agreement, the Authority may assign to a title insurance company one or more task orders identifying specific properties or sites for which to provide title

insurance for purposes of one or more school facilities projects based upon the following criteria:

1. The title insurance company's experience with the property or area comprising and surrounding the site for the particular school facility at issue;

2. Present capacity of the firm to provide the required services; and

3. Equitable allocation of task order assignments among all title insurance companies engaged by the Authority under a term agreement.

SUBCHAPTER 9. ENGAGEMENT OF APPRAISERS

19:38C-9.1 Scope

This subchapter, exclusively, shall govern the engagement of appraisers.

19:38C-9.2 Master list

(a) The Authority shall establish and maintain and update on a quarterly basis, a master list of appraisers. The master list shall be created based upon the list of appraisers maintained by the New Jersey Department of Transportation and the list of appraisers previously engaged by the Authority. Firms may apply for inclusion on the master list by submitting to the Authority a statement of qualifications, which shall include, but not limited to, the following:

1. A resume;

2. Experience with condemnation projects carried out by governmental entities and a full description of same; and

3. Experience with other governmental entities.

(b) Authority staff shall evaluate the statement of qualifications submitted by a firm seeking inclusion in the master list-based criteria including:

1. The firm's experience with condemnation projects carried out by governmental entities; and

2. The firm's compliance with the Uniform Standards of Professional Appraisal Practice, as published annually by the Appraisal Standards Board of the Appraisal Standards Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, DC 20005.

19:38C-9.3 Procurement by competitive bidding for individual engagement

(a) When the Authority deems it is in the best interest of a school facilities project or the school construction program to make use of an individual competitive procurement to engage an appraiser, it shall solicit proposals for appraisal services by means of a request for proposals presented to at least three separate appraisers chosen from the master list based upon the following:

1. Geographic proximity to the school facilities project; and

2. If applicable, the need for a particular specialty.

(b) The Authority shall prepare a memorandum indicating the number of entities contacted and of proposals received, including prices.

(c) The proposals will be evaluated by the Authority based on price and the following evaluative criteria:

1. Licensing status;

2. Professional designations;

3. Previous experience on similar projects;

4. Geographic proximity to the school facilities project; and

5. Present capacity of a firm to complete solicited services.

(d) The Authority may request clarifying technical and/or organizational information from those entities submitting proposals prior to determining the final ranking.

19:38C-9.4 Procurements through term agreements specifying fixed rates

(a) In the event that the Authority determines that it would be in the best interest of the school construction program to make use of a term agreement approach to the procurement of appraisal services, it may extend an offer to all firms on the master list to enter into an agreement that may extend for a term not to exceed three years. The compensation paid under any such term agreement shall be in accordance with a fixed schedule of rates and charges and the

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contract value shall not exceed a stated ceiling during its term. The Authority may extend such term agreement offers at such frequency as it determines is in the best interest of the school construction program, provided that no appraiser may be engaged under more than one such term agreement at a time. All term agreements with appraisers shall provide for, among other things, termination for the convenience of the Authority and termination for cause.

(b) During the term of such an agreement, the Authority may assign to an appraiser a task order identifying specific sites to appraise for purposes of one or more school facilities projects based upon the following criteria:

1. Licensing status;
2. Professional designations;
3. Previous experience on similar projects;
4. Geographic proximity to the school facilities project or projects;
5. Present capacity of the firm to complete the required services; and
6. Equitable allocation of task order assignments among all appraisers engaged by the Authority under a term agreement.

SUBCHAPTER 10. ENGAGEMENT OF EXPERTS

19:38C-10.1 General requirements

Experts for litigation support or real estate transaction support may be retained through outside counsel on behalf of the Authority, or procured directly by the Authority, using any of the procurement methods set forth in this chapter.

SUBCHAPTER 11. PROTESTS AND HEARING PROCEDURES

19:38C-11.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern protests and administrative hearings regarding the Authority's conduct of procurements for professional services consultants, including protests challenging:

1. The form of advertisements for procurement;
2. The form of the RFQ or the RFP for a given procurement;
3. The scoring of proposals or the ranking of firms;
4. The selection of professional services consultants for unadvertised procurements under N.J.A.C. 19:38C-3 or 6;
5. The issuance of a task order under a term agreement under N.J.A.C. 19:38C-7.4; and
6. Performance evaluations for professional services consultants.

(b) For purposes of this subchapter, protests of the type described in (a) above are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

19:38C-11.2 Subject matter, time limitations, and who may request hearings

(a) Administrative hearings before the Authority may include the following subject matter and may be requested by the following entities:

1. RFQ process or documents. A consultant that has submitted or intends to submit a proposal in response to an RFQ, may request an informal hearing before the Authority to protest the RFQ process or documents by submitting a written protest to the Authority at least five business days prior to the date and time scheduled for receipt of proposals, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials, or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for, and arguments supporting, the protest;

2. RFP process or documents. A consultant that has submitted or intends to submit a proposal in response to an RFP, may request an informal hearing before the Authority to protest the RFP process or documents, by submitting a written protest to the Authority setting forth in detail the grounds for such protest, at least five business days prior to the date and time scheduled for receipt of the proposals. The

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protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for and arguments supporting the protest;

3. Short list. A consultant protesting its failure to be included in a short list, or protesting the inclusion of another consultant on a short list, may request an informal hearing before the Authority to protest the selection of the short list, by submitting to the Authority a written protest setting forth the specific grounds for challenging the short list, within five business days of the public announcement of the short list. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the short list, or any protest that fails to provide the specific reasons for and arguments supporting the protest;

4. Master list. An appraiser or title insurance firm protesting its failure to be included in a master list may request an informal hearing before the Authority to protest the composition of the master list by submitting to the Authority a written protest setting forth the specific grounds for challenging the composition of the master list, within five business days of notification of the firm's failure to be included on the master list. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after notification of the firm's failure to be included on the master list, or any protest that fails to provide the specific reasons for and arguments supporting the protest;

5. Award of contract. A consultant that has submitted a proposal in response to an RFQ or RFP may request an informal hearing before the Authority to protest the award of a contract to another professional services consultant by submitting to the Authority a written protest, setting forth the specific grounds for challenging such award, within five business days of the public announcement of the award. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for and arguments supporting the protest;

6. Unadvertised contracts. A professional services consultant may request an informal hearing before the Authority to protest the award of a contract to another professional services consultant by submitting to the Authority a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award of the contract. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for and arguments supporting the protest;

7. Task order assignment. A professional services consultant that has received an award under a term agreement procurement may request an informal hearing before the Authority to protest the award or assignment of a task order to another professional services consultant, by submitting to the Authority a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award or assignment of the task order. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than

five business days after the public announcement of the award or assignment of the task order, or any protest that fails to provide the specific reasons for and arguments supporting the protest; or

8. Performance evaluation. A professional services consultant that is dissatisfied with its performance evaluation on an Authority project may request an informal hearing before the Authority by submitting to the Authority a written protest setting forth the specific grounds for such protest, within 15 calendar days after the date of receipt of written notification of the performance evaluation. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than 15 calendar days after the consultant's receipt of written notification of the performance evaluation, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

19:38C-11.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold an informal hearing. Alternatively, the Authority may determine that sufficient information already exists in the record, so that a decision may be made without a hearing, and the Authority may issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within five business days of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be held, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written decision will issue prior to the opening of proposals. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed by addendum to all consultants eligible for the procurement at issue.

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

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his or her designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. 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.

(a)

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procurement of Goods and Services

Proposed Readoption with Amendments: N.J.A.C. 19:38D

Proposed Repeals and New Rules: N.J.A.C. 19:38D-2.2, 2.3, 2.6, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, 7.1, 7.2, and 7.3

Proposed Repeals: N.J.A.C. 19:38D-2.9, 5.3, 5.4, 5.5, 5.6, 7.4, 8, and 9

Proposed New Rules: N.J.A.C. 19:38D-4.8, 4.9 and 4.10

Proposed Recodification with Amendments: N.J.A.C. 19:38D-4.4 as 2.9

Authorized By: New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.

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

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

Proposal Number: PRN 2011-251.

Submit written comments by February 3, 2012 to:

Cecelia Haney, Administrative Practice Officer
 New Jersey Schools Development Authority
 PO Box 991
 Trenton, NJ 08625-0991

The agency proposal follows:

Summary

The New Jersey Schools Development Authority ("Authority" or "SDA") proposes to readopt with amendments, new rules and repeals, N.J.A.C. 19:38D. The rules establish the requirements, standards, and procedures for the Authority's procurement of goods and services.

Chapter 38D was originally adopted on February 7, 2005 by the New Jersey Schools Construction Corporation (SCC). The SCC was created pursuant to the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq. The SCC was abolished in 2007 by P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., which simultaneously created the Authority to assume all of the functions, powers, and duties of the former SCC.

Chapter 38D was scheduled to expire on February 7, 2010, but was extended by action of Executive Order No. 1 (2010), which "froze" all existing regulations until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Authority has reviewed Chapter 38D and has determined that it remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated, with the addition of the proposed amendments, new rules, repeals and recodification. The rules proposed for readoption with amendments, new rules, repeals and readoption:

(a) implement Executive Order No. 37 (2006), which sets guidelines for the procurement of goods and services by State Authorities; and

(b) provide assurance to vendors and other stakeholders that the SDA procurement process is fair, transparent, and results in the procurement of goods and services at competitive prices.

As the Authority 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 section-by-section description of the rules proposed for readoption with amendments, repeals, new rules, and recodification follows:

RESOLUTION –6di.**Resolution Approving Re-adoption and Amendments to Title 19, Chapter 38C-
Procurement of Architects, Engineers, Land Surveyors and Other
Professional Services Consultants****Resolution**

WHEREAS, N.J.A.C. 19:38C (the “Rules”) establishes requirements, standards and procedures for the New Jersey Schools Development Authority’s (“SDA” or “Authority”) procurement of architects, engineers, land surveyors and other Professional Services Consultants (“PSCs”); and

WHEREAS, the Rules were originally adopted on February 7, 2005 and were set to expire on February 7, 2010; and

WHEREAS, by action of Executive Order No. 1 (2010), the Rules were exempted from expiration until re-adoption by the Authority; and

WHEREAS, in late 2011 the Authority undertook a substantial revision of the original Rules to provide clarity, conform to statutory requirements, and reflect procurement best practices consistent with relevant case law and State Comptroller guidance; and

WHEREAS, on October 5, 2011, the Members of the Authority approved for proposal and publication the re-adoption and amendment of the Rules; and

WHEREAS, the proposed Rules appeared in the New Jersey Register on December 5, 2011 at 43 N.J.R. 3153(a), and were subject to a sixty (60) day public comment period ending February 3, 2012; and

WHEREAS, , as set forth in the memorandum presented to the Board on this date, the text of the Rules presented for Board approval remains substantively unchanged from the form previously approved by the Board for publication on October 5, 2011; and

WHEREAS, the Rules presented for Board approval comply with N.J.S.A. 52:34-9, implement Executive Order 37 (2006), and provide assurances to vendors and other stakeholders that the SDA procurement process is fair, transparent, and results in the retention of quality PSCs at competitive prices; and

WHEREAS, SDA Management recommends that the Members of the Authority approve the re-adoption of and amendments to the Rules consistent with the materials presented to the Board on this date and incorporated herein; and

WHEREAS, the Members of the Authority are requested to approve advancement and completion of the re-adoption process for these Rules, which requires filing a with the Office of Administrative Law a Notice of Adoption, reflecting the Rule Re-adoption with Amendments, and publication of the final approved Rules and Notice of Adoption in the New Jersey Register.

NOW THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve re-adoption of, and substantive amendments to, N.J.A.C. 19:38C as fully set forth in the memorandum and Proposed Re-adoption with Amendments: N.J.A.C. 19:38C, Proposed Repeals and New Rules: N.J.A.C. 19:38C-2.1, 2.7, 2.9, 2.10, 5.1, 5.2, 5.3, 5.5, 5.6, 6.3, 7.1, and 7.2, Proposed Repeals: N.J.A.C. 19:38C-2.4, 4, 7.3, and 7.4, Proposed New Rules: N.J.A.C. 19:38C-5.9, 5.10, 8, 9, 10, and 11, and Proposed Recodification with Amendment: N.J.A.C. 19:38C-5.4 as 2.4, all as presented to the Board on this date.

BE IT FURTHER RESOLVED, that the Board approves the filing of the N.J.A.C. 19:38C Rules with the Office of Administrative Law.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Rule Re-adoption with Amendments: Title 19, Chapter 38C
Procurement of Architects, Engineers, Land Surveyors and Other Professional
Services Consultants, dated March 7, 2012

Dated: March 7, 2012

READOPTION w/AMENDMENTS: 19:38D

MEMORANDUM**6**

TO: Members of the Authority

FROM: Jane Kelly, Vice President
Division of Corporate Governance and Operations

DATE: March 7, 2012

RE: Rule Readoption with Amendments: Title 19, Chapter 38D
Procurement of Goods and Services

On October 5, 2011, the Members of the Authority approved for proposal and publication the readoption and amendment of regulations at Title 19, Chapter 38D, Procurement of Goods and Services (the "Rules"). Management of the New Jersey Schools Development Authority ("Authority" or "SDA") now seeks the Members' approval to formally readopt the Rules as previously approved for proposal and publication. The Rules to be readopted have not changed since the Board's initial approval on October 5, 2011, with the exception of minor edits suggested by the Office of Administrative Law prior to publication. The Rules are attached as published in the New Jersey Register.

As previously briefed in a Board Memorandum of October 5, 2011, the Rules were originally adopted on February 7, 2005 to govern the Authority's procurement of goods and services, and were set to expire on February 7, 2010. By action of Executive Order No. 1, the rules were exempted from expiration until readoption by the Authority. The Authority undertook a substantial revision of the original Rules, as part of an effort to overhaul its procurement regulations to provide additional clarity, conform to statutory requirements, and reflect procurement best practices influenced by case law and advocated by the Office of the Comptroller.

The proposed Rules appeared in the New Jersey Register on December 5, 2011 at 43 N.J.R. 3168(a), and were subject to a sixty (60) day public comment period ending February 3, 2012. Additional notice of the rule proposal was published on the Authority's website and provided to news outlets and by mail to consultants and vendors that had done business with the Authority. No comments were received during the public comment period, and thus the Rules are unchanged from the form previously approved by the Board for publication on October 5, 2011 (with the exception of minor technical edits from the Office of Administrative Law).

[Notice of Adoption for N.J.A.C. 19:38D]

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procurement of Goods and Services

Proposed: December 5, 2011 at 43 N.J.R. 3168(a)

Adopted: March 7, 2012 by the New Jersey Schools Development Authority,

Marc Larkins, Chief Executive Officer

Filed: [date] as R. 2012 d. __, **without change.**

Authority: P.L. 2007, c.137, § 4k (N.J.S.A. 52:18A-238k) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); P.L. 2007, c.137, (N.J.S.A. 52:18A-235 et seq.) (enabling statutes); and P.L. 1997, c. 399 (N.J.S.A. 52:34-9.1 et seq.) (related authority).

Effective Date: [Date of submission to OAL for readopted rules;
date of publication for new rules and amendments]

Expiration Date [7 years from Publication Date]

Summary of Public Comment and Agency Response:

No comments were received regarding this proposal.

Federal Standards Statement

The proposed new Rules implement a State statute, specifically P.L. 2007, c.137, (N.J.S.A. 52:18A-235 et seq.). There are no Federal standards or requirements applicable to these Rules. A Federal standards analysis, therefore, is not required.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:38C.

Full text of the adopted amendments follows: [Published version of rule proposal attached for Board review; final text to be added by publisher]

five business days after the public announcement of the award or assignment of the task order, or any protest that fails to provide the specific reasons for and arguments supporting the protest; or

8. Performance evaluation. A professional services consultant that is dissatisfied with its performance evaluation on an Authority project may request an informal hearing before the Authority by submitting to the Authority a written protest setting forth the specific grounds for such protest, within 15 calendar days after the date of receipt of written notification of the performance evaluation. The protest must contain all factual and legal arguments, materials, or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than 15 calendar days after the consultant's receipt of written notification of the performance evaluation, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

19:38C-11.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold an informal hearing. Alternatively, the Authority may determine that sufficient information already exists in the record, so that a decision may be made without a hearing, and the Authority may issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within five business days of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be held, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written decision will issue prior to the opening of proposals. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed by addendum to all consultants eligible for the procurement at issue.

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

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his or her designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. 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.

(a)

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Procurement of Goods and Services

Proposed Readoption with Amendments: N.J.A.C. 19:38D

Proposed Repeals and New Rules: N.J.A.C. 19:38D-2.2, 2.3, 2.6, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, 7.1, 7.2, and 7.3

Proposed Repeals: N.J.A.C. 19:38D-2.9, 5.3, 5.4, 5.5, 5.6, 7.4, 8, and 9

Proposed New Rules: N.J.A.C. 19:38D-4.8, 4.9 and 4.10

Proposed Recodification with Amendments: N.J.A.C. 19:38D-4.4 as 2.9

Authorized By: New Jersey Schools Development Authority, Marc Larkins, Chief Executive Officer.

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

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

Proposal Number: PRN 2011-251.

Submit written comments by February 3, 2012 to:

Cecelia Haney, Administrative Practice Officer
 New Jersey Schools Development Authority
 PO Box 991
 Trenton, NJ 08625-0991

The agency proposal follows:

Summary

The New Jersey Schools Development Authority ("Authority" or "SDA") proposes to readopt with amendments, new rules and repeals, N.J.A.C. 19:38D. The rules establish the requirements, standards, and procedures for the Authority's procurement of goods and services.

Chapter 38D was originally adopted on February 7, 2005 by the New Jersey Schools Construction Corporation (SCC). The SCC was created pursuant to the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq. The SCC was abolished in 2007 by P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., which simultaneously created the Authority to assume all of the functions, powers, and duties of the former SCC.

Chapter 38D was scheduled to expire on February 7, 2010, but was extended by action of Executive Order No. 1 (2010), which "froze" all existing regulations until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The Authority has reviewed Chapter 38D and has determined that it remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated, with the addition of the proposed amendments, new rules, repeals and recodification. The rules proposed for readoption with amendments, new rules, repeals and readoption:

(a) implement Executive Order No. 37 (2006), which sets guidelines for the procurement of goods and services by State Authorities; and

(b) provide assurance to vendors and other stakeholders that the SDA procurement process is fair, transparent, and results in the procurement of goods and services at competitive prices.

As the Authority 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 section-by-section description of the rules proposed for readoption with amendments, repeals, new rules, and recodification follows:

PROPOSALS

Subchapter 1. General Provisions

N.J.A.C. 19:38D-1.1 Purpose and scope of rules

This section has been proposed for reoption with a minor amendment. The reference to the "Corporation" has been changed to "Authority."

N.J.A.C. 19:38D-1.2 Definitions

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

New definitions include:

"Act," which refers to the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended, and P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq.

"Agreement," which is the title of the contractual document executed by and between the Authority and its vendors, and which replaces the term "contract" when used to denote reference to the contractual document, to comport with the Authority's current practices;

"Authority," which had previously referred to the New Jersey Economic Development Authority, but which has been replaced to refer to the New Jersey Schools Development Authority or "SDA." The definition reflects the creation of the SDA as a new governmental entity by P.L. 2007, c. 137, to be the successor to the New Jersey Schools Construction Corporation, which was simultaneously abolished in that same legislation. Accordingly, throughout N.J.A.C. 19:38D, references to "Corporation" and "SCC" have been replaced, where appropriate, with references to the "Authority" and "SDA";

"Board" has been replaced to refer to the members of the Authority, rather than referring to the board of directors of the now-abolished SCC;

"Emergent project" is proposed for amendment to be defined in accordance with the Department of Education's definition in N.J.A.C. 6A:26-1.2 to mean a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff;

"Fee proposal," which means the proposal for fees and costs submitted by a vendor, in the form and manner provided in the request for qualifications or request for proposals;

"Key personnel," which means those persons named by a vendor in response to a requirement in an RFQ or RFP for specific identification of certain employees who are represented in the proposal as having a responsible role in the successful completion of the delivery of goods or services proposed by a vendor;

"Moral integrity review," which refers to the background investigation that each prospective vendor is subject to as a condition of participating in an Authority procurement;

"Notice of award," which refers to the written document indicating a vendor has been selected to enter an agreement with the Authority;

"Other facilities," a definition taken from the Act which refers to types of facilities excluded from the definition of "school facilities" under the Act;

"Pre-qualified," is replaced to reflect the codification of the Authority's rules governing the prequalification of firms at N.J.A.C. 19:38A;

"Protest," which means a challenge or objection to an Authority decision or action;

"Ranking," which describes one of the key responsibilities of the selection coordinator in the evaluation process for prospective vendors of goods and/or services;

"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";

"Selection committee," which is replaced to recognize that there may be one or more such committees involved in the evaluation of proposals

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when compensation in the proposed agreement is in excess of the State bid threshold;

"Selection coordinator," which refers to the administrator responsible for the functioning of the selection process;

"Task order," which is the contractual document issued by the Authority to a vendor that defines and authorizes specified services and payment therefor, pursuant to a term agreement; and

"Vendor," which means an entity that provides goods and/or services.

The following definitions have been amended:

"Compensation," which is amended to clarify that compensation means payment to a vendor in accordance with the agreement and to eliminate reference to "allowances";

"Corporation," which is amended to reflect the abolition of the former New Jersey Schools Construction Corporation (NJSCC) and the Authority's status as a successor entity to the NJSCC;

"Goods," which has been amended to add "technology" to the list of items constituting "goods"; to delete the modifier "tangible" to refer to goods, in recognition of the focus on items, such as technology; to delete the references to "predevelopment activities" and "school program procurement" as those terms have been eliminated in favor of a more general reference to goods needed for the "school construction program"; and to and to specify that goods may be procured for program-wide purposes;

"Proposal," which has been amended to mean the submission of a vendor with respect to either an RFQ or RFP;

"Request for proposals," which is amended to include the acronym "RFP" and to reflect the definition of vendor;

"Request for qualifications," which is amended to include the acronym "RFQ," to describe the content of the document and to reflect the new definition of vendor;

"Schedule of goods," which has been amended to delete reference to the term "school program," to reflect the definition of "vendor," and to refer to the Agreement;

"School construction program," which is amended to delete the reference to a program "mandated by the act for the design, renovation, repair, and new construction of primary and secondary public schools throughout the State." The existing description failed to encompass the full scope of activities that constitute a "school facilities project," and has been replaced with a description of a "program of school facilities projects and related activities undertaken by the Authority," which relies on the statutory definition of "school facilities project" to define the program;

"School facilities project," which is amended in conformity with N.J.S.A. 52:18A-236 to include planning activities associated with a school facilities project, to clarify that maintenance activities that come within the definition are confined to capital maintenance projects, and to delete from the definition the "repair" of a school facility;

"School facility," which is amended to bring the term into conformity with its statutory definition pursuant to P.L. 2007, c. 137 (N.J.S.A. 18A:7G-3) by adding references to facilities that "support educational buildings and structures, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, and to include to the statutory distinction of "other facilities," which are defined as structures or improvements that do not constitute school facilities and which are elsewhere defined to include 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;

"Scope of services," which is amended to delete a circular reference and to include references to the vendor and the agreement;

"Services," which is amended to delete references to "predevelopment activities" and "school program procurement" and to specify that the term means the duties and obligations of a vendor under the agreement; the term is further amended to delete a reference to "other services," as that is now a defined term with a specific meaning not intended as used within this definition; and to replace the statutory reference to the now-repealed N.J.S.A. 34:1B-5.7 with a reference to the Authority's construction procurements under N.J.S.A. 52:18A-243;

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“Small business enterprise,” which is amended to reflect the change in the name of the governmental entity for small business registration and to refer to the recodified rules for registration; and

“Term contract” is amended to replace “contract,” with “agreement” as the contractual document governing the terms of engagement between the Authority and vendors.

The following terms are proposed for deletion:

“Allowance,” as the term was referenced in the former rules only to define an “allowance” as an exception to the contract value limits for the now-obsolete category one and two contracts. As the rules have now been revised to eliminate the system of numerical categories for contracts, defined by contract type or value, the reference to an “allowance” is no longer necessary;

“Appraiser,” as the procedures for procurement of appraisers, formerly known as category six contracts have been relocated to Chapter 38C and that term is now defined in Chapter 38C;

“Category one contract,” “category two contract,” “category three contract,” “category four contract,” “category five contract,” “category six contract,” and “category seven contract,” each of which classified certain types of procurement methods by numerical. In lieu of these numerical categories, the Authority has proposed rules categorizing agreements according to the type of procurements they entail, or whether the engagements referenced therein contemplate compensation above or below the State threshold pursuant to N.J.S.A. 52:34-7b;

“Client school district” is proposed for replacement with the term “SDA district” in conformance to the terminology used in the School Funding Reform Act of 2008, P.L. 2007, c. 260, N.J.S.A. 18A:7G-3;

The term “Educational Facilities Construction and Financing Act” has been subsumed within the definition of “Act” and the reference is amended to reflect that the statutory parameters for the schools construction program encompass the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended, and P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq.;

“Expert,” as the procedures for procurement of experts, formerly known as category seven contracts have been relocated to Chapter 38C, and that term is now defined and codified in Chapter 38C;

“Pre-development activities,” as that term is no longer used in Chapter 38D as a result of proposed amendments, and the concept behind the term, while still relevant to Chapter 38C, has been replaced in that chapter with “preconstruction activities”;

“School program procurement,” as it is superfluous and likely to be confused with the concept of “program-wide procurement,” used elsewhere in this chapter;

“Title insurance,” as the procedures for procurement of title insurance companies, formerly known as category five contracts have been relocated to Chapter 38C, and that term is now defined in Chapter 38C; and

“Title insurance company,” as the procedures for procurement of title insurance companies, formerly known as category five contracts have been relocated to Chapter 38C, and that term is now defined in Chapter 38C.

Subchapter 2. General Requirements

N.J.A.C. 19:38D-2.1 Scope

This section has been amended to define the scope of Subchapter 2, which specifies the requirements for procurements of goods or services by the Authority. The section has been amended to delete a reference to “consultants providing goods and services” in favor of specifying that the subchapter “sets forth requirements applicable to procurements of goods and services,” in recognition that, because elsewhere in proposed amendments, the provisions governing procurement of appraisers, title insurers, and experts have been proposed for removal from N.J.A.C. 19:38D and simultaneous inclusion in N.J.A.C. 19:38C, the procurement of “consultants” (specifically “professional services consultants”) is now governed by the companion rules at N.J.A.C. 19:38C. The original language of the section has been amended to make reference to the “Authority.”

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N.J.A.C. 19:38D-2.2 Pre-qualification and moral integrity review

Existing N.J.A.C. 19:38D-2.2, Seven categories of procurement procedures, has been proposed for repeal, as the Authority has eliminated the numerical categories that were previously outlined in this section. Instead, the Authority has proposed the new section, Prequalification and moral integrity review. This new section specifies that where vendors responding to a particular procurement are required to be prequalified pursuant to N.J.A.C. 19:38A, the responding vendors must be prequalified at the time of submission of responses to the RFQ or RFP, as indicated by the Authority. This section requires that all responding vendors that seek to enter an agreement with the Authority be subject to a moral integrity review, even where prequalification is not required, and further indicates that if the results of the moral integrity review are negative or unsatisfactory, in that they indicate any circumstance that would justify a revocation of prequalification under N.J.A.C. 19:38A-4.1, the vendor’s proposal shall be rejected.

N.J.A.C. 19:38D-2.3 Selection procedures based on type of engagement

Existing N.J.A.C. 19:38D-2.3, Contract term; term contracts, has been proposed for repeal because new rules governing term agreements have been proposed as Subchapter 5. This new section replaces the former section and specifies that the procedures applicable to a particular procurement vary depending on the nature of the goods or services or the contract value of a particular vendor engagement.

N.J.A.C. 19:38D-2.4 General evaluation criteria

This section, formerly headed “General evaluation criteria for categories two, three and four” has been proposed for re-adoption with amendments. The amendments include revision to the heading to delete references to the now-obsolete numerical categories for procurement. Subsection (a) has been amended to replace references to the “Corporation” with “Authority”; to recognize the defined terms “vendor,” “goods” and “services”; to specify that the selection committee will evaluate vendors using the criteria set forth in the RFP and/or RFQ; and to streamline the language regarding the commitment of staff to other projects, and the language regarding the proximity of the vendor to the school facility at issue. Subsection (b) has been amended to delete reference to expired rules at N.J.A.C. 12:10A and to recognize the recodification of the Authority’s rules governing small-business set-aside procurements from N.J.A.C. 19:32 to 19:39. The section has also been amended to eliminate references to the term “school program procurement.”

N.J.A.C. 19:38D-2.5 Rejection of proposals; cancellation of procurement or award

In this amended section, the Authority makes provision for the rejection of individual proposals that are submitted late or that are deemed non-responsive, and provides that an award may be cancelled at any time before the execution of an agreement by all parties. The section is amended to streamline the process for rejection of proposals, providing that the Authority may reject all proposals for any reason when otherwise in the public interest to do so and may cancel a procurement.

N.J.A.C. 19:38D-2.6 Approval and execution of agreement

Existing N.J.A.C. 19:38D-2.6, Contract approval, has been proposed for repeal and replacement with a new section, “approval and execution of agreement.” The existing section provided that engagements “shall be subject to approval by Corporation staff” and referred to the Corporation’s levels of internal operating authority. The new section specifies that a proposed agreement with the Authority is not valid or binding on the Authority until executed by the Authority.

N.J.A.C. 19:38D-2.7 Termination

This section has been amended to delete reference to the “Corporation.”

N.J.A.C. 19:38D-2.8 Disclosure and publicity; records retention

This section, formerly headed “Records access and retention,” has been amended to acknowledge that all submissions made in response to an RFQ or RFP are subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1-1 et seq., including the exceptions from disclosure as

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provided within that act. New subsection (b) provides that vendors shall seek the permission of the SDA prior to their issuance of press releases concerning a school facilities project and that such releases shall acknowledge Authority financing and assistance in undertaking the project. Subsection (c) has been amended to eliminate the requirement that vendors retain documents for a period of 10 years; as the Authority has specific retention periods for procurement documents that vary with the type of procurements. The section now provides that vendors will be required by the agreement to retain documents for a specified period consistent with the Authority's retention schedules and that vendors will be required to produce documents to the Authority upon written demand.

N.J.A.C. 19:38D-2.9 Advertising

Existing N.J.A.C. 19:38D-2.9, Appeals, has been proposed for repeal, as the procedures for protests to, and appeal of, Authority procurement decisions have been outlined in detail in new Subchapter 7. Proposed new N.J.A.C. 19:38D-2.9, Advertising, has been recodified from N.J.A.C. 19:38D-4.4, with certain amendments. The only substantive amendment of the language of the section is a new requirement that advertising be performed in accordance with N.J.S.A. 52:18A-243(h), which includes electronic means and/or newspapers, as well as design and construction publications and trade journals covering the construction industry in New Jersey, written notice to New Jersey professional societies, and use of direct mailings. This section further requires that any such advertisement must promote competitive bidding and also describe any specific information that a consultant must submit, provide the date and time for the receipt of submissions, as well as the evaluation criteria that will be applied to proposals.

Subchapter 3. Selection Procedures – Agreements Not Exceeding the State Bid Threshold Pursuant to N.J.S.A. 52:34-7b

Subchapter 3 has been proposed for re adoption, with amendments, to reflect the proposed deletion of the definition "category one contracts" and the replacement of "Corporation" by "Authority," as stated above. Accordingly, the reference to category one contracts in the heading of Subchapter 3 is deleted and replaced with a descriptive reference of the type of agreements addressed in Subchapter 3; namely, agreements that individually do not exceed the public bid threshold, as established by N.J.S.A. 52:34-7b.

N.J.A.C. 19:38D-3.1 Scope

This section has been amended to delete references to category one contracts and to provide that this subchapter applies to procurements not exceeding the public bid threshold, as established by N.J.S.A. 52:34-7b, although the Authority may opt to apply the provisions of Subchapter 4 to such a procurement. This section is further amended to indicate that the Authority may waive prequalification requirements for a procurement under this subchapter.

N.J.A.C. 19:38D-3.2 Solicitation

This section has been amended to delete reference to category one procurements and to clarify that procurements under this subchapter need not be advertised.

N.J.A.C. 19:38D-3.3 Evaluation

This section has been amended to replace the term "price" with "fees," to replace "Corporation" with "Authority" and to utilize the new term "vendor."

N.J.A.C. 19:38D-3.4 Selection

This section has been amended to replace the term "price" with "fees" and to replace "Corporation" with "Authority."

Subchapter 4. Selection Procedures – Agreements Exceeding the State Bid Threshold, as Adjusted, Pursuant to N.J.S.A. 52:34-7b.

Subchapter 4 has been proposed for repeal and replacement with new rules, with the exception of N.J.A.C. 19:38D-4.4, which is proposed for recodification with amendments as N.J.A.C. 19:38D-2.9, as discussed above. New Subchapter 4 is headed with a descriptive reference to agreements with compensation exceeding the State bid threshold (currently \$36,000, as adjusted by the State Treasurer), pursuant to N.J.S.A. 52:34-7b.

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N.J.A.C. 19:38D-4.1 Scope

This section specifies that Subchapter 4 applies to agreements with compensation exceeding the State bid threshold, but also applies to other engagements at the option of the Authority.

N.J.A.C. 19:38D-4.2 Initiation

The existing section provided for the initiation of a procurement for specific goods or services after creation of a selection committee, development of a procurement schedule, and determining the need for prequalification and deciding between a one- or two-step procurement process. These multiple preliminary steps are either rendered obsolete (as in the one- or two-step process) or accounted for in other sections of Chapter 38D (as in the creation of a selection committee in N.J.A.C. 19:38D-4.3 and the treatment of prequalification in N.J.A.C. 19:38D-2.2), and thus the section has been streamlined. Proposed new N.J.A.C. 19:38D-4.2 specifies that a procurement of goods or services shall be initiated by public advertisement of an RFQ, RFP, or both, except in circumstances where public advertisement is not required in accordance with Subchapter 6. The section further requires that the RFQ or RFP shall include the schedule of goods or scope of services required, as well as the form of agreement and related documents.

N.J.A.C. 19:38D-4.3 Selection committee

This new section establishes the role and responsibilities of the selection committee(s) as including review, evaluation, and scoring of proposals submitted in response to RFQs and RFPs. This section requires that selection committee members have relevant experience necessary to evaluate proposals, execute a certification of no personal interest in the vendors under consideration, and that the names of selection committee members will be made public after award, pursuant to N.J.S.A. 52:34-10.3(c).

N.J.A.C. 19:38D-4.4 Selection evaluation criteria

This proposed new section provides that the selection criteria to be utilized for a particular procurement shall be established prior to advertisement, and requires that the criteria and weights assigned to such criteria be disclosed in the request for qualifications or request for proposals for the procurement. This section enumerates the types of selection criteria that may be considered, and references the general criteria listed in N.J.A.C. 19:38D-2.4. The section further indicates that a fee proposal may be considered as part of the evaluation criteria.

N.J.A.C. 19:38D-4.5 Selection evaluation process

Existing N.J.A.C. 19:38D-4.5, Random selection process, has been proposed for repeal, as the process described therein, a random selection from a group of appropriately prequalified vendors, has been rendered obsolete. The proposed new section sets out in detail the components and steps in the evaluation of vendors, including the responses to the RFQ and/or RFP, responses to requests for additional information, participation in interviews, and other components at the discretion of the Authority. The new section specifies that site visits, pre-proposal conferences, and interviews may be scheduled, and may be mandatory when so stipulated in the RFP or RFQ. The section describes the role of the selection committee members in evaluating and scoring vendors for a particular engagement, and the role of the selection committee coordinator in compiling the scores and preparing a ranking, as well as the procedures for preparing a short list, if one is specified in the RFQ or RFP for a given procurement, and indicates that additional information may be requested from interested vendors, and such information may be considered in the evaluation process.

N.J.A.C. 19:38D-4.6 Submission of fee proposals

The existing section described the procedure for issuance of a request for proposals. That process has been addressed in N.J.A.C. 19:38D-4.2, Initiation. The proposed new section addresses the procedure for submission of fee proposals.

N.J.A.C. 19:38D-4.7 Consideration of fee proposals

Existing N.J.A.C. 19:38D-4.7, Evaluation, has been proposed for repeal, as the matters addressed therein, namely the procedure for evaluation of proposals, has been addressed at length in proposed new

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N.J.A.C. 19:38D-4.5, Selection evaluation process. The proposed new section describes the two methods for consideration of fee proposals, which vary depending on whether the fee proposal is considered one of the qualitative evaluation factors, and is therefore included in the numerical scoring of proposals, or is not a qualitative factor in evaluation, in which case the fee proposal is used as a basis for negotiation of an agreed fee with the prospective vendor.

N.J.A.C. 19:38D-4.8 Recommendation

This proposed new section provides that the selection coordinator shall recommend the most technically qualified vendor at a fair and reasonable compensation, and once the recommendation is approved, the Authority will issue a written notice of award to the successful vendor.

N.J.A.C. 19:38D-4.9 Execution of agreement

This proposed new section provides that upon acceptance by the SDA of any documents or materials submitted by the winning vendor as required in the notice of award, the Authority will execute the agreement and provide a fully-executed agreement to the winning vendor.

N.J.A.C. 19:38D-4.10 Confidentiality

This proposed new section provides that the selection evaluations, rankings, negotiations, and fee proposals of all proposed vendors, as well as all discussions and correspondence relating to a vendor selection, shall remain confidential and exempt from production under the Open Public Records Act, N.J.S.A. 47:1-1 et seq., until a notice of award has been issued.

Subchapter 5. Term Agreements

Existing Subchapter 5, Category Three Selection Procedures, has been proposed for repeal. It addressed the procedures for a now-obsolete category of procurement for contracts exceeding \$500,000. Because the Authority has streamlined its procurements into those exceeding the State bid advertisement threshold, currently \$36,000, and those that do not exceed the threshold, the former Category Three is rendered obsolete, and the procedures of former Subchapter 5 are no longer of use.

The Authority proposes to replace existing Subchapter 5 with a new subchapter headed "term agreements," which governs the circumstances and the process for the Authority's procurement of term agreements for goods and services and the issuance of purchase orders and task orders under such term agreements.

N.J.A.C. 19:38D-5.1 Scope

The proposed new section provides that the scope of the subchapter includes the circumstances for the use of term agreements and the process for their procurement, as well as the issuance of individual task orders.

N.J.A.C. 19:38D-5.2 General requirements

This proposed new section defines the nature of a term agreement and provides that term agreements may be used by the Authority to serve a variety of needs in fulfillment of its duties to administer the school construction program. More specifically, term agreements may be procured to expedite emergent projects or emergent project requirements; or when there exists a need to procure goods or services on an "on call" basis; or in order to address the program-wide requirements of the Authority. The section specifies that term agreements may be procured under the procedures of N.J.A.C. 19:38D-3 or 4, and may be based on hourly or daily rates. The proposed new section also provides that the SDA may enter into a term agreement with any vendor engaged pursuant to this subchapter for an initial term not to exceed three years, with an option to renew for one additional year, unless a longer term is authorized by law; or for a value that does not exceed a ceiling stated in the agreement; or both. These new provisions recognize that procurements for goods and services, particularly for furniture and fixtures, can be a labor-intensive process that justifies the option to renew for an additional year. Moreover, the provisions recognize that certain term agreements may appropriately be capped at a given contract value, whereas other agreements, such as those for basic office supplies based on individual item pricing, may not require a contract value limit, but rather may benefit from guaranteed pricing for a term of years. The proposed new section also describes the procedures for issuance of a task order or purchase order under a term agreement. Finally, this section provides that

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work performed under a task order or goods provided under a purchase order may extend past the term agreement's expiration date, as long as the purchase order or task order was executed prior to the expiration date.

Subchapter 6. Waiver of Advertising

Subchapter 6 has been proposed for re-adoption, with amendments, to reflect the proposed deletion of the numerical category for unadvertised procurements: Category Four. Accordingly, the reference to Category Four Contracts in the heading of Subchapter 6 is deleted and replaced with a descriptive reference of the types of agreements addressed; namely, agreements procured through the Authority's grant of a waiver of advertising. Proposed amendments throughout Subchapter 6 include replacement of references to the "Corporation" with references to the "Authority" and recognition of the defined terms "goods" and "services."

N.J.A.C. 19:38D-6.1 Scope

This section sets forth the scope of the subchapter.

N.J.A.C. 19:38D-6.2 Exemption types and requirements

This section is proposed for re-adoption with minor amendments as described above. In addition, further amendments include amendment of the description of "sole source" in subsection (a); the deletion of subparagraph (a)4i, which required impracticality or impossibility of public bidding in the case of public exigency, as the language has now been merged with the health and safety language of former subparagraph (a)4ii, thereby extending the waiver of advertising to health and safety hazards that preclude an advertised procurement in order to remedy the dangerous condition as subparagraph (a)4i; the correction of the spelling of "sole source" in subparagraph (a)4iii; and the insertion of "schedule of goods" along with "scope of services" in subparagraph (a)4iii.

Subchapter 7. Protests and Hearing Procedures**N.J.A.C. 19:38D-7.1 Scope and purpose**

Existing Subchapter 7, Category Five Selection Procedures, governed the procurement of title insurance companies and is proposed for repeal and replacement, as the procurement of title insurance companies has been recodified into N.J.A.C. 19:38C-8. Proposed new Subchapter 7 sets forth the procedures that govern challenges to the form of the RFQ or the RFP, the ranking of firms during the RFQ phases the scoring of proposals, the selection of vendors, and the issuance of a task order under a term agreement. This subchapter further provides that protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

N.J.A.C. 19:38D-7.2 Protests, hearing procedures, time limitations

This proposed new section outlines the procedures and requirements for challenging the actions of the Authority undertaken pursuant to this chapter, such as the RFQ process or documents; the RFP process or documents; the failure of a firm to be short listed, or the short listing of another firm; and the award of contracts, whether subject to public advertisement or not; and the award of a task order assignment.

N.J.A.C. 19:38D-7.3 Hearing procedures

This proposed new section outlines the procedures for requesting, and the time frames for undertaking, informal hearings conducted by the Authority. This section provides that the Authority may grant an informal hearing regarding a protest, which will result in a written decision. This section further provides that informal hearings will be held, where feasible, within 14 business days of the receipt of the request and will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The section further specifies that the hearing officer shall issue a final written decision within 30 calendar days of the conclusion of the hearing unless a greater time is required, due to the circumstances of the hearing.

Existing Subchapters 8 and 9

Existing Subchapter 8, Category Six Selection Procedures, and 9, Category Seven Selection Procedures, have been proposed for repeal.

Social Impact

The rules proposed for re-adoption with amendments, new rules, repeals, and recodification should establish confidence in the Authority's

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ability to ensure that the public's interest in the Authority's procurement of goods and services is adequately protected and that the Authority fairly obtains the services of the most qualified vendors. The rules will affect all providers of goods and services that desire to bid on school facilities projects constructed under the Act, as amended, in that the rules specify the requirements of advertisement of proposals, selection procedures, proposal evaluation, and contract approval and execution.

Economic Impact

The economic impact of the rules proposed for readoption with amendments, new rules, repeals, and recodification is limited; the rules outline the process that will be used by the Authority in the selection of vendors for the provision of goods or services. This information should be beneficial to all private firms wishing to provide goods or services to the Authority. The rules establish a bidding process that entails certain incidental costs associated with the preparation and submission of bids. Such costs may include professional staff time associated with preliminary planning, as well as the costs associated with the production and reproduction of proposals. The goods and services procured are to be funded with the State share of the eligible costs of a school facilities project, which may be funded with State contract bonds issued by the NJEDA pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. Additional activity in the services sectors may directly result from the rules proposed for readoption with amendments, new rules, repeals, and recodification, providing obvious Statewide economic benefits in the short term; manufacturing activity may also be positively affected.

The Authority will incur direct and indirect costs for bid advertisements and the staff and administrative expense arising from the preparation of bid requests, the evaluation of the bids received, and the award of contracts and agreements. However, the rules proposed for readoption with amendments, new rules, repeals, and recodification contain amendments designed to streamline the Authority's procurement processes, which should permit some cost savings in staff time.

Federal Standards Statement

The rules proposed for readoption with amendments, new rules, repeals, and recodification implement a State statute, specifically P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq. There are no Federal standards or requirements applicable to the rules, therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments, new rules, repeals, and recodification modify the Authority's process for procurement of goods and services, and thus to the extent the rules have an effect on jobs, it will be to create jobs in New Jersey, primarily in the service sector, rather than eliminate positions. Moreover, the rules are likely to support job growth to the extent that they may foster participation in the school construction program by a broader class of vendors.

Agriculture Industry Impact

The rules proposed for readoption with amendments, new rules, repeals, and recodification will have no direct impact on the agriculture industry. However, implementation of the rules will be coordinated with the Farmland Preservation Program for the acquisition of sites for new schools.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments, new rules, repeals, and recodification impose some compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but only for those small businesses that choose to seek to do business with the Authority. The rules outline the criteria and procedures the Authority will consider for the selection of vendors of goods and services.

The rules, at N.J.A.C. 19:38D-2.2, specify that vendors may be required to be prequalified by the Authority. As implemented by the Authority, all firms seeking prequalification will be required to submit audited financial statements, a cost which these firms might not otherwise need to incur. In the interests of financial probity, however, no exemption

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for small businesses would be warranted. In addition, the rules eliminate the 10-year recordkeeping requirement imposed on winning bidders by the prior version of the rules, in favor of a more flexible recordkeeping requirement that varies according to the nature of the agreements and documents at issue, in compliance with the Authority's standard document retention policy.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, new rules, repeals, and recodification address the requirements and the process for the procurement of goods and services and, therefore, will not have an impact on affordable housing or evoke a change in the average costs of housing in the State of New Jersey.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, new rules, repeals, and recodification govern the process by which the Authority purchases goods and services, and thus the rules will have no impact on smart growth development because the scope of the rules is minimal, and because it is extremely unlikely that the rules would evoke a change in the average price or availability of housing in the State of New Jersey, and unlikely that the rules would in any way affect new construction in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:38D.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:38D-2.2, 2.3, 2.6, 2.9, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 5, 7, 8, and 9.

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

SUBCHAPTER 1. GENERAL PROVISIONS

19:38D-1.1 Purpose and scope of rules

This chapter is designed to establish the procedures applicable to the award of contracts by the [Corporation] **Authority** for goods and services **required for implementation of the school construction program**, excluding services subject to P.L. 1997, [c.399] **c. 399, N.J.S.A. 52:34-9.1 et seq.**, and N.J.A.C. 19:38C[, required for implementation of the school construction program].

19:38D-1.2 Definitions

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

["Allowance" means a fee allowance established by the Corporation to address a specific good or service when the exact cost of any such service cannot be known by the Corporation at the time of a request for proposals or by the provider of the good or service at the time of submission of proposals. The exact cost or fee will be determined during administration of the contract, and will draw upon the allowance previously established by the Corporation. The amount of allowances may be excluded from the total amount of compensation, in accordance with provisions of this chapter.

"Appraiser" means a firm that provides an unbiased analysis, opinion or conclusions on the value of real property.

"Authority" means the New Jersey Economic Development Authority, established pursuant to the New Jersey Economic Development Authority Act, P.L. 1974, c. 80, as amended. The Corporation is a subsidiary of the Authority.

"Board" means the member of the Board of Directors of the Corporation.

"Category one selection procedures" means the procedures applicable to procurement of a contract for goods or services where compensation, exclusive of allowances, does not exceed \$25,000, set forth at N.J.A.C. 19:38D-3.

"Category two selection procedures" means the procedures applicable to procurement of a contract for goods or services where compensation,

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exclusive of allowances, exceeds \$25,000, but is less than \$500,000, set forth at N.J.A.C. 19:38D-4.

“Category three selection procedures” means the procedures applicable to procurement of a contract for goods or services where the compensation, exclusive of allowances, equals or exceeds \$500,000, set forth at N.J.A.C. 19:38D-5.

“Category four selection procedures” means the procedures applicable to procurement of a contract for goods or services where the requirements of one of the exemptions set forth in N.J.A.C. 19:38D-6 have been met, regardless of the amount of compensation.

“Category five selection procedures” means the procedures applicable to procurement of a contract for title insurance, set forth at N.J.A.C. 19:38D-7.

“Category six selection procedures” means the procedures applicable to procurement of a contract for appraiser services, set forth at N.J.A.C. 19:38D-8.

“Category seven selection procedures” means the procedures applicable to procurement of a contract for expert services, set forth at N.J.A.C. 19:38D-9.

“Client school district” means the school district in which services are provided.]

“Act” means the “Educational Facilities Construction and Financing Act,” P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) as amended, which mandates the school construction program.

“Agreement” means the written agreement between the Authority and the vendor for the provision of goods and/or services.

“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. The Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.

“Board” means the governing body of the Authority, consisting of members of the Authority as outlined in N.J.S.A. 52:18A-237.

“Compensation” means the [estimated amount of fees, but may exclude allowances where so provided by this chapter] payment due the vendor pursuant to the agreement.

“Corporation” or “SCC” means the New Jersey Schools Construction Corporation, [which is] the entity formed pursuant to N.J.S.A. 34:1B-159 [as a subsidiary of the Authority for the purpose of implementing provisions of the Act. The Corporation is authorized to exercise all powers granted to the Authority under the Act, except the power to incur indebtedness] and the predecessor to the Authority, which was abolished by P.L. 2007, c. 137.

[“Educational Facilities Construction and Financing Act” or the “Act” means P.L. 2000, c. 72, which mandates the school construction program.

“Expert” means an individual or firm with a high degree of skill or knowledge in a specific subject engaged or to be engaged by the Corporation for purposes of litigation support, including, but not limited to, testimony as an expert witness.]

“Emergent project” means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff, as defined by N.J.A.C. 6A:26-1.2.

“Fee proposal” means the proposal submitted by a vendor, in the form and manner provided in the request for qualifications or request for proposals, which specifies the fees proposed for the provision of goods and/or services.

“Goods” means fixtures, furnishings, equipment, technology and any other [tangible] items the procurement of which the [Corporation] Authority deems necessary for [pre-development activities, a school facilities project, or for purposes of any school program procurement] the school construction program. For purposes of this chapter, “goods” shall not include materials to be provided in connection with the provision of services pursuant to [a contract] an agreement entered into by the [Corporation] Authority pursuant to N.J.A.C. 19:38C or N.J.S.A. [34:1B-5.7] 52:18A-243.

“Pre-development activities” means activities undertaken by the Corporation in connection with the development of a school facilities project and includes, but is not limited to, such activities as:

1. Site acquisition and development;
2. Preliminary design work;
3. Acquisition and installation of temporary facilities;
4. Undertaking feasibility studies to determine the viability of new construction versus rehabilitation;
5. Environmental analysis;
6. Appraisal and title work; and
7. Other activities required for the development of a school facilities project.

“Pre-qualified” means pre-qualified by the Corporation in accordance with provisions set forth in rules adopted by the Corporation.]

“Key personnel” means those persons named by a vendor in response to a requirement in an RFQ or RFP for specific identification of employees or personnel having a responsible role in the successful delivery of goods or services proposed by a vendor.

“Moral integrity review” means an investigation, performed by the Authority or members of the New Jersey State Police or other investigative body on behalf of the Authority, of a vendor that seeks to enter an agreement with the Authority.

“Notice of award” means a written notice issued to a vendor by the Authority indicating that the vendor has been selected to provide certain goods or services pursuant to an Authority procurement process, and that upon the Authority’s receipt of certain required documentation, the Authority intends to enter an agreement with the vendor for the provision of those goods and/or the performance of those services.

“Other facilities” means those facilities that are not school facilities projects as defined by the Act, namely, 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.

“Pre-qualified” or “pre-qualification” means the approval of a vendor by the Authority pursuant to N.J.A.C. 19:38A.

“Proposal” means the [proposal] response submitted by a firm [in response to] with respect to a request for qualifications or a request for proposals.

“Protest” means a challenge to a decision, statement, action, or alleged inaction of the Authority.

“Ranking” means the process of listing responsive vendors in order of highest to lowest total scores, based upon selection criteria set forth in the RFQ and/or RFP.

“Request for proposals” or “RFP” means the solicitation issued by the [Corporation] Authority in connection with the selection of a [provider of goods or services] vendor.

“Request for qualifications” or “RFQ” means the request for statements of qualifications [(preceding the Corporation’s issuance of a request for proposals)] issued by the [Corporation] Authority seeking submissions from vendors including statements of qualifications, experience and/or organizational information, as well as any additional information deemed necessary by the Authority, in connection with the selection of a [provider of goods or services] vendor.

“Schedule of goods” [or “school program”] means the goods required to be provided by a [provider of goods for a particular school program procurement] vendor under an agreement.

“School construction program” means the [over-all] program [mandated by the act for the design, renovation, repair and new construction of primary and secondary public schools throughout the State, through the implementation] of school facilities projects and related activities undertaken by the Authority.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, [repair,] 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,

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site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs and administrative costs, and expenses incurred in connection with the project.

“School facility” means and includes any structure, building or facility used wholly or in part for academic purposes by a [client school] district, [but shall exclude athletic stadiums, grandstands, and any structure, building or facility used solely for school administration] and facilities that physically support such structures, buildings and facilities, such as district wastewater treatment facilities, power generating facilities, and steam generating facilities, but shall exclude other facilities, as elsewhere defined herein.

“School program procurement” means the procurement of goods or services pursuant to the policies and procedures established in this chapter in connection with the school construction program. A school program procurement may relate to one or more school projects or pre-development activities, or to the school construction program.]

“Scope of services” means the [scope of services] extent of obligations contractually required from a [provider of goods or services for a particular school program procurement] vendor pursuant to an agreement.

“Selection committee” means the body established by the Corporation to review, evaluate and recommend proposals of providers of goods or services for specific school program procurements when compensation, exclusive of allowances, exceeds \$25,000.]

“SDA school district” means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39, N.J.S.A. 18A:7G-3.

“Selection committee” means the group(s) responsible for review and evaluation of vendors’ responses to RFQs and/or RFPs in connection with a procurement, when the compensation for the engagement is anticipated to exceed the State bid advertisement threshold pursuant to N.J.S.A. 52:34-7b.

“Selection coordinator” means the administrator of the operations and procedures of the selection process, whose activities shall include, but are not limited to, scheduling of meetings, preparing agendas, recording scores, preparing minutes of selection committee meetings and other similar administrative duties.

“Services” means [such professional, technical, or other types of services as the Corporation may deem necessary for pre-development activities, a school facilities project, or for purposes of any school program procurement,] the duties and responsibilities to be performed by the vendor pursuant to the agreement, including all other labor, materials and equipment provided or to be provided to fulfill such obligations, except that, for purposes of these policies and procedures, “services” shall not include:

1. Any “architectural, engineering or land surveying services” within the meaning of N.J.S.A. 52:34-9.2;
2. [Other services subject to] Services procured under the [procurement] procedures established at N.J.A.C. 19:38C; and
3. Services subject to the procurement requirements established at N.J.S.A. [34:1B-5.7] 52:18A-243.

“Services” shall include all labor, materials, and equipment provided or to be provided in order to fulfill the services obligations of the provider of such services.]

“Small business enterprise” or “SBE” means a firm that is registered as [such] a “small business” with the New Jersey [Commerce and Economic Growth Commission] Department of the Treasury, Division of Minority and Women Business Development pursuant to N.J.A.C. 17:14-3.1.

“Task order” means a contractual document, containing a scope of work, negotiated costs, and schedule, which the Authority issues to a vendor, pursuant to a term agreement.

“Term [contract] agreement” means [a contract] an agreement whereby the [Corporation] Authority may engage a [provider of goods or services] vendor for a defined period of time, as provided in this chapter.

“Title insurance” means a policy issued by a title insurance company insuring, guaranteeing or indemnifying owners of real property or others

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interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in or the unmarketability of the title of the subject property and includes searches relating to the title of the subject property.

“Title insurance company” means a title insurance company duly authorized to transact the business of title insurance in the State of New Jersey.]

“Vendor” means a provider of goods and/or services.

SUBCHAPTER 2. GENERAL REQUIREMENTS

19:38D-2.1 Scope

This subchapter sets forth requirements applicable to [all] procurements of [consultants providing] goods and/or services [to] for the [Corporation] Authority.

19:38D-2.2 Pre-qualification and moral integrity review

(a) For all procurements requiring pre-qualification pursuant to N.J.A.C. 19:38A, vendors must be pre-qualified by the Authority at the time of submission of a response to an RFQ and/or an RFP, except if otherwise expressly provided in this chapter.

(b) All vendors seeking to enter into an agreement with the Authority are subject to a moral integrity review, even where Authority pre-qualification is not required. If the results of the moral integrity review are negative or unsatisfactory in that they indicate any circumstance that would justify a revocation of pre-qualification under N.J.A.C. 19:38A-4.1, the Authority shall reject the vendor’s proposal pursuant to N.J.A.C. 19:38D-2.6.

19:38D-2.3 Selection procedures based on type of engagement

The Authority may establish different procedures as set forth in this chapter, for the selection of vendors based on the contract type or value of the engagement.

19:38D-2.4 General evaluation criteria [for categories two, three and four]

(a) [Proposals] The ranking of vendors shall be [ranked] performed pursuant to evaluation criteria [developed] established by the [Corporation] Authority for each particular procurement [or engagement,] and by the weights established for such criteria. In [general, the Corporation shall consider price and other factors. More specifically, the] selecting the most highly qualified vendor, the selection committee shall consider the criteria and relative weights of such criteria, as set forth in the RFP and/or RFQ. Such evaluation criteria may include:

1. The experience of the [provider of the goods or services] vendor, and [of] its key personnel, on projects similar in scope, size, complexity;
2. The ability of the [provider of the goods or services,] vendor and [of] its key personnel, to provide the required goods or services;
3. The approach set forth by the [provider of] vendor with respect to the provision of the goods or services in its proposal;
4. The proposed staffing, including, but not limited to, the extent to which [any staff proposed is already committed to provide services under any other] the ability of the vendor to fulfill the contract may be affected or compromised by the commitment of staff to another contract with the [Corporation, or] Authority, or to contracts with any other public or private entity [may compromise the provider of goods or services capacity to provide the services addressed in the technical proposal];
5. Performance by the [provider] vendor of the goods or services on other work undertaken or funded by the [Corporation] Authority;
6. The proximity of the [provider] vendor of the goods or services [may have] to the site of the school [program procurement] facility at issue;
7. In the case of the provision of goods, the durability, and/or construction of, and related warranty provisions affecting, the goods in question; and/or
8. Such other criteria as the [Corporation] Authority may determine to be appropriate to a specific procurement and which shall be set forth in the pertinent advertisement and request for proposals.

(b) To the extent required by law or by order of a court of competent jurisdiction, the [Corporation] Authority shall abide by the provisions of

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N.J.S.A. 52:32-17 et seq., [N.J.A.C. 12:10A,] and all [other] applicable regulations, with respect to SBEs. Nothing in this chapter shall be construed to limit the [Corporation's] Authority's ability to obtain goods or services pursuant to [a] **an SBE set-aside procurement [under] pursuant to N.J.A.C. [19:32] 19:39.**

19:38D-2.5 Rejection of proposals; **cancellation of procurement or award**

(a) Proposals received after the submission date and time prescribed in the [advertisement and request for proposals] **RFQ or RFP** shall be rejected[, except where the Corporation, in its sole discretion, finds good cause].

(b) The [Corporation] Authority may reject any proposal for [lack of responsiveness or responsibility or] **any reason in accordance with law**, when it is otherwise deemed to be in the public interest to do so. The [Corporation] Authority may reject all proposals **and cancel a procurement** for excessive cost, insufficient competition, or any other reason, **in accordance with law**, that it deems to be in the public interest. The [Corporation] Authority may cancel an award at any time before the execution of an agreement by all parties.

19:38D-2.6 **Approval and execution of agreement**

No agreement is valid or binding on the Authority unless and until it is executed by the Authority.

19:38D-2.7 Termination

All [contracts] **agreements** executed pursuant to this chapter shall provide for, among other things, termination for [the] convenience [of the Corporation] and for cause.

19:38D-2.8 [Records] **Disclosure and publicity; records access and retention**

[(a) All applications and submissions received by the Corporation pursuant to this chapter shall constitute government records within the meaning of N.J.S.A. 47:1A-1 et seq., except as otherwise provided by N.J.A.C. 19:30-1.5.

(b) The Corporation and, pursuant to the express terms of any contract, any provider of goods and services, shall make any documents or records in any form, including electronic, relating to a school program procurement that is subject to this chapter available for inspection and copying at any time by the Office of Government Integrity, Unit of Fiscal Integrity created pursuant to N.J.S.A. 18A:7G-43.]

(a) **Any and all submissions made in response to an RFP and/or an RFQ are subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., including the exceptions from disclosure provided therein.**

(b) **Vendors shall notify the Authority prior to the issuance of press releases and other public dissemination of information concerning a school facilities project and such shall acknowledge Authority financing and assistance in the undertaking of the school facilities project.**

(c) The [Corporation] Authority and any [provider of goods or services] **vendor** subject to this chapter shall retain all records relating to goods or services provided under [contract] **the agreement** with the [Corporation] Authority for a **specified period [of 10 years] following expiration or termination of the [contract] agreement, as indicated in the agreement and as specified in the Authority's document retention schedule. All such records shall be provided to the Authority upon written demand, at no cost to the Authority. In the event [provided] that [if] any litigation, claim, [or] audit or request pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., relating to the [school program] procurement and the provision of such services is commenced prior to [contract] expiration or termination of the agreement, such records shall be retained until all litigation, claims, [or] audit findings, document requests, and related appeals, if any, have been resolved with finality.**

19:38D-[4.4]2.9 Advertising

(a) The [Corporation] Authority shall [solicit statements of qualifications by] **advertise for all procurements in accordance with N.J.S.A. 52:18A-243(h). In addition, such advertising [as follows] may also be placed:**

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[1. Advertising shall be done by Statewide advertising in newspapers and/or by electronic means. In addition, such advertising may also be placed:]

[i.] **1.** (No change in text.)

[ii.] **2.** By written notice to [pertinent] New Jersey professional societies or trade organizations; and/or

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

[2.] **(b)** Any such advertisement shall be made in the form and in the time required to promote [competitive bidding] **competition** and shall [include] **describe** any specific information that [a provider of goods or services] **an interested vendor** must submit [by], **as well as** the date and time [specified in the advertisement] **of the deadline for submissions.**

(c) The advertisement shall [also] specify the evaluation criteria that shall apply to the [statement of qualifications] **proposals.**

SUBCHAPTER 3. [CATEGORY ONE] SELECTION PROCEDURES—**AGREEMENTS NOT EXCEEDING THE STATE BID THRESHOLD PURSUANT TO N.J.S.A. 52:34-7b**

19:38D-3.1 Scope

This subchapter [establishes category one selection procedures for] **sets forth the procedural requirements applicable to the procurement of [contracts] agreements for goods and/or services where such agreements specify compensation that does not exceed the State bid threshold of \$36,000, as adjusted, pursuant to N.J.S.A. 52:34-7b, except for those procurements in which the Authority, at its sole option, determines to apply the procedures of N.J.A.C. 19:38D-4. The Authority reserves the right to waive any pre-qualification requirement for a procurement pursuant to this subchapter.**

19:38D-3.2 Solicitation

[The Corporation] **In accordance with N.J.S.A. 52:34-7b, the Authority** shall not be required to advertise [a category one] **the procurement[. Wherever practicable, a competitive selection process shall be used.] of agreements for goods and/or services where such agreements provide for compensation below the State bid threshold.**

19:38D-3.3 Evaluation

Proposals shall be evaluated based on [price] **fees and/or the** evaluation criteria appropriate for the particular [school program] procurement. The [Corporation] Authority may request clarifying technical and/or organizational information from any [entity] **vendor** submitting a proposal prior to finalizing the evaluation.

19:38D-3.4 Selection

The [Corporation] Authority shall select the proposal that is in the best interest of the [Corporation] Authority and the school construction program, based on [price] **fees and/or** the evaluation criteria established for the selection.

(Agency Note: The text of N.J.A.C. 19:38D-4.4 is proposed for recodification with amendments as N.J.A.C. 19:38D-2.9.)

SUBCHAPTER 4. SELECTION PROCEDURES—**AGREEMENTS EXCEEDING THE STATE BID THRESHOLD, AS ADJUSTED, PURSUANT TO N.J.S.A. 52:34-7b**

19:38D-4.1 Scope

This subchapter sets forth procedures that shall apply to the procurement of agreements for goods and/or services where such agreements specify compensation exceeding the amount set forth in N.J.S.A. 52:34-7b. **At the option of the Authority, the procedures specified in this subchapter may apply to an engagement with compensation below the amount set forth in N.J.S.A. 52:34-7b.**

19:38D-4.2 Initiation

A procurement for the provision of goods and/or services under this chapter shall be initiated by the public advertisement of an RFQ, RFP, or both, except in circumstances where a waiver of advertising is permitted under N.J.A.C. 19:38D-6. The RFQ or RFP shall include the schedule of goods or the scope of services sought under the

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procurement, as well as the form of agreement and other related documents.

19:38D-4.3 Selection committee

(a) Prior to the receipt of vendor proposals, the Authority shall establish a selection committee or committees to review and evaluate the proposals. Each member of the selection committee shall have the relevant experience necessary to evaluate the proposals. Each member of a selection committee shall be responsible for independently evaluating and scoring the proposals.

(b) Once the responses are received and the identity of the vendors is ascertained and communicated to the members of the selection committee, each member of the selection committee, prior to the evaluation of any proposal, shall execute a certification that he or she has no personal interest, financial or familial, in any of the vendors to be evaluated, or the principals, subsidiaries or parent companies thereof. Furthermore, should any of the selection committee members indicate that a conflict or personal interest exists once the identity of the vendors is revealed, that member shall not serve on the selection committee and may be replaced.

(c) The names of the members of the selection committee shall be made public once the contract is awarded, pursuant to N.J.S.A. 52:34-10.3(c).

19:38D-4.4 Selection evaluation criteria

(a) The selection evaluation criteria may include the criteria listed in N.J.A.C. 19:38D-2.4, as well as past project performance, understanding of project needs and project schedule, and budget and cost estimating. Selection evaluation criteria may also include any other criteria determined to be appropriate in the sole discretion of the Authority.

(b) The selection evaluation criteria and the specific weight assigned to each criterion for each procurement of goods and/or services under this chapter shall be established by the Authority prior to advertisement, and the criteria and weights shall be incorporated into the RFQ and/or RFP for the procurement.

(c) The Authority may consider the fee proposal as a qualitative factor upon which firms will be evaluated.

19:38D-4.5 Selection evaluation process

(a) The members of the selection committee will evaluate the submissions and other information comprising the evaluation process, and shall assign scores based upon the evaluation criteria set forth in the RFQ and/or RFP.

(b) In addition to the review of responses to an RFQ and/or RFP, the evaluation process may include:

1. Review of a vendor's responses to requests for additional or clarifying information;
2. Participation in interviews; and
3. Any other components determined, in the sole discretion of the Authority, to be appropriate.

(c) Site visits, pre-proposal conferences, and interviews may be scheduled. Attendance shall be mandatory when so stipulated in the RFP or RFQ.

(d) The selection coordinator shall compile the evaluation scores of the committee members, as well as any points assigned in the consideration of a fee proposal in accordance with N.J.A.C. 19:38D-4.7(a), if applicable, and shall prepare a ranking in accordance with the procedures specified in the RFQ and/or RFP, which shall be deemed a final ranking if no shortlisting process, as set forth in this section, is called for in the RFQ.

(e) If a shortlisting process is specified by the selection procedures described in the RFQ, the selection coordinator shall review the ranking and shall identify the short list of vendors.

1. Once the short list is determined in accordance with subsection (e) above, the Authority shall publish the short list on the Authority's website and/or provide written notification to all firms that supplied responses to the RFQ of the names of the firms selected for the short list.

2. If additional information is required, the Authority shall request such information from all of the shortlisted firms prior to the

final ranking. The members of the selection committee shall review and evaluate the additional information provided by the shortlisted firms, in accordance with the procedures specified in the RFQ and/or RFP, and shall assign scores based upon the evaluation criteria stated in the RFQ and/or RFP. At the sole discretion of the Authority, interviews may be held with the shortlisted firms prior to the determination of the final ranking. The members of the selection committee shall evaluate the additional information, and interviews, if any, and shall assign scores to each. The selection coordinator shall combine all evaluation scores in accordance with the procedures outlined in the RFQ and/or RFP, and prepare a final ranking.

19:38D-4.6 Submission of fee proposals

A fee proposal shall be submitted in accordance with the process set forth in either an RFQ or RFP. A fee proposal shall be submitted in a separate sealed envelope. The envelope shall indicate clearly that it is the fee proposal and shall identify the vendor's name, the project or procurement number and any other information required by the RFQ and/or RFP. The fee proposals shall remain sealed until such time as provided in N.J.A.C. 19:38D-4.7(a) or (b) below.

19:38D-4.7 Consideration of fee proposals

(a) In the event the fee proposal is one of the qualitative factors for the evaluation of the proposals, the Authority shall open the sealed fee proposals and assign the maximum points to the lowest total fee proposal. All other proposals shall be scored based upon the percentage that each proposal exceeds the lowest proposal. The scores of the fee proposals shall then be utilized to finalize the ranking undertaken by the selection committee, pursuant to N.J.A.C. 19:38D-4.5(d).

(b) In the event the fee proposal is not a qualitative factor for the evaluation of the proposal, the Authority shall open the sealed fee proposals at a predetermined date and time after the final ranking has been prepared. Using the fee proposals as a guide, the Authority shall negotiate an agreement with the highest-ranked vendor at a fee determined by the Authority to be fair and reasonable. Should the Authority be unable to negotiate a satisfactory fee with the highest-ranked vendor, the Authority shall terminate negotiations with the highest-ranked vendor, and may then terminate the procurement or may undertake negotiations with the second-highest ranked vendor. Failing accord with the second highest-ranked vendor, the Authority shall terminate negotiations with the second highest-ranked vendor and may then terminate the procurement or may undertake negotiations with the third highest-ranked vendor. In the event that the Authority is unable to agree to a satisfactory fee with any of the three highest-ranked firms, the Authority may select additional vendors in the order of their ranking and continue negotiations, until either an agreement is reached or the procurement is canceled or terminated.

19:38D-4.8 Recommendation

Based on the process set forth in this subchapter, the selection coordinator shall recommend the most technically qualified vendor at final compensation determined to be fair and reasonable. If the recommendation is approved, the Authority will issue a written notice of award to the successful vendor.

19:38D-4.9 Execution of agreement

Upon the successful vendor's submission of any required documentation or materials as specified in the notice of award, and the Authority's acceptance of such documents, the Authority will execute the agreement and provide the successful vendor with a fully-executed agreement.

19:38D-4.10 Confidentiality

The selection evaluations, rankings, negotiations and fee proposals of all firms, as well as all discussions and correspondence, relating to the selection of a vendor shall remain confidential and exempt from production under the Open Public Records Act, N.J.S.A. 47:1-1 et seq., until a notice of award has issued.

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SUBCHAPTER 5. TERM AGREEMENTS

19:38D-5.1 Scope

This subchapter provides for the use of term agreements by the Authority to serve a variety of needs in accordance with its statutory responsibilities to administer the school construction program. This subchapter further provides for issuance of purchase orders, or issuance of task orders in accordance with a term agreement.

19:38D-5.2 General requirements

(a) A term agreement is an agreement whereby the Authority may engage a vendor for a defined period of time, rather than for a defined project or projects.

(b) Term agreements may be used by the Authority to procure goods and/or services when there is a need to:

1. Expedite emergent projects or emergent project requirements;
2. Procure goods or services for a school facilities project on an "on call" basis; or
3. Address the program-wide requirements of the Authority.

(c) Procurement of a term agreement shall be in accordance with the selection procedures pursuant to N.J.A.C. 19:38D-3 or 4, depending on whether the value of the term agreement exceeds the statutory threshold of N.J.S.A. 52:34-7b, except that fee proposals submitted under those procedures may be based upon hourly or daily rates and/or other methods of determining costs over a specific time period.

(d) Term agreements shall be for a specific time period, or maximum contract value, or both, which limitations shall be set forth in the term agreement. The Authority shall set forth a budget and schedule for each proposed purchase order or task order under a term agreement, prior to its issuance or assignment to a vendor. The time in which goods are to be supplied or services are to be performed under a purchase order or task order may extend past the expiration date of a term agreement, as long as the purchase order or task order was issued or executed prior to the expiration date.

(e) Under this subchapter, the Authority may enter into a term agreement with any vendor engaged pursuant to the provisions of this chapter for:

1. A value that shall not exceed a ceiling stated in the agreement; or
2. An initial term not to exceed three years, with an option to renew for one additional year, unless a longer time period is expressly authorized by law; or
3. A combination of both a stated value and a stated time period.

SUBCHAPTER 6. [CATEGORY FOUR SELECTION PROCEDURES] WAIVER OF ADVERTISING

19:38D-6.1 Scope

This subchapter shall apply when the [Corporation] Authority determines to procure goods and/or services by means of an exemption from advertising pursuant to N.J.S.A. 52:34-10, having found that the requirements of one of the exemption types in N.J.A.C. 19:38D-6.2 have been satisfied, and when the [Corporation] Authority has established that such exemption is in the best interest of the [Corporation] Authority and the school construction program.

19:38D-6.2 Exemption types and requirements

(a) The circumstances providing a basis for an exemption are as follows:

1. Sole source: when [the provider] only one vendor is [the only] capable of or available [source of] to provide the goods or services[, and is shown to be such despite the availability of seemingly comparable goods or services from another provider] at the time they are required.
2. Continuity: when, as a result of the [provider] vendor's previous satisfactory engagement by the [Corporation] Authority, a significant need arises to maintain continuity through updated or additional goods or services from the same source.
3. Governmental agreement: when the goods or services required are available from the Federal or any [State] state government or any agency or political subdivision thereof.

4. Public exigency: when public exigency requires the immediate delivery of the goods or services. Public exigency may be found if:

- [i. Competitive bidding is impractical or impossible;]
- [ii.] i. A health or safety hazard exists, which precludes the lead time for advertisement of a procurement for goods and/or services to rectify such condition, or renders the competitive bidding for such a procurement impractical or impossible;
- [iii.] ii. A critical agency mandate, statutory or operational requirement can only be fulfilled by the [sole] sole source; or
- [iv.] iii. A health or safety emergency precludes the lead time required to develop a competitive [scope] schedule of [services] goods or scope of services.

5. Existing contract: when the goods or services required are available through participation in an existing contract between a vendor and any department, division, office, agency, bureau or section of the United States, or any authority or instrumentality created or chartered thereby and any department, division, office, agency, bureau or section of New Jersey or any state of the United States other than New Jersey, or any political subdivision thereof including, but not limited to, municipalities, or any other authority or instrumentality created or chartered thereby, provided that:

- i. (No change.)
- ii. The terms of the existing contract permit such [Corporation] Authority participation;
- [iii. The Attorney General's office approves the terms applicable to the Corporation's participation in the existing contract;]
- [iv.] iii. (No change in text.)
- [v.] iv. The [Corporation] Authority receives the benefit of any price reductions mandated by the original governmental unit party during the term of the existing contract and is protected from price increases during that time; and
- [vi.] v. (No change in text.)

SUBCHAPTER 7. PROTESTS AND HEARING PROCEDURES

19:38D-7.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern protests regarding the Authority's procurements of goods and services, including protests challenging:

1. The form of advertisements for procurement;
2. The form of the RFQ or the RFP for a given procurement;
3. The scoring of proposals or the ranking of firms;
4. The selection of vendors for unadvertised procurements under N.J.A.C. 19:38D-3 or 6; and
5. The issuance of a task order under a term agreement under N.J.A.C. 19:38D-5.4.

(b) For purposes of this subchapter, protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

19:38D-7.2 Subject matter, hearing procedures, time limitations

- (a) A protest shall be made as follows:
 1. RFQ process or documents. A vendor that has submitted or intends to submit a proposal in response to an RFQ may request an informal hearing before the Authority to protest the RFQ process or documents, by submitting a written protest to the Authority, at least five business days prior to the date and time scheduled for receipt of proposals, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for, and arguments supporting, the protest;
 2. RFP process or documents. A vendor that has submitted or intends to submit proposals in response to an RFP may request an informal hearing before the Authority to protest the RFP process or documents, by submitting a written protest to the Authority, setting forth in detail the grounds for such protest, at least five business days prior to the date and time scheduled for receipt of the proposals. The

PROPOSALS

protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The Authority may deny any protest that is filed less than five business days prior to the date and time scheduled for receipt of proposals, or that fails to provide the specific reasons for, and arguments supporting, the protest;

3. Short list. A vendor protesting its failure to be included in a short list, or protesting the inclusion of another vendor on a short list, may request an informal hearing before the Authority to protest the selection of the short list by submitting to the Authority, a written protest setting forth the specific grounds for challenging the short list, within five business days of the public announcement of the short list. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the short list, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest;

4. Award of contract. A vendor that has submitted a proposal in response to an RFQ or RFP, may request an informal hearing before the Authority to protest the award of a contract to another vendor, by submitting to the Authority a written protest, setting forth the specific grounds for challenging such award, within five business days of the public announcement of the award. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position, and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest;

5. Unadvertised contracts. A vendor may request an informal hearing before the Authority to protest the award of an unadvertised contract to another vendor, by submitting to the Authority, a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award of the contract. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest; or

6. Task order assignment. A vendor that has received an award under a term agreement procurement may request an informal hearing before the Authority to protest the award or assignment of a task order to another vendor, by submitting to the Authority, a written protest setting forth the specific grounds for such protest, within five business days of the public announcement of the award or assignment of the task order. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and a statement as to whether the protestor

OTHER AGENCIES

requests an informal hearing. The Authority may deny any protest that is filed more than five business days after the public announcement of the award or assignment of the task order, or any protest that fails to provide the specific reasons for, and arguments supporting, the protest.

19:38D-7.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the Authority. Alternatively, the Authority may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the Authority may issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written final agency decision will be issued by the Authority within five business days of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. Hearings will be heard, where practicable, by a hearing officer designated by the Chief Executive Officer. The hearing officer shall issue a final agency decision within 30 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written final agency decision will issue prior to the opening of proposals. If a decision based upon a protest results in a modification of the aforesaid process or documents, the modifications relating to such decision shall be conveyed by addendum to all vendors eligible for the procurement at issue.

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

4. For matters of dispute that may occur relative to the activities of the Authority, if formal hearings are warranted, such hearings will be held by the Chief Executive Officer or his or her designee, or by an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as applicable.

5. The Board of the Authority, or the Chief Executive Officer, as its designee, shall determine whether a matter constitutes a contested case and shall retain or refer any such matter for hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. 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.

RESOLUTION – 6dii.**Resolution Approving Re-adoption and Amendments to Title 19, Chapter 38D-
Procurement of Goods and Services****Resolution**

WHEREAS, N.J.A.C. 19:38D (the “Rules”) establishes requirements, standards and procedures for the New Jersey Schools Development Authority’s (“SDA” or “Authority”) procurement of Goods and Services; and

WHEREAS, the Rules were originally adopted on February 7, 2005 and were set to expire on February 7, 2010; and

WHEREAS, by action of Executive Order No. 1 (2010), the Rules were exempted from expiration until re-adoption by the Authority; and

WHEREAS, in late 2011 the Authority undertook a substantial revision of the original Rules to provide additional clarity, conform to statutory requirements, and reflect procurement best practices consistent with relevant case law and guided by the Office of the Comptroller; and

WHEREAS, on October 5, 2011, the Members of the Authority approved for proposal and publication the re-adoption and amendment of the Rules; and

WHEREAS, the proposed Rules appeared in the New Jersey Register on December 5, 2011 at 43 N.J.R. 3168(a), and were subject to a sixty (60) day public comment period ending February 3, 2012; and

WHEREAS, no comments on the rule proposal were received during the public comment period; and

WHEREAS, the text of the Rules remain substantively unchanged from the form previously approved by the Board for publication on October 5, 2011; and

WHEREAS, the Rules proposed for re-adoption and amendment implement Executive Order 37 (2006) which set guidelines for the procurement of goods and services by State Authorities, and provide assurances to vendors and other stakeholders that the SDA procurement process is fair, transparent, and results in the procurement of goods and services at competitive prices; and

WHEREAS, SDA Management recommends that the Members of the Authority approve the re-adoption of and amendments to the Rules consistent with the materials presented to the Board on this date and incorporated herein; and

WHEREAS, the Members of the Authority are requested to approve advancement and completion of the re-adoption process for these Rules, which requires filing with the Office of Administrative Law a Notice of Adoption, reflecting the Rule Re-adoption with Amendments, and publication of the final approved Rules and Notice of Adoption in the New Jersey Register.

NOW THEREFORE, BE IT RESOLVED, that the Members of the Authority authorize and approve re-adoption of and substantive amendments to N.J.A.C. 19:38D as fully set forth in the memorandum and Proposed Readoption with Amendments: N.J.A.C. 19:38D, Proposed Repeals and New Rules: N.J.A.C. 19:38D-2.2, 2.3, 2.6, 4.1, 4.2, 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, 7.1, 7.2, and 7.3, Proposed Repeals: N.J.A.C. 19:38D-2.9, 5.3, 5.4, 5.5, 5.6, 7.4, 8, and 9, Proposed New Rules: N.J.A.C. 19:38D-4.8, 4.9 and 4.10, and Proposed Recodification with Amendments: N.J.A.C. 19:38D-4.4 as 2.9, all as presented to the Board on March 7, 2012 and attached hereto.

BE IT FURTHER RESOLVED, that the Board approves the filing of the N.J.A.C. 19:38D Rules with the Office of Administrative Law subject to its review and possible revision.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10 day period, the Governor shall approve same, in which case such action shall become effective upon such approval.

Attached: Memorandum, Rule Readoption with Amendments: Title 19, Chapter 38D
Procurement of Goods and Services, dated March 7, 2012
Dated: March 7, 2012

MONTHLY REPORTS
(For Informational Purposes)

ACTIVE STATUS REPORT



STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director

DATE: March 7, 2012

SUBJECT: Active Project Status Report
(For Informational Purposes Only)

The 1st section of the report includes a 2011 Capital Program Activities Summary.

The 2nd part of the report displays project completion milestones for all other major capital projects and emergent projects.



2011 Capital Program Activities Summary

as of 2/10/2012

District	Project	Grade Alignment	Capacity	Total Estimated Cost (millions)	Design Status	Advancement Status	Projected Construction Advertisement Date*
Elizabeth	Academic HS	9-12	1,091	\$81.5	Existing Design	Bids Received for Phase 1 Early Site Package Advancing to the March Board for Approval Final Preparation for Phase 2 Construction Procurement.	12/8/2011
Long Branch	Catrambone ES	PK-5	817	\$40.2	Existing Design	Advertised for Building Construction Receipt of Technical and Price Proposals scheduled for February 28, 2012.	12/20/2011
Bridgeton	Cherry St. ES	K-8	591	TBD	TBD	Scoping Conversations with Working Group (DOE/SDA/District).	TBD
Jersey City	ES 3	PK-5	814	\$67.3	Kit of Parts Candidate	Site Investigations ongoing. Design Development.	2 QTR 12
Jersey City	PS 20	K-5	628	\$54.6	Existing Design	Site Investigations ongoing. Design Development.	2 QTR 12
New Brunswick	Redshaw ES	K-5	670	\$49.3	Kit of Parts Candidate	Site Investigations ongoing. Design Development.	2 QTR 12
Newark	Oliver St. ES	TBD	TBD	TBD	Kit of Parts Candidate	Design Development. Scoping Conversations with Working Group (DOE/SDA/District).	2 QTR 12
Paterson	Marshall St. ES	K-8	650	\$42.5	Existing Design	Site Investigations ongoing. Design Development.	2 QTR 12
Paterson	PS 16	PK-8	651	\$61.7	Kit of Parts Candidate	Site Investigations ongoing. Land acquisition and related activities ongoing. Design Development.	1 QTR 12
West New York	Harry L. Bain PS 6	PK-6	736	TBD	TBD	Scoping Conversations with Working Group (DOE/SDA/District). Design Development for demolition of existing structure on SDA owned site.	1 QTR 12

*PLEASE NOTE - Projected Construction Advertisement Date reflects the first construction activity for the Project. Dates in the Past are ACTUAL.



Active Project Status Report

Report Date: 2/6/12

Major Capital Projects

#	District	Project Name	Project Scope	Project Status	Substantial Completion	Status Substantial Completion	Occupancy Date	Status of Occupancy Date	Total Estimated Project Cost
1	Elizabeth	Victor Mravlag ES	New Construction	Construction	Nov-12	On-target	Jan-13	On-target	\$ 45,464,204
2	Passaic City	New Henry Street ES	New Construction	Construction	Apr-14	On-target	Sep-14	On-target	\$ 40,250,458
3	Union City	New Columbus ES	New Construction	Construction	Jun-12	On-target	Sep-12	On-target	\$ 46,203,896
4	West New York	Public School #3	New Construction	Construction	Feb-12	On-target	Mar-12	On-target	\$ 66,303,105

Emergent Projects

#	District	Project Name	Project Scope	Project Phase	Substantial Completion	Status Substantial Completion	Final Completion	Status of Final Completion	Total Estimated Project Cost
1	Camden City	Molina ES	HVAC & Roofing	Complete	Oct-11	Achieved	Mar-12	On-Target	\$ 3,110,783
2	Camden City	East Camden M.S.	HVAC	Design	Oct-12	On-Target	Dec-12	On-Target	\$ 3,158,761
3	East Orange	Cochran Academy	Roof & Ceilings	Complete	Jan-12	Achieved	Mar-12	On-Target	\$ 324,410
4	East Orange	Houston ES	Roof & Ceilings	Complete	Jan-12	Achieved	Mar-12	On-Target	\$ 762,227
5	East Orange	Warwick ES	Roof, Ceilings & Curtain Wall Repair	Complete	Dec-11	Achieved	Feb-12	On-Target	\$ 832,549
6	Irvington	Irvington HS	HVAC & Roofing	Pre-Development	Oct-12	On-Target	Dec-12	On-Target	\$ 2,840,625
7	Irvington	Union Avenue Middle School	Boiler Replacement	Complete	Nov-11	Achieved	Jan-12	Achieved	\$ 1,390,747
8	Passaic City	School #6-MLK Jr.	Roofing	Construction	Mar-12	On-Target	Apr-12	On-Target	\$ 1,008,230
9	Paterson	PS #6	Windows	Pre-Development	Oct-12	On-Target	Dec-12	On-Target	\$ 792,899
10	Trenton	Trenton Central HS	Roofing	Construction	Apr-12	On-Target	Apr-12	On-Target	\$ 431,857

PROJECT CLOSEOUT STATUS REPORT



STATE OF NEW JERSEY

SCHOOLS DEVELOPMENT AUTHORITY

1 WEST STATE STREET
 P.O. BOX 991
 TRENTON, NJ 08625-0991
 609-943-5955

To: Members of the Authority
 From: /s/ Jason E. Ballard, Chief of Staff
 Date: March 7, 2012
 Subject: Project Close Out Status Report

The attached report provides a listing of projects managed by the SDA, all of which have achieved school occupancy. The listing is further defined by year of occupancy and details those projects that are fully closed out and those which achieved building and/or land transfer to the district.

We continue to advance projects and contracts through the close out process. The following projects have been transferred since the last Board Meeting:

Year of Occupancy	Project #	Project Type	District	School	Status
2009	0680-190-01-0927	Capital Plan	Camden	Dudley Elementary School	Transferred
N/A	3570-070-08-0GAM	Emergent	Newark	Weequahic High School	Transferred

Prepared by: Ayisha Cooper
 Reviewed by: Carol Petrosino
 Bridget Capasso

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL PROJECT DIVISION
PROJECT STATUS REPORT - As of February 1, 2012**

Year of Occupancy	District	School	Disposition	Land & School Transferred Date	Date Full Project Close Out	Outstanding Issues remaining for complete close out
Legacy	Orange	New Main St. ES	Closed		06/22/09	
Legacy	Elizabeth	Albert Einstein #29	Closed		09/16/09	
Legacy	Elizabeth	#44 aka #51	Closed		09/16/09	
Legacy	Jersey City	ECC #9 - School Site only	Closed		05/24/10	
Legacy	Jersey City	ECC #9 - Parking lot only	Closed		05/24/10	
Legacy	Vineland	Petway - ES #1	Closed		03/12/09	
Legacy	Vineland	MS #1 Thomas Wallace	Closed		03/12/09	
Legacy	Asbury Park	Bradley Primary	Closed		04/29/09	
Legacy	Neptune	Gables ES	Closed		04/30/09	
Legacy	Neptune	Neptune MS	Closed		04/30/09	
Legacy	Neptune	Summerfield ES	Closed		04/30/09	
Legacy	Trenton	Mott ES	Closed		05/07/09	
Legacy	Trenton	P. J. Hill ES	Closed		05/07/09	
Legacy	Bridgeton	Buckshutem Road ES	Closed		05/12/09	
Legacy	Vineland	Johnstone ES	Closed		05/20/09	
Legacy	Buena	Cleary MS	Closed		06/02/09	
Legacy	Woodlynne	Woodlynne ES	Closed		06/10/09	
Legacy	Neptune	Neptune ECC	Closed		10/31/06	
Legacy	Millville	Millville ECC	Closed		06/19/09	
Legacy	Trenton	Gregory ES	Closed		06/30/09	
Legacy	Millville	Lakeside MS	Closed		07/08/09	
Legacy	Neptune	Shark River Hills ES	Closed		07/13/09	
Legacy	Long Branch	New MS - Building	Closed		07/25/09	
Legacy	Long Branch	New Anastasia ES	Closed		10/23/09	
Legacy	Burlington City	Burlington City - Samuel Smith ES	Closed		11/24/09	
Legacy	Neptune	Neptune Township - Green Grove ES	Closed		11/27/09	
Legacy	Paterson	Panther Academy	Closed		08/15/11	
Legacy	Union City	Jose Marti MS Jose Marti MS Athletic Field	Closed		08/25/11	
Legacy	Neptune	HS Swing Space	Closed		10/21/11	
Legacy	Trenton	Joyce Kilmer	Closed		12/29/11	
Legacy	Garfield	Garfield ECC	Land and/or School Transferred	04/23/09		Contracts @ \$0 DEP Action Required
Legacy	East Orange	New - Langston Hughes Replacement	Land and/or School Transferred	08/03/09		Open contract(s)

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL PROJECT DIVISION
PROJECT STATUS REPORT - As of February 1, 2012**

Year of Occupancy	District	School	Disposition	Land & School Transferred Date	Date Full Project Close Out	Outstanding Issues remaining for complete close out
Legacy	Phillipsburg	ECC	Land and/or School Transferred	08/18/09		Contracts @ \$0 Awaiting NFA - District action required
Legacy	Elizabeth	Dr. MLK Jr Center for ECC School # 52 aka ECC # 45	Land and/or School Transferred	09/16/09		Contracts @ \$0 DEP Action Required
Legacy	Plainfield	Clinton ES - Site only	Land and/or School Transferred	05/06/10		Open contract(s)
Legacy	Perth Amboy	ECC I - Ignacio Cruz	Land and/or School Transferred	06/17/10		Open contract(s)
Legacy	Trenton	Columbus ES	Land and/or School Transferred	04/03/09		Open contract(s)
Legacy	Gloucester City	Cold Springs ES	Land and/or School Transferred	06/05/09		Open contract(s)
Legacy	Manchester	Manchester - Manchester Township MS	Land and/or School Transferred	07/16/09		Open contract(s)
Legacy	Manchester	Whiting ES	Land and/or School Transferred	07/16/09		Open contract(s)
Legacy	Fairfield	New ES	Land and/or School Transferred	09/23/09		Open contract(s)
Legacy	Barnegat	Barnegat HS	Land and/or School Transferred	10/13/09		Open contract(s)
Legacy	East Orange	East Orange HS				
Legacy	East Orange	Wahlstrom ECC				
Legacy	Elizabeth	#31 Monsignor Joan Antao School				
Legacy	Elizabeth	#30 Ronald Reagan Academy				
Legacy	Gloucester City	JR SR HS				
Legacy	Jersey City	Freshman Academy - Lincoln HS				
Legacy	Jersey City	New ES #3 (Frank R. Conwell ES #3)				
Legacy	Jersey City	Jersey City MS # 4 (Frank R. Conwell MS # 4)				
Legacy	Manchester	Manchester Township HS				
Legacy	Newark	Science Park				
Legacy	Passaic	# 7, Grant, ES				
Legacy	Paterson	Roberto Clemente, ES				
Legacy	Perth Amboy	#10 ES - Dr. N. H. Ritchardson School				
Legacy	Plainfield	Hubbard MS				

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL PROJECT DIVISION
PROJECT STATUS REPORT - As of February 1, 2012**

Year of Occupancy	District	School	Disposition	Land & School Transferred Date	Date Full Project Close Out	Outstanding Issues remaining for complete close out
Legacy	West New York	West New York MS				
Total Legacy Projects			57			
Legacy Closed Out			29			
Legacy Not Closed Out			28			
	Legacy Not Closed Out, Land & School Transferred		12			
2007	Irvington	Augusta ES	Closed		03/13/09	
2007	Irvington	Irvington - New Mt. Vernon, ES	Closed		03/13/09	
2007	Irvington	University Six School	Closed		03/13/09	
2007	Vineland	Vets Memorial	Closed		03/13/09	
2007	Trenton	Parker ES	Closed		03/13/09	
2007	Garfield	Garfield MS	Land and/or School Transferred	06/25/09		Open contract(s)
2007	Clark	Frank Hehny ES	Land and/or School Transferred	06/03/10		Open contract(s)
2007	Clark	Carl Kumpf MS	Land and/or School Transferred	06/03/10		Open contract(s)
2007	Clark	Arthur Johnson HS	Land and/or School Transferred	06/03/10		Open contract(s)
2007	Clark	Valley Road ES	Land and/or School Transferred	06/03/10		Open contract(s)
2007	Barneget	Brackman MS	Land and/or School Transferred	09/23/09		Open contract(s)
2007	Newark	1st Avenue ES	Land and/or School Transferred	09/28/11		Open contract(s)
2007	Burlington City	Wilbur Watt Intermediate School & Stadium Maintenance Bldg. (MB)	Land and/or School Transferred	07/01/11		Open contract(s)
2007	Burlington City	New HS*	Land and/or School Transferred	12/29/11		Open contract(s)
2007	Egg Harbor	Slaybaugh ES				
2007	Egg Harbor	Davenport ES				
2007	Harrison	New Harrison HS				
2007	Hoboken	Calabro ES # 4				
2007	Jersey City	Heights MS # 7				

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL PROJECT DIVISION
PROJECT STATUS REPORT - As of February 1, 2012**

Year of Occupancy	District	School	Disposition	Land & School Transferred Date	Date Full Project Close Out	Outstanding Issues remaining for complete close out
2007	Long Branch	Gregory ES				
2007	New Brunswick	McKinley K Center #3				
2007	Union City	ECC @ JFK - Phase I (School only)				
2007	Union City	ECC @ JFK - Phase II (Schlemm) Parking/Playgrounds				
2007	West New York	#4				
Total 2007 Projects			24			
2007 Closed Out			5			
2007 Not Closed Out			19			
2007 Not Closed Out, Land & School Transferred			9			
2008	Elizabeth	Pre K-8 #27 Dr. Antonia Pontoja School	Closed		10/29/09	
2008	Asbury Park	T. Marshall Primary	Closed		04/29/09	
2008	Neptune	Midtown Community ES & Parking*	Closed	02/03/10	11/16/11	
2008	Egg Harbor	Oakcrest Regional, HS (Auditorium upgrade)	Land and/or School Transferred	06/02/09		All contracts at \$0, documentation in final review
2008	Barnegat	HS Addition	Land and/or School Transferred	10/13/09		Open contract(s)
2008	Barnegat	New Donahue, ES (aka Ronald Reagan)	Land and/or School Transferred	10/13/09		Open contract(s)
2008	Barnegat	Barnegat - Collins, ES	Land and/or School Transferred	07/12/10		Open contract(s)
2008	East Orange	Campus #9 CJ Scott HS				
2008	East Orange	Mildred Barry Garvin*				
2008	Jersey City	ES # 34				
2008	Long Branch	Long Branch - Athletic Fields & High School				
2008	Newark	Central HS				
2008	Paterson	International HS*				
2008	Paterson	#24 ES*				
2008	Plainfield	Emerson ES School Site only				
Total 2008 Projects			15			
2008 Closed Out			3			
2008 Not Closed Out			12			

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL PROJECT DIVISION
PROJECT STATUS REPORT - As of February 1, 2012**

Year of Occupancy	District	School	Disposition	Land & School Transferred Date	Date Full Project Close Out	Outstanding Issues remaining for complete close out
2008 Not Closed Out, Land & School Transferred			4			
2009	Newark	Park ES (aka North Ward Park ES)*	Land and/or School Transferred	02/24/10		Open contract(s) Awaiting NFA
2009	Camden	Camden ECDC*	Land and/or School Transferred	11/04/09		Open contract(s)
2009	Egg Harbor	Spragg ES	Land and/or School Transferred	11/17/09		All contracts at \$0, documentation in final
2009	Camden	HB Wilson ES*	Land and/or School Transferred	04/14/10		Open contract(s) Deed still to be transferred
2009	Bridgeton	Bridgeton HS Media Center	Land and/or School Transferred	04/21/10		All contracts at \$0, documentation in final review
2009	Cumberland	Cumberland Regional HS	Land and/or School Transferred	06/25/10		Open contract(s)
2009	Barnegat	Barnegat - Dunfee, ES	Land and/or School Transferred	07/12/10		Open contract(s)
2009	Barnegat	Barnegat - Horbelt, ES	Land and/or School Transferred	07/12/10		Open contract(s)
2009	Elizabeth	Elizabeth New PreK-8 #28	Land and/or School Transferred	08/26/10		Open contract(s)
2009	Camden	Dudley ES*	Land and/or School Transferred	02/06/12		Open contract(s)
2009	Orange	Park Ave ES				
2009	Perth Amboy	ECC #2 - Edmund Hmielseki ECC*				
2009	Plainfield	Clinton ES - Parking/Playground only				
2009	Plainfield	Emerson ES - Parking/Playground only				
2009	West New York	ES #2*				
Total 2009 Projects			15			
2009 Closed Out			0			
2009 Not Closed Out			15			
2009 Not Closed Out, Land & School Transferred			10			
2010	Neptune	Neptune HS Aux. Gym	Closed		10/21/11	
2010	Buena	Buena MS	Land and/or School Transferred	09/01/10		Open contract(s)

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL PROJECT DIVISION
PROJECT STATUS REPORT - As of February 1, 2012**

Year of Occupancy	District	School	Disposition	Land & School Transferred Date	Date Full Project Close Out	Outstanding Issues remaining for complete close out
2010	Paterson	Roberto Clemente ES K-1 Center (Madison Avenue K Center) parking Lot	Land and/or School Transferred	11/09/11		Open contract(s)
2010	Trenton	MLK-Jefferson*	Land and/or School Transferred	12/01/11		Open contract(s)
2010	Egg Harbor City	New MS*	Land and/or School Transferred	01/01/12		Open contract(s)
2010	Greater Egg Harbor	Greater Egg Harbor HS (Cedar Creek HS)	Land and/or School Transferred	01/01/12		Open contract(s)
2010	East Orange	New ES #5				
2010	Newark	Speedway ES*				
2010	Orange	Lincoln Ave ES*				
2010	Passaic	Daniel F Ryan #19 ES aka New ES Main Ave*				
Total 2010 Projects			10			
2010 Closed Out			1			
2010 Not Closed Out			9			
2010 Not Closed Out, Land & School Transferred			5			
2011	Egg Harbor Twp	Egg Harbor Twp HS - Phase 1 (add/reno)				
2011	Egg Harbor Twp	Egg Harbor Twp HS - Phase 2 (add/reno)				
2011	Pemberton	ECC				
2011	Camden	Morgan Village				
Total 2011 Projects			4			
2011 Closed Out			0			
2011 Not Closed Out			4			
2011 Not Closed Out, Land & School Transferred			0			
Total Projects			125			
All Closed Out Projects			38			
All Projects Not Closed			87			
All Projects Not Closed, Land & School Transferred			40			

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
SPECIAL PROJECT DIVISION
PROJECT STATUS REPORT - As of February 1, 2012**

Year of Occupancy	District	School	Disposition	Land & School Transferred Date	Date Full Project Close Out	Outstanding Issues remaining for complete close out
Emergent Projects						
	District	School	Disposition		Date Full Project Close Out	Outstanding Issues remaining for complete close out
	Camden	Broadway Elementary School	Closed		08/12/11	
	Camden	Lanning Square at Fetters Elementary	Closed		11/02/11	
	Passaic	School #1-T. Jefferson ES	Closed		10/07/11	
	Newark	Branch Brook ES	Closed		11/09/11	
	Newark	Franklin ES	Closed		11/09/11	
	Newark	Sussex Avenue ES	Closed		11/09/11	
	Newark	Barringer High School	Closed		12/01/11	
	East Orange	Hart Middle School	Closed		12/02/11	
	Newark	McKinley	Closed		12/02/11	
	East Orange	Jackson Academy	Closed		12/14/11	
	Newark	Avon Avenue (1)	Project Transferred	10/20/11		Open contract(s)
	Newark	Maple Avenue	Project Transferred	10/20/11		Open contract(s)
	Newark	13th Avenue (1)	Project Transferred	11/09/11		Open contract(s)
	Newark	Lafayette Street School	Project Transferred	11/09/11		Open contract(s)
	Camden	East Camden Middle School				
	Camden	Camden High School				
	Camden	Molina Elementary School				
	Camden	Sharp Elementary School				
	Camden	Washington Elementary School				
	East Orange	Houston Elementary School				
	East Orange	Warwick Elementary School				
	East Orange	Cochran Academy				
	East Orange	Louverture				
	Irvington	Irvington High School				
	Irvington	Irvington High School				
	Irvington	Irvington High School				
	Irvington	Union Avenue Middle School				
	Newark	Avon Avenue (2)				
	Newark	13th Avenue (2)				
	Newark	Bragaw				
	Newark	Horton				
	Newark	R. Clemente				



STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

1 WEST STATE STREET
P.O. BOX 991
TRENTON, NJ 08625-0991
609-943-5955

To: Members of the Authority

From: /s/ Jason E. Ballard, Chief of Staff

Date: March 7, 2012

Subject: Demonstration Projects - Close Out Status

We have accelerated our efforts to advance the close out process for the four (4) remaining Pre-Development Grants and the six (6) Development Grants associated with the six (6) Demonstration projects.

Our meetings with the Redevelopers continue this month to verify the status of open issues, define the tasks necessary to close the items and agree to a timeline for completion. Open invoices and internal processes are being reviewed to expedite closure of the projects. We will report on progress of the closure of the four (4) remaining Pre-Development Grants and the finalization and closure of the six (6) Development Grants at the April Board Meeting.

Prepared by: Bruce Lieblich
Reviewed by: Carol Petrosino
Bridget Capasso

MONTHLY EMERGENT RESERVE BALANCE SUMMARY



STATE OF NEW JERSEY

SCHOOLS DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director

DATE: March 7, 2012

SUBJECT: Monthly Emergent Reserve Balance Summary
(For Informational Purposes Only)

The report shows the remaining balance in the \$97M reserve fund for emergent projects as of February 1, 2012. Both the current contractual obligations as well as total estimated project costs funded within the reserve are shown.

Noteworthy Items during the reporting period:

- **Additional Emergent Projects approved during the reporting period**
No additional Emergent Projects were approved during the reporting period.
- **Changes in Estimated Total Project Costs**
Estimated Total Project Costs have decreased \$136k
 - SDA Managed Projects:
 - Estimated Total Project Costs have decreased \$70k due to a reduction in the estimated costs related to the Trenton Central HS partial roof replacement project.
 - District Delegated Projects:
 - Estimated Total Project Costs have decreased \$66k due to a reduction in the grant upon completion of the Irvington Berkley Terrace Roofing and Façade repair project.
- **Changes in Contractual Obligations**
Contractual Obligations have decreased \$50k
 - SDA Managed Projects:
 - Current Contractual Obligations have decreased \$50k due to credits received for unused allowances for the Irvington Union Ave MS Boiler replacement project.
 - District Delegated Projects:
 - No change during the reporting period.



Monthly Emergent Reserve Balance Summary
As of 02/01/12

Reserve Balance \$ 97,000,000

<u>Current Contractual Obligations</u>			
District Delegated Projects	84 Projects	\$	30,591,521
SDA Managed Emergent Projects	46 Projects	\$	23,196,781
SDA Managed Emergency Situations at Existing Projects	2 Projects	\$	445,103
Total Current Contractual Obligations		\$	54,233,405
Reserve Balance Remaining Unobligated		\$	42,766,595

<u>Estimated Total Project Costs</u>			
District Delegated Projects	84 Projects	\$	41,278,769
SDA Managed Emergent Projects	46 Projects	\$	36,626,580
SDA Managed Emergency Situations at Existing Projects	2 Projects	\$	5,636,692
Total Estimated Total Project Costs		\$	83,542,042
Reserve Balance Remaining for Additional Projects		\$	13,457,958

PROGRAM OPERATIONS REPORTS



STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director – Program Operations

DATE: March 7, 2012

SUBJECT: Executive Summary – Monthly Project Status Reports

MONTHLY PROJECT STATUS REPORT

Projects that have Expended 75% or More of Board Approved Contingency:

No new data to report

Projects Greater than 90 Days Behind Schedule:

No new data to report.

Revisions to Project Charters:

No new data to report.

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)



Projects that have Expended 75% or More of Board Approved Contingency

Reporting Period: Jan. 1, 2008 to January 20, 2012

District	Project ¹	Board Approved Project Charter Contingency	Contingency Expended/Committed	Contingency Remaining ²	% of Contingency Expended/Committed	Project Completion %	Cause(s)	Current Status
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In Construction

Camden	Morgan Village M.S.	\$5,174,775	\$4,510,822	\$663,953	87.2%	95%	1. Unforeseen soil remediation 2. Structural steel changes	TCO has been achieved on the construction of the new school and the District has taken occupancy of the building. Demolition of the existing school on the site and related site work is still required.
Elizabeth	Number 21, Victor Mravlag E.S.	\$8,240,000	\$6,390,358	\$1,849,642	77.6%	55%	1. Unforeseen asbestos abatement 2. Unforeseen structural integrity issues. 3. Project changed from addition/renovation to new construction.	Revised Charters were approved by the Board in accordance with the Operating Authority adding a total of \$8.4M against a total project budget of \$31.9M. Close monitoring of the projected costs will continue. The project is scheduled for completion to allow for occupancy in January 2013.

Substantially Complete & Building Occupied

Please refer to the Project Close-Out Activity Report for status of close-out activities

Burlington City	Burlington City H.S.	\$17,830,990	\$17,817,588	\$13,402	99.9%	99%	1. Unforeseen soil remediation 2. Unforeseen asbestos abatement.	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$1.1M against a total project budget of \$55M. Project Closeout in Process.
Camden	Dudley E.S.	\$3,215,000	\$2,863,398	\$351,602	89.1%	99%	1. Installation of IT/AV systems	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$1.4M against a total project budget of \$42.8M. The Core Team is currently preparing a CEO memo in accordance with the Operating Authority requesting \$450k in additional funds.
Camden	Camden ECDC	\$11,314,645	\$9,916,987	\$1,397,658	87.6%	99%	1. Unforeseen soil remediation	Close monitoring of the projected costs will continue.
Camden	HB Wilson E.S.	\$3,097,150	\$3,097,150	\$0	100.0%	99%	1. Installation of centralized water filtration system 2. Installation of IT/AV systems	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$2M against a total project budget of \$33.6M. Close monitoring of the projected costs will continue.
East Orange	Mildred B. Garvin E.S.	\$1,429,632	\$1,355,772	\$73,860	94.8%	99%	1. Unforeseen soil remediation 2. Modifications to security system	Close monitoring of the projected costs will continue.
Egg Harbor City	New M.S.	\$1,058,907	\$960,409	\$98,498	90.7%	99%	1. Delays caused by design errors and extreme weather	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$818k against a total project budget of \$21.8M. Close monitoring of the projected costs will continue.
Newark	Park School	\$3,294,431	\$2,435,335	\$859,096	73.9%	99%	1. Removal of unsuitable soils 2. Removal of unforeseen USTs 3. Installation of groundwater monitoring wells	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$975k against a total project budget of \$51.6M. Close monitoring of the projected costs will continue. Project close-out in process.

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)



Projects that have Expended 75% or More of Board Approved Contingency

Reporting Period: Jan. 1, 2008 to January 20, 2012

District	Project ¹	Board Approved Project Charter Contingency	Contingency Expended/Committed	Contingency Remaining ²	% of Contingency Expended/Committed	Project Completion %	Cause(s)	Current Status
Newark	Speedway Avenue E.S.	\$1,826,000	\$1,826,000	\$0	100.0%	99%	1. Removal of unforeseen impacted materials	Close monitoring of the projected costs will continue.
Orange	Lincoln Ave E.S.	\$5,615,000	\$4,917,545	\$697,455	87.6%	99%	1. Unforeseen asbestos abatement 2. Structural repairs to interior walls 3. Extended general conditions	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$2.95M against a total project budget of \$48.2M. Close monitoring of the projected costs will continue.
Orange	Park Avenue E.S.	\$3,360,000	\$3,275,103	\$84,897	97.5%	99%	1. Unforeseen asbestos abatement	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$1.91M against a total project budget of \$35.3M. Close monitoring of the projected costs will continue.
Passaic	E.S. at Main Avenue	\$9,548,320	\$8,259,178	\$1,289,142	86.5%	98%	1. Atrium design changes required by code 2. Unforeseen subsurface sewage line work 3. Adding back Security/IT System (removed and anticipated to be bid as a separate engagement for E-Rate reimbursement)	A revised Project Charter was approved by the Board in accordance with the Operating Authority adding \$7M against a total project budget of \$55.7M. Certificate of Occupancy issued and Project Closeout in process.
Paterson	International H.S. Academy	\$5,039,000	\$4,258,099	\$780,901	84.5%	98%	1. Installation of two foot soil cap required to meet DEP regulations 2. Modifications to smoke evacuation system	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$1.7M against a total project budget of \$55.3M. Close monitoring of the projected costs will continue.
Paterson	E.S. #24	\$4,616,120	\$4,582,581	\$33,539	99.3%	99%	1. Unforeseen soil remediation and clean fill.	Certificate of Occupancy issued. Project close-out in process.
Perth Amboy	ECC II	\$2,604,619	\$2,033,073	\$571,546	78.1%	99%	1. Removal of unsuitable soils 2. Adding back Security/IT System (removed and anticipated to be bid as a separate engagement for E-Rate reimbursement)	A revised Charter was approved by the CEO in accordance with the Operating Authority adding \$1.7M against a total project budget of \$30.1M. Project closeout in process.
Trenton	MLK/Jefferson School	\$3,256,159	\$2,498,300	\$757,859	76.7%	99%	1. Unforeseen soil remediation	Project close-out in progress. Close monitoring of the projected costs will continue.
West New York	West New York P.S. #2	\$2,708,883	\$2,708,883	\$0	100.0%	99%	1. Unforeseen site foundation issues	Certificate of occupancy issued. The Core Team is currently preparing a Board memo in accordance with the Operating Authority requesting additional funds.

¹ * Indicates Final Project Charter Revision

² Does not include expended contingency or contingency funds allocated for change orders, amendments and claim



Projects Greater than 90 Days Behind Schedule or with Occupancy Date in Jeopardy

Reporting Period: January 2012

#	Event Date	District	Project	Board Approved Project Charter SubComp Date	Current Contract SubComp Date	Forecasted Contract SubComp Date	# of Days Behind Schedule	Cause(s)	Current Status
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No New Data to Report



Revisions to Project Charters

Reporting Period: January 2012

#	District	Project	Financial & Schedule Impacts	Additional Funds Approved	Additional Funds as % of Total Project Budget	Operating Authority Approval Requirement	Description of Revision
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No New Data to Report

CONTRACTS EXECUTED REPORT



MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director

DATE: March 7, 2012

SUBJECT: Contracts Executed Report and Amendments & Change Orders Report
(For Informational Purposes Only)

Contracts Executed Report

This report contains the activity of contracts executed during the period January 1 through January 31, 2012.

Noteworthy Items during the reporting period:

- Execution of one contract for the demolition of the Keansburg Caruso ES totaling \$870,000.

Amendments & Change Orders Report

This report contains the activity of Amendments and Change Orders executed during the period January 1 through January 31, 2012.

Noteworthy Items during the reporting period:

- Execution of 1 Design Amendment totaling \$24k.
- Execution of 2 Amendments for Construction Management Services that were approved by the Board totaling \$687k
 - Elizabeth Victor Mravlag ES - \$457,501
 - Union City New Columnus ES - \$229,283
- Execution of 12 Construction Services Change Orders totaling a credit of \$251k. Of the 12 executed change orders 2 required board approval totaling a credit of \$273,042.

Report of change orders less than \$10,000 yet requiring Board Approval

In accordance with the Operating Authority adopted by the Member on December 1, 2010 the Members are to be provided a report of any change order which received delegated approval by the CEO due to the fact that they are valued at less than \$10,000 yet require Board approval due the total change orders exceeding 10% of the contract value.

- No data during the reporting period



New Jersey Schools Development Authority
Contracts Executed Report

Report Period 1/1/12 through 1/31/12

District	School Name(s)	Project Type	Contract Type	Contract Number	Vendor	MWSBE Cert(s)	Contract Award Amount	Contract Execution Date	Per School CCE	Total CCE
Part 2. Construction Services										
Contractor										
Keansburg Borough	Joseph C. Caruso E.S.	Add	Demolition-PM	ET-0061-N01	Tricon Enterprises, Inc.	W	\$870,000	1/27/12	-	\$1,082,473
Contractor										
Part 2. Construction Services							\$870,000			\$1,082,473

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Report Period 1/1/12 through 1/31/12

District	School Name(s)	Project Type	Contract Type	Contract Number	Vendor	MWSBE Cert(s)	Contract Award Amount	Contract Execution Date	Per School CCE	Total CCE	
Part 4. Other Contracts & Services											
	Others										
Multi-District, Project, or Statewide	Property Management & Maintenance Services	NA	General	GP-0175-R01	Bluegrass Services		\$799,968	1/27/12	-		
	Others										
Part 4. Other Contracts & Services							\$799,968				

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Report Period 1/1/12 through 1/31/12

	Total Contract Award	Total Contracts Awarded
Grand Totals - Professional and Construction Services Combined	\$1,669,968	2

** Contracts less than \$10,000 are not displayed

Project Types Legend

HS	Health & Safety
New	New Construction
Add	Addition
RenoAdd	Addition & Renovation
Reno	Renovation

Contract Types Legend

Acquisition	Property Acquisition Related Costs
Appraisal	Appraisal, Appraisal Review, NRE
Construction	Construction
Design	Design or Site Investigation
DB	Design-Build
E-Rate	E-Rate
FFE	Furniture, Fixtures, and Equipment
General	General Program Cost
Legal	Legal
Material	Material Supply
ProjectMgmt	Project Management Firm
PreDevelopment	Predevelopment or Demolition
Relocation	Relocation Services
SiteInvstgtn	Site Investigation
Testing	Testing

MWSBE Certifications

M = Minority Business Enterprise
 W = Women Business Enterprise
 S = Small Business Enterprise



New Jersey Schools Development Authority
Amendments & Change Orders Report

Reporting Period 1/1/12 through 1/31/12

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board
Professional Services & Grants																
Design Consultant																
West New York	Number 3 E.S.	HU-0006-A01	7/31/03	17	Gruzen Samton Architects Planners & Int. Designers	1/19/12	\$1,910,000	\$353,453	7/21/08	\$24,150			\$2,287,603	19.76%	\$1,910,000	10.65%
Design Consultant																
Site Acquisition																
Asbury Park	New Early Childhood Center (-x02)	ET-0038-L08	4/15/05	35	Verizon of New Jersey, Inc.	1/10/12	\$1,399	\$2,619		\$60			\$4,078	191.61%	\$1,399	191.61%
Site Acquisition																
Site Investigation																
Long Branch	New H.S. (-x03)	GP-0084-L02	2/14/08	42	French & Parrello Associates, P.A.	1/31/12	\$0	\$1,114,826		\$10,656			\$1,125,482	0.00%	\$0	NA
Long Branch	George L. Catrambone E.S. (formerly Elberon)	NT-0015-L04	9/8/03	6	Maser Consulting P.A.	1/12/12	\$775,189	\$230,698		\$43,346			\$1,049,233	35.35%	\$775,189	35.35%
Site Investigation																
Relocation																

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Reporting Period 1/1/12 through 1/31/12

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board	
Professional Services & Grants																	
Relocation																	
Multi-District	New PS# 16 A. Chester Redshaw E.S. Cooper's Poynt E.S. Creative and Performing Arts H.S. Dayton Avenue Middle School East Side High School (Replacement) ECC 03 Elliott Street E.S. Fetters E.S./Lanning Square Gladys Hillman-Jones M.S. Harriet Tubman E.S. Harry L. Bain E.S. Lorraine Place ES (formerly New Beachway ES) Magnet K-8 Marshall Street Elementary School New Early Childhood Center (-x02) New ECC PK-2 (Caruso) New Franklin Elementary School Replacement New Middle School New North East ES (-x06) Number 1, Thomas Jefferson E.S. Number 20 E.S. Ridge Street (Replacement) Roebling School South Street E.S. University H.S. West Side H.S.	GP-0117-R03	3/25/09	68	Bluegrass Services	1/11/12	\$192,711	\$2,388,880			\$17,684			\$2,599,276	1,248.79%	\$192,711	1248.79%

7

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Reporting Period 1/1/12 through 1/31/12

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board	
Professional Services & Grants																	
Relocation																	
Multi-District	New PS# 16 A. Chester Redshaw E.S. Cooper's Poynt E.S. Creative and Performing Arts H.S. Dayton Avenue Middle School ECC 03 ECC Leonard Place & Madison St Elementary School 02 Elliott Street E.S. Fetters E.S./Lanning Square Gladys Hillman-Jones M.S. Harriet Tubman E.S. Harry L. Bain E.S. Lorraine Place ES (formerly New Beachway ES) Magnet K-8 Marshall Street Elementary School New Early Childhood Center (-x02) New ECC PK-2 (Caruso) New ES at Henry St. (-x01) New Franklin Elementary School Replacement New Middle School Number 1, Thomas Jefferson E.S. Number 10, Roosevelt E.S. Number 20 E.S. Ridge Street (Replacement) Roebbling School Temporary School University H.S. West Side H.S.	GP-0117-R03	3/25/09	69	Bluegrass Services	1/24/12	\$192,711	\$2,406,565			\$26,255			\$2,625,531	1,262.41%	\$192,711	1262.41%
Relocation																	
Others																	
Asbury Park	New Early Childhood Center (-x02)	ET-0038-L05	4/15/05	105	NJ Natural Gas Co.	1/5/12	\$36,693	\$7,969		\$230			\$44,892	22.34%	\$36,693	7.19%	
Asbury Park	New Early Childhood Center (-x02)		4/15/05	106	NJ Natural Gas Co.	1/5/12	\$36,693	\$8,199		\$25			\$44,918	22.41%	\$36,693	7.26%	
Asbury Park	New Early Childhood Center (-x02)		4/15/05	107	NJ Natural Gas Co.	1/5/12	\$36,693	\$8,224		\$26			\$44,944	22.48%	\$36,693	7.33%	
Asbury Park	New Early Childhood Center (-x02)		4/15/05	108	NJ Natural Gas Co.	1/5/12	\$36,693	\$8,251		\$25			\$44,969	22.55%	\$36,693	7.40%	
Asbury Park	New Early Childhood Center (-x02)		4/15/05	109	NJ Natural Gas Co.	1/5/12	\$36,693	\$8,276		\$25			\$44,995	22.62%	\$36,693	7.47%	

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Reporting Period 1/1/12 through 1/31/12

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board
Professional Services & Grants																
Others																
Asbury Park	New Early Childhood Center (-x02)	ET-0038-L06	4/15/05	48	JCP&L	1/11/12	\$8,060	\$6,713		\$660			\$15,434	91.47%	\$8,060	91.47%
Asbury Park	New Early Childhood Center (-x02)		4/15/05	49	JCP&L	1/11/12	\$8,060	\$7,373		\$132			\$15,565	93.11%	\$8,060	93.11%
Asbury Park	New Early Childhood Center (-x02)	ET-0038-L09	4/15/05	32	Asbury Park Sewer Department	1/24/12	\$13,452	\$24,270		\$1,793			\$39,515	193.75%	\$13,452	193.75%
Asbury Park	New Early Childhood Center (-x02)		4/15/05	33	Asbury Park Sewer Department	1/24/12	\$13,452	\$26,063		\$80			\$39,595	194.34%	\$13,452	194.34%
Asbury Park	New Early Childhood Center (-x02)	ET-0038-L16	8/2/11	4	New Jersey American Water	1/10/12	\$410	\$404		\$164			\$978	138.66%	\$410	138.66%
Asbury Park	New Early Childhood Center (-x02)		8/2/11	5	New Jersey American Water	1/24/12	\$410	\$568		\$164			\$1,142	178.66%	\$410	178.66%
Barnegat Township	Cecil S. Collins E.S. Horbelt ES Lillian M. Dunfee E.S.	ET-0065-M01	4/10/08	3	AFG Group, Inc.	1/19/12	\$1,212,000	\$7,254		\$9,393			\$1,228,647	1.37%	\$1,212,000	0.77%
Bergenfield	Roy W. Brown M.S.	G5-0865-D01	11/9/05	1	District - Bergenfield	1/11/12	\$200,000	\$0		\$-48,388			\$151,612	-24.19%	\$200,000	-24.19%
Central Regional	Central Regional H.S.	G5-4716-D01	4/19/11	1	District - Central Regional	1/9/12	\$1,095,630	\$0		\$-50,133			\$1,045,497	-4.57%	\$1,095,630	-4.57%
Clayton	Clayton H.S.	G5-3180-D01	11/4/09	1	District - Clayton	1/9/12	\$385,975	\$0		\$-32,630			\$353,345	-8.45%	\$385,975	-8.45%
Clayton	Herma S. Simmons E.S.	G5-3182-D01	11/4/09	1	District - Clayton	1/9/12	\$3,190,292	\$0		\$-368,020			\$2,822,272	-11.53%	\$3,190,292	-11.53%
Clearview Regional	Clearview Regional H.S.	G5-4727-D01	3/14/11	1	District - Clearview Regional	1/6/12	\$228,637	\$0		\$-126,747			\$101,890	-55.43%	\$228,637	-55.43%
Closter	Tenakill M.S.	G5-4122-D01	5/25/11	1	District - Closter	1/11/12	\$118,800	\$0		\$-47,072			\$71,728	-39.62%	\$118,800	-39.62%
Elizabeth	Number 21, Victor Mravlag E.S.	EL-0016-M01	4/5/07	3	Skanska USA Building Inc.	1/19/12	\$1,091,000	\$185,386	9/27/09	\$457,501	Yes	11/5/09	\$1,733,887	58.92%	\$1,091,000	41.93%
Franklin Township - Somerset	Franklin Park E.S.	G5-1644-D01	2/23/04	1	District - Franklin Township - Somerset	1/4/12	\$36,459	\$0		\$-36,459			\$0	-100.00%	\$36,459	-100.00%
Franklin Township - Somerset	Elizabeth Avenue E.S.	G5-1814-D01	6/30/04	1	District - Franklin Township - Somerset	1/4/12	\$114,000	\$0		\$-114,000			\$0	-100.00%	\$114,000	-100.00%
Garfield	James Madison School #10 (Most Holy Name)	NT-0014-L18	1/16/08	17	PSE&G	1/10/12	\$188	\$392		\$10			\$590	213.09%	\$188	213.09%
Garfield	James Madison School #10 (Most Holy Name)		1/16/08	18	PSE&G	1/10/12	\$188	\$401		\$13			\$603	220.04%	\$188	220.04%
Garfield	James Madison School #10 (Most Holy Name)		1/16/08	19	PSE&G	1/30/12	\$188	\$414		\$43			\$645	242.68%	\$188	242.68%
Garfield	James Madison School #10 (Most Holy Name)		1/16/08	20	PSE&G	1/30/12	\$188	\$457		\$12			\$657	248.82%	\$188	248.82%
Hamilton Township - Mercer	McGalliard E.S.	G5-3232-D01	8/11/09	1	District - Hamilton Township - Mercer County	1/19/12	\$176,410	\$0		\$-6,302			\$170,108	-3.57%	\$176,410	-3.57%
Hamilton Township - Mercer	Mercerville E.S.	G5-3233-D01	8/11/09	1	District - Hamilton Township - Mercer County	1/19/12	\$65,323	\$0		\$-4,201			\$61,122	-6.43%	\$65,323	-6.43%
Hamilton Township - Mercer	Mercerville E.S.		8/11/09	2	District - Hamilton Township - Mercer County	1/19/12	\$65,323	\$-4,201		\$0			\$61,122	-6.43%	\$65,323	-6.43%

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Reporting Period 1/1/12 through 1/31/12

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board
Professional Services & Grants																
Others																
Keansburg Borough	New ECC PK-2 (Caruso)	ET-0030-L08	1/1/09	16	JCP&L	1/26/12	\$49	\$691		\$33			\$772	1,491.61%	\$49	1491.61%
Keansburg Borough	New ECC PK-2 (Caruso)	ET-0030-L09	7/1/10	6	Keansburg Water & Sewer Department	1/11/12	\$97	\$7,589		\$97			\$7,784	7,914.31%	\$97	7914.31%
Lower Township	Sandman Consolidated E.S.	G5-3318-D01	7/2/09	1	District - Lower Township	1/27/12	\$511,200	\$0		-\$35,548			\$475,652	-6.95%	\$511,200	-6.95%
Mahwah Township	Joyce Kilmer E.S.	G5-3575-D01	9/24/10	1	District - Mahwah Township	1/4/12	\$223,120	\$0		-\$22,169			\$200,951	-9.93%	\$223,120	-9.93%
Milford Borough	Milford E.S.	G5-3210-D01	9/11/09	1	District - Milford Borough	1/12/12	\$7,840	\$0		-\$643			\$7,197	-8.20%	\$7,840	-8.20%
Moorestown Township	Moorestown H.S.	G5-3640-D01	6/4/10	1	District - Moorestown Township	1/10/12	\$141,120	\$0		-\$36,208			\$104,912	-25.65%	\$141,120	-25.65%
Moorestown Township	William Allen Middle School	G5-3641-D01	6/4/10	1	District - Moorestown Township	1/10/12	\$24,480	\$0		-\$6,231			\$18,249	-25.45%	\$24,480	-25.45%
Multi-District, Project, or Statewide	Adverts As Contracts	GP-0004-R01	4/12/01	23	Star Ledger Newspaper	1/4/12	\$130,907	\$870		\$113			\$131,890	0.75%	\$130,907	0.75%
Multi-District, Project, or Statewide	Adverts As Contracts		4/12/01	24	Star Ledger Newspaper	1/19/12	\$130,907	\$983		\$32			\$131,922	0.77%	\$130,907	0.77%
Multi-District, Project, or Statewide	Adverts As Contracts		4/12/01	25	Star Ledger Newspaper	1/20/12	\$130,907	\$1,015		\$235			\$132,158	0.95%	\$130,907	0.95%
Multi-District, Project, or Statewide	Adverts As Contracts	GP-0004-R02	4/12/01	21	Times Newspaper (The)--(Adverts)	1/4/12	\$62,132	\$282		\$35			\$62,449	0.51%	\$62,132	0.51%
Multi-District, Project, or Statewide	Adverts As Contracts		4/12/01	22	Times Newspaper (The)--(Adverts)	1/20/12	\$62,132	\$317		\$11			\$62,460	0.52%	\$62,132	0.52%
Multi-District, Project, or Statewide	Adverts As Contracts		4/12/01	23	Times Newspaper (The)--(Adverts)	1/20/12	\$62,132	\$328		\$63			\$62,523	0.62%	\$62,132	0.62%
Elizabeth	New Academic HS	GP-0005-R06	6/14/02	4	American Reprographics Company, LLC dba ARC	1/12/12	\$570,325	\$16,303		\$1,031			\$587,660	3.03%	\$570,325	3.03%

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Reporting Period 1/1/12 through 1/31/12

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board
Professional Services & Grants																
Others																
Multi-District, Project, or Statewide	First Avenue Elementary School (new) New International High School Academy New Science Park HS Number 21, Victor Mravlag E.S.	GP-0005-R10	7/3/02	7	Napco Copy Graphics Center Corp.	1/6/12	\$251,397	\$18,352		\$1,226			\$270,975	7.78%	\$251,397	7.78%
Multi-District, Project, or Statewide	Fetters E.S./Lanning Square West Side H.S.	GP-0089-R09	9/2/08	20	Riker Danzig Attorneys at Law	1/25/12	\$0	\$353,705		\$23,890			\$377,595	0.00%	\$0	NA
Barneget	New Barneget High School	GP-0089-R11	8/26/08	41	Stems & Weinroth	1/30/12	\$148,910	\$232,750		\$25,396			\$407,055	173.35%	\$148,910	173.35%
Newark	West Side H.S.	NE-0008-L56	7/1/04	22	City of Newark	1/5/12	\$2,512	\$4,625		\$49			\$7,186	186.02%	\$2,512	186.02%
Newark	West Side H.S.	NE-0070-L22	4/8/10	61	PSE&G	1/5/12	\$22	\$4,611		\$236			\$4,869	22,482.69	\$22	22,482.69%
Newark	West Side H.S.		4/8/10	62	PSE&G	1/5/12	\$22	\$4,847		\$35			\$4,904	22,645.59	\$22	22,645.59%
Newark	West Side H.S.		4/8/10	63	PSE&G	1/11/12	\$22	\$4,882		\$31			\$4,935	22,788.03	\$22	22,788.03%
Newark	West Side H.S.		4/8/10	64	PSE&G	1/31/12	\$22	\$4,913		\$69			\$5,003	23,106.21	\$22	23,106.21%
Newark	West Side H.S.		4/8/10	65	PSE&G	1/31/12	\$22	\$4,982		\$110			\$5,114	23,618.46	\$22	23,618.46%
Newark	West Side H.S.		4/8/10	66	PSE&G	1/31/12	\$22	\$5,092		\$215			\$5,329	24,617.90	\$22	24,617.90%
North Warren Regional School District	North Warren Regional H.S.	G5-3743-D01	5/27/10	1	District - North Warren Regional School District	1/6/12	\$30,800	\$0		\$-19,101			\$11,699	-62.01%	\$30,800	-62.01%
Paterson	New International High School Academy	PA-0008-R04	3/1/09	14	Paterson Public Schools	1/13/12	\$177,221	\$105,072		\$15,443			\$297,735	68.00%	\$177,221	68.00%
Secaucus	Huber Street No. 3 E.S.	G5-0784-D01	3/21/03	1	District - Secaucus	1/9/12	\$418,062	\$0		\$-3,188			\$414,873	-0.76%	\$418,062	-0.76%
South Plainfield	South Plainfield M.S.	G5-3924-D01	6/7/11	1	District - South Plainfield	1/6/12	\$286,800	\$0		\$-98,863			\$187,937	-34.47%	\$286,800	-34.47%
South River	South River H.S.	G5-4536-D01	5/9/11	1	District - South River	1/31/12	\$2,477,929	\$0		\$-313,464			\$2,164,465	-12.65%	\$2,477,929	-12.65%
South River	South River H.S.	G5-4537-D01	5/9/11	1	District - South River	1/30/12	\$165,987	\$0		\$-15,763			\$150,224	-9.49%	\$165,987	-9.49%
Sussex County Vocational School District	Sussex County Tech V.S.	G5-4681-D01	6/1/11	1	District - Sussex County Voc. S.D.	1/11/12	\$52,400	\$0		\$-12,150			\$40,250	-23.18%	\$52,400	-23.18%
Tabernacle Township	Tabernacle M.S.	G5-2717-D01	7/20/05	2	District - Tabernacle Township	1/26/12	\$2,886,189	\$-686		\$201,687			\$3,087,190	6.96%	\$2,886,189	6.96%
Teaneck	Teaneck H.S.	G5-4563-D01	5/25/11	1	District - Teaneck	1/27/12	\$506,521	\$0		\$-78,481			\$428,040	-15.49%	\$506,521	-15.49%

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

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Professional Services & Grants																
Others																
Teaneck	Eugene Field High School	G5-4564-D01	2/3/11	1	District - Teaneck	1/27/12	\$184,492	\$0		\$-30,378			\$154,114	-16.46%	\$184,492	-16.46%
Trenton	Roebbling School	WT-0008-L06	2/3/04	120	PSE&G	1/26/12	\$30,574	\$15,858		\$338			\$46,770	52.97%	\$30,574	52.97%
Union City (Hudson Co.)	Columbus Elementary School (aka New ES)	HU-0012-M01	5/19/09	2	Epic Management, Inc.	1/19/12	\$1,353,617	\$0		\$229,283	Yes	12/7/11	\$1,582,900	16.93%	\$1,353,617	16.93%
Ventnor City	Ventnor E.S.	G5-2941-D01	11/17/09	1	District - Ventnor City	1/11/12	\$149,821	\$0		\$11,073			\$160,894	7.39%	\$149,821	7.39%
Ventnor City	Ventnor E.S.	G5-2943-D01	11/17/09	1	District - Ventnor City	1/11/12	\$848,988	\$0		\$71,645			\$920,633	8.43%	\$848,988	8.43%
Vernon Township	Cedar Mountain E.S.	G5-3584-D01	6/24/10	1	District - Vernon Township	1/26/12	\$153,676	\$0		\$-41,656			\$112,020	-27.10%	\$153,676	-27.10%
Washington Township - Morris	Flocktown Road E.S.	G5-3585-D01	6/15/10	1	District - Washington Township - Morris	1/3/12	\$22,158	\$0		\$-10,526			\$11,632	-47.50%	\$22,158	-47.50%
Washington Township - Morris	Old Farmers Road E.S.	G5-3587-D01	6/15/10	1	District - Washington Township - Morris	1/3/12	\$24,620	\$0		\$-6,140			\$18,480	-24.93%	\$24,620	-24.93%
Washington Township - Morris	Walter J. Kossmann E.S.	G5-3588-D01	6/15/10	1	District - Washington Township - Morris	1/3/12	\$36,930	\$0		\$-7,336			\$29,594	-19.86%	\$36,930	-19.86%
West Long Branch	Betty McElmon Elementary School	G5-4591-D01	5/3/11	1	District - West Long Branch	1/27/12	\$192,334	\$0		\$-88,346			\$103,988	-45.93%	\$192,334	-45.93%
West New York	Harry L. Bain E.S.	HU-0005-L06	11/16/06	46	PSE&G	1/5/12	\$7,568	\$7,162		\$77			\$14,807	95.65%	\$7,568	24.39%
West New York	Harry L. Bain E.S.		11/16/06	47	PSE&G	1/26/12	\$7,568	\$7,239		\$55			\$14,862	96.38%	\$7,568	25.12%
West New York	Number 3 E.S.	HU-0006-L30	3/3/04	8	United Water New Jersey	1/12/12	\$25	\$3,093		\$442			\$3,560	14,112.29%	\$25	14112.29%
West New York	Number 3 E.S.	HU-0006-L43	4/15/11	16	PSE&G	1/12/12	\$819	\$124,765		\$17,297			\$142,881	17,348.97%	\$819	17348.97%
West New York	Number 3 E.S.		4/15/11	17	PSE&G	1/26/12	\$819	\$142,062		\$9,307			\$152,188	18,485.57%	\$819	18485.57%
Woodbridge Township	Robert Mascenik E.S.	G5-4647-D01	2/14/11	1	District - Woodbridge Township	1/17/12	\$138,640	\$0		\$-4,617			\$134,023	-3.33%	\$138,640	-3.33%
Woodbridge Township	Claremont Avenue E.S.	G5-4648-D01	2/14/11	1	District - Woodbridge Township	1/17/12	\$292,404	\$0		\$-23,261			\$269,143	-7.95%	\$292,404	-7.95%
Woodbridge Township	Matthew Jago E.S.	G5-4650-D01	2/14/11	1	District - Woodbridge Township	1/17/12	\$392,392	\$0		\$-50,541			\$341,851	-12.88%	\$392,392	-12.88%
Woodbridge Township	Lafayette Estates E.S.	G5-4653-D01	2/14/11	1	District - Woodbridge Township	1/12/12	\$276,271	\$0		\$-28,128			\$248,143	-10.18%	\$276,271	-10.18%
Woodbridge Township	Mawbey Street E.S.	G5-4655-D01	2/14/11	1	District - Woodbridge Township	1/12/12	\$78,982	\$0		\$-10,019			\$68,963	-12.68%	\$78,982	-12.68%
Woodbridge Township	Pennsylvania Avenue E.S.	G5-4658-D01	2/14/11	1	District - Woodbridge Township	1/12/12	\$253,752	\$0		\$-24,231			\$229,521	-9.54%	\$253,752	-9.54%
Woodbridge Township	Port Reading E.S.	G5-4659-D01	2/14/11	1	District - Woodbridge Township	1/11/12	\$284,841	\$0		\$-25,262			\$259,579	-8.86%	\$284,841	-8.86%
Woodbridge Township	Ross Street E.S.	G5-4660-D01	2/14/11	1	District - Woodbridge Township	1/11/12	\$145,362	\$0		\$-15,573			\$129,789	-10.71%	\$145,362	-10.71%
Woodland Park	Memorial M.S.	G5-3532-D01	1/29/10	1	District - Woodland Park	1/17/12	\$530,944	\$0		\$-2,263			\$528,681	-0.42%	\$530,944	-0.42%

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Professional Services & Grants																
Others																
Woodland Park	Memorial M.S.	G5-3972-D01	1/20/10	1	District - Woodland Park	1/18/12	\$262,893	\$0		\$-87,631			\$175,262	-33.33%	\$262,893	-33.33%
Others																
Professional Services & Grants										\$-729,668						

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Reporting Period 1/1/12 through 1/31/12

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board
Construction Services																
Contractor																
Egg Harbor Township	Egg Harbor Township H.S.	ET-0087-C01	6/18/08	50	Tamburro Bros. Const. Co., Inc	1/23/12	\$16,990,000	\$629,867		\$4,968			\$17,624,835	3.73%	\$16,990,000	3.73%
Egg Harbor Township	Egg Harbor Township H.S.		6/18/08	51	Tamburro Bros. Const. Co., Inc	1/23/12	\$16,990,000	\$634,835		\$3,237			\$17,628,072	3.75%	\$16,990,000	3.75%
Egg Harbor Township	Egg Harbor Township H.S.	ET-0087-C02	10/16/08	78	Sambe Construction Co., Inc.	1/19/12	\$26,172,173	\$1,123,082	10/23/09	\$746			\$27,296,001	4.29%	\$26,172,173	2.94%
Egg Harbor Township	Egg Harbor Township H.S.		10/16/08	160	Sambe Construction Co., Inc.	1/19/12	\$26,172,173	\$1,123,828	10/23/09	\$4,261			\$27,300,262	4.31%	\$26,172,173	2.95%
Egg Harbor Township	Egg Harbor Township H.S.		10/16/08	199	Sambe Construction Co., Inc.	1/19/12	\$26,172,173	\$1,128,089	10/23/09	\$6,737			\$27,306,999	4.33%	\$26,172,173	2.98%
Gloucester City	Gloucester City Jr. Sr. H.S.	ST-0019-C03	2/1/05	54	Network Construction Co., Inc.	1/11/12	\$25,679,372	\$1,330,344	10/23/09	\$21,900			\$27,031,616	5.26%	\$25,679,372	0.09%
Irvington Township	Union Avenue M.S.	EP-0050-C01	6/23/11	3	Sunnyfield Corporation	1/19/12	\$1,063,000	\$-165		\$-50,000			\$1,012,835	-4.71%	\$1,063,000	-4.71%
Paterson	Don Bosco Academy	EP-0059-C01	6/29/11	3	Catcord Construction Co., Inc.	1/19/12	\$303,993	\$12,842		\$2,995			\$319,830	5.20%	\$303,993	5.20%
Paterson	Don Bosco Academy		6/29/11	4	Catcord Construction Co., Inc.	1/19/12	\$303,993	\$15,837		\$24,633			\$344,463	13.31%	\$303,993	13.31%
Perth Amboy	Early Childhood Center II	ET-0024-C01	5/24/07	85	TAK Construction, Inc.	1/19/12	\$13,274,000	\$2,487,597	12/15/09	\$-175,317	Yes	9/7/11	\$15,586,280	17.41%	\$13,274,000	0.16%
Perth Amboy	Early Childhood Center II		5/24/07	86	TAK Construction, Inc.	1/19/12	\$13,274,000	\$2,312,280	12/15/09	\$-97,725	Yes	9/7/11	\$15,488,555	16.68%	\$13,274,000	-0.57%
Union City (Hudson Co.)	Columbus Elementary School (aka New ES)	HU-0012-C01	9/25/09	28	Chanree Construction Co Inc	1/19/12	\$25,276,828	\$815,194		\$2,767			\$26,094,789	3.23%	\$25,276,828	3.23%
Contractor																
Construction Services																
										\$-250,799						

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

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District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Prior Board Approval Date	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %	RBC Value	Cumulative % since last Board
Other Contracts & Services																
Furniture, Fixtures & Equipment																
Egg Harbor Township	Egg Harbor Township H.S.	ET-0087-Q17	4/29/10	2	Hausmann Industries, Inc.	1/10/12	\$9,572	\$0		\$154			\$9,726	1.61%	\$9,572	1.61%
Furniture, Fixtures & Equipment																
Other Contracts & Services										\$154						

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NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)

Reporting Period 1/1/12 through 1/31/12

Total Change Order Summary

Total Change Orders

Grand Totals

\$-980,303

105

Column Description Legend

CO Execution Date	Date the Change Order was entered into the SIMS system
Revised Contract Amount	Current value of the contract (excluding additional assignments) including current change order
Cumulative CO %	Cumulative percentage change in contract value (excluding additional assignments) over the original contract award amount
RBC Value	Revised Basis Contract Value – This value is the Original Award amount for contracts executed after July 27, 2005 or contracts for which board approval has been required after July 27, 2005. Otherwise, this value is the contract value as of July 27, 2005.
Cumulative % since last Board Approval	Cumulative percentage change in contract value since either the later of July 27, 2005 or last board action date over the RBC Value. If the current change order received approval prior to July 27, 2005 this value is not applicable.

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CONTRACT TERMINATIONS REPORT (NO ACTIVITY)

SETTLEMENT CLAIMS

Settled Claims Log

Contract #	School Name	Claimant	Type of Claim	Settlement Date	Claim Amount (Per SDA Form 505)	Settlement
ET-0065-C01	Dunfee/Collins Horbelt ES	Hessert Corp.	OCIP Admin. Work	5/2/2011	\$95,368	\$38,000
ET-0065-C01	Dunfee/Collins Horbelt ES	Hessert Corp.	Inconsistencies in Haunched Footing Design	5/2/2011	\$20,271	\$0
ET-0065-C01	Dunfee/Collins Horbelt ES	Hessert Corp.	2nd Shift Work on Dunfee ES	5/2/2011	\$55,948	\$41,367
ET-0064-C01	Donohue ES	Hessert Corp.	Delays assoc. w/design changes	5/2/2011	\$236,204	\$148,650
ET-0064-C01	Donohue ES	Hessert Corp.	Asphalt material escalation	5/2/2011	\$42,465	\$0
ET-0064-C01	Donohue ES	Hessert Corp.	Detention basin design	5/2/2011	\$29,378	\$29,378
CA-0001-C02	Camden ECDC	Henderson Corp.	Re-routing of Fire Sprinkler Piping	5/5/2011	\$44,528	\$23,320
ET-0049-C02	Emerson ES	TAK Construction	Add'l Costs - Design and Dimension Conflicts	5/5/2011	\$78,394	\$37,343
WT-0008-C05	Roebbling ES	Cobra/CAP	Demolition/Environmental remediation	5/11/2011	\$2,389,000	\$329,458
PM-0022-P01	Egg Harbor City MS	Greyhawk	Scheduling Assistance	9/12/2011	\$35,234	\$11,600
PM-0022-P01	Egg Harbor City MS	Greyhawk	Delay/Extended Services	9/12/2011	\$280,415	\$115,280
PM-0022-P01	Egg Harbor Twp HS	Greyhawk	Scheduling Assistance	9/12/2011	\$36,462	\$12,640
PM-0022-P01	Egg Harbor Twp HS	Greyhawk	Delay/Extended Services	9/12/2011	\$428,972	\$210,480
HU-0015-C01	West New York PS #2	D&K Construction	Settlement of 33 CO's and 9 claims	9/21/2011	\$4,284,386	\$977,000
PA-0026-M01	Madison Ave/Clemente	Jay Shapiro Assoc	Add'l Contract Svcs/Extended Svcs	12/21/2011	\$89,881	\$50,002
ET-0065-C02	Horbelt/Dunfee/Collins	AFG Group	Extended CM Services	12/21/2011	\$12,523	\$9,393
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Over-dig of soils	12/27/2011	\$44,290	\$20,079
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Extended General conditions	12/27/2011	\$104,900	\$0
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Shear Wall Reinforcing	12/27/2011	\$35,103	\$11,901
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Add'l Surveying costs	12/27/2011	\$12,098	\$0
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Upgrades to Window systems	12/27/2011	\$69,892	\$0
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Media Center soffits	12/27/2011	\$19,489	\$12,341
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Roof Insulation Increase	12/27/2011	\$40,425	\$0
EL-0008-C01-RB1	Elizabeth #30	Bergen Eng.	Temporary Heating	12/27/2011	\$30,304	\$15,655
EL-0008-C03	Elizabeth #30	Bergen Eng.	Additional Paving Costs	12/27/2011	\$4,853	\$0
			TOTAL FOR 2012		\$8,520,782	\$2,093,886

CONTRACTOR AND WORKFORCE COMPLIANCE



STATE OF NEW JERSEY

SCHOOLS DEVELOPMENT AUTHORITY

1 WEST STATE STREET
P.O. BOX 991
TRENTON, NJ 08625-0991
609-943-5955

MEMORANDUM

TO: Members of the Authority

FROM: Karon Simmonds /s/ Karon Simmonds
Director Risk Management and Vendor Services
Office of the Chief Financial Officer

DATE: March 7, 2012

SUBJECT: Contractor and Workforce Compliance Monthly Update

SMALL BUSINESS ENTERPRISE (SBE) COMPLIANCE REVIEW

Project Approvals:

Two emergent construction projects were verified to be compliant with SBE requirements by the Contractor Compliance Coordinator.

Vendor Services staff continues to participate at mandatory pre-bid and pre-construction meetings to instruct and inform bidders regarding SDA's SBE goals, policies and procedures, including:

- Small Business Enterprise subcontracting goal of 25% of all contracts
- County workforce goals for minorities and females
- Detailed process procedures to monitor and track the progress made toward these goals throughout the life cycle of each project

At these meetings, general contractors are strongly encouraged to identify and hire minority-owned and women-owned firms, as well as locally-based enterprises, for diverse business participation on all school building projects. Additional outreach strategies are discussed and utilized.

SMALL BUSINESS ENTERPRISE (SBE) COMPLIANCE MONITORING

The SDA regularly exceeds the State-mandated 25% SBE goal. The figures below demonstrate compliance with this requirement.

SBE Breakdown

The total SDA contract dollars awarded from January 1 through December 31, 2011 was \$8,328,399.97.

- The total contract dollars awarded to all SBE contractors (January 1 through December 31, 2011), was \$6,563,515.05 (including minorities and women). This represents 78.81% of all SDA contracts.

Members of the Authority
 Contractor and Workforce Compliance Monthly Update
 March 7, 2012
 Page 2 of 3

Type of Business Enterprise	Contract Amount	% of Total SDA Contracts
Small Business Enterprises	\$5,811,693.05	69.78%
Small Minority Business Enterprises	\$735,822.00	8.84%
Small/Women Business Enterprises	\$16,000.00	0.19%
Small/Minority/Women Business Enterprises	\$-0-	0.00%
TOTAL SBE CONTRACTS	\$6,563,515.05	78.81%

Ethnic Breakdown

The total SBE contracts awarded with minority participation was \$735,822.00 equaling 8.84% (includes S/MBEs and S/M/WBEs as shown below).

Ethnicity	Contract Amount	Percentage
American Indian	\$0	0.00%
Asian	\$135,000.00	1.62%
Black	\$600,822.00	7.21%
Hispanic	\$0	0.00%
Total	\$735,822.00	8.84%

WORKFORCE COMPLIANCE MONITORING

For the month of December, 2011 there was a contractor workforce of 189 on SDA projects. This represents a total of 11,352 contractor workforce hours as follows:

Contractor Workforce Breakdown (All Trades/Districts/Counties)			
*Ethnicity	Total Workforce	Total Workforce Hours	Workforce Hours Percentage
Black	32	1,319	10.20%
Hispanic	59	2,078	16.06%
American Indian	0	0	0.00%
Asian	5	147	1.14%
*Total Minority Participation	96	3,843	29.75%
*Total Non-Minority Participation	163	9,093	70.25%
Total Female Participation	2	117	1.03%

*Contractor workforce, workforce hours, and ethnicity do not include female participation.

Members of the Authority
 Contractor and Workforce Compliance Monthly Update
 March 7, 2012
 Page 3 of 3

There was a contractor workforce of 183,972 total workforce hours and 1,613 total female workforce hours on SDA projects for the period of January 1, 2011 through December 31, 2011. The following table highlights the Local County contractor workforce participation for that period:

Local County Workforce Participation	Workforce Hours	Percentage
*Total Workforce Hours	185,585	100.00%
*Total Local County Workforce Hours	19,775	10.64%
Total Local County Non-Minority Workforce Hours	11,945	6.44%
Total Local County Female Workforce Hours	157	0.08%
Total Local County Minority Workforce Hours	7,673	4.13%
**Local County Workforce Hours by Ethnicity:		
Black	2,796	1.51%
Hispanic	4,877	2.63%
America Indian	0	0.00%
Asian	0	0.00%

*Total workforce and total local county workforce represent all laborers including females

**Minority breakdown represents Black, Hispanic, American Indian, and Asian laborers. Minority female laborers are captured as female laborers only and are not included in the minority breakdown.

The following table represents contractor and female workforce for all SDA active capital projects and all active and completed emergent projects for the period of January 1, 2011 through December 31, 2011.

SDA Managed Project	Total Workforce Hours	Local County Workforce Hours & Percentage	
Camden Morgan Village M.S.	23,648	871	3.68%
Elizabeth Victor Mravlag E.S.	9,473	1727	18.23%
Lincoln Avenue E.S.	0	0	0.00%
Passaic City E.S. at Henry St.	7	7	100.00%
ECC Leonard Place/ Madison	2,609	0	0.00%
Pemberton ECC	16,632	1,906	11.46%
Union City Columbus E.S.	60,280	2,243	3.72%
West New York Number 3 E.S.	6,553	359	5.48%
Egg Harbor Township H.S.	14,900	1,836	12.32%
Mildred B.Garvin	0	0	0.00%
All Emergent Projects (YTD)	50,301	7,356	14.62%
Totals	184,423	16,305	8.84%

Prepared by: Lorena Young, Contractor Compliance Analyst
 Nicholas Torrens, Vendor Analyst

REGULAR OPERATING DISTRICTS (RODs) ACTIVITY REPORT



STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director

DATE: March 7, 2012

SUBJECT: Regular Operating District Grant Activity Report
(For Informational Purposes Only)

This report summarizes the Regular Operating District Grant activity from inception to date and for the month of January 2012. Also included is a detailed list of grants executed and grants offered during the reporting period.

Monthly Update:

- 1 new grant was offered during the reporting period representing total project costs of \$114k and estimated state share of \$45k.
- 3 grants impacting 1 district were executed during the reporting period representing total estimated project costs of \$31.1M and estimated state share of \$8.5M.
- 36 grants impacting 24 districts were closed out during the reporting period representing \$35.8M in total project costs and state share of \$12.4M.
- Since inception, over \$2.1B has been disbursed to over 500 regular operating districts through the grant program.
- Since inception \$2.9B in funding has been approved by the Department of Education and offered to regular operating districts through the grant program.



Monthly Regular Operating District Grant Report - Summary

As of 1/31/2012

ROD Grant Summary Since Program Inception				
	Offered ¹	Executed	Closed-Out	Active
Districts Impacted	167	502	449	281
Number of Grant Projects	664	3,797	2,600	1,197
Total Project Cost Estimate	\$ 816,276,557	\$ 7,971,514,616	\$ 5,586,801,480	\$ 2,384,713,136
Grant Amount	\$ 289,693,661	\$ 2,577,406,328	\$ 1,785,761,225	\$ 791,645,103
Amount Disbursed	N/A	\$ 2,198,608,412	\$ 1,785,761,225	\$ 412,847,187

Total Funding Offered to School Districts via Grant Program	\$ 2,867,099,989
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Total ROD Grant Funding remaining for new Grant Projects	\$ 333,757,446
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1. Includes grants that have been offered to District's but have not yet been executed.

ROD Grant Summary - January 2012		
	Executed	Closed-Out
Districts Impacted	1	24
Number of Grant Projects	3	36
Total Project Cost Estimate	\$ 31,122,450	\$ 35,776,707
Grant Amount	\$ 8,463,401	\$ 12,371,588
Amount Disbursed	\$ -	\$ 12,371,588

* Report is inclusive of all Regular Operating Districts grants (including vocational school districts)

** Total Project Cost Estimate and Grant Amount may be adjusted as the projects advance. Grant Amount is capped at the value approved in the DOE Final Eligible Cost Approval.

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY - Monthly Reports (For Informational Purposes)



Monthly Regular Operating District Grant Report - Monthly Executed Grant Detail

January 2012

County	District	School Name	Total Project Cost Estimate	Grant Amount	Project Description
Gloucester	Kingsway Regional High	Kingsway Regional H.S.	\$ 15,388,625	\$ 4,375,608	Addition with (17) classrooms, (2) LGI rooms, cafeteria expansion, music room, and media center expansion; Renovation of PE and administration areas.
Gloucester	Kingsway Regional High	Kingsway Regional M.S.	\$ 10,383,813	\$ 2,866,467	Addition with (16) classrooms, (1) OT/PT room, (1) art room, (1) auxiliary gym with entrance, stage, PE classroom, and cafeteria seating expansion. Renovations include main office area, nurses suite, guidance offices, IMC computer room, (2) SGI rooms, stage, kitchen serving line, and (2) Locker rooms; All finishes and building systems in these renovated areas will be modified and upgraded as required.
Gloucester	Kingsway Regional High	Kingsway Regional M.S.	\$ 5,350,012	\$ 1,221,326	Construct new 14,583 SF Auxiliary Gym including toilet rooms and PE classroom. Renovations of (2) existing classrooms, (2) locker rooms, (2) PE Offices and required bldg. upgrades.
Grand Total		Grants Executed - 3	\$ 31,122,450	\$ 8,463,401	

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Monthly Regular Operating District Grant Report - Monthly Offered Grant Detail

January 2012

County	District	School Name	Total Project Cost Estimate	Grant Amount	Project Description
Ocean	Tuckerton Borough	Tuckerton E.S.	\$ 113,670	\$ 45,468	Rehabilitation: Installation of CCTV security system.
Grand Total		Grants Offered - 1	\$ 113,670	\$ 45,468	

**NOTIFICATION OF AMENDMENTS TO GOODS AND SERVICES CONTRACTS NOT EXCEEDING \$250,000
(NO ACTIVITY)**

COMMUNICATIONS MONTHLY REPORT

**MEMORANDUM**

TO: Members of the Authority

FROM: /s/ Kristen MacLean, Director of Communications

DATE: March 7, 2012

SUBJECT: New Jersey Schools Development Authority
Monthly Communications Report

Governor Christie Announces 2012 Project Portfolio Recommendations

On February 15, Governor Chris Christie announced the recommendation of twenty new capital school construction projects in eighteen SDA Districts. The announcement of this year's projects, made at West New York Memorial High School, continue the comprehensive reform measures implemented by Governor Christie and the Authority last February. The twenty projects set to advance in 2012 are divided into three categories addressing: 1) high educational priority needs – representing an estimated state investment of almost \$675 million, 2) high educational priority needs that require further discussions with the District and 3) serious facility deficiencies.

The reforms implemented in 2011 which continues to be shown in the 2012 plan, reflects a commitment to the efficient and proper use of public funds, an objective prioritization of statewide educational needs and the advancement of sound design and construction principles. The Governor's announcement has generated more than 35 news articles to date.

Authority Announces Site Demolition and Remediation at Caruso Elementary School

The SDA recently announced the commencement of site demolition and remediation at Caruso Elementary School and VFW Building in Keansburg.

A \$870,000 general construction contract was awarded for site demolition and remediation work to Tricon Enterprises, Inc. of Keyport, NJ. Work began at the former Caruso Elementary School site in early February 2012 and is anticipated to be completed during early Summer 2012.

Members of the Authority
Communications Report
March 7, 2012
Page 2 of 2

Black History Month Celebration

On February 23, CEO Marc Larkins and Chief of Staff Jason Ballard joined Senator Sandra Cunningham (D-31) at the 5th Annual “Man in the Mirror” Black History Month Celebration at the Glenn Cunningham Early Childhood Center in Jersey City.

The Senator presented resolutions to the honorees – Calvin Hart, President of the Jersey City NAACP, Donald Ridley, Director of Security at Jersey City Public Schools and Rhudell Snelling, Jr. of the Jersey City Police Department. She also presented the Glenn D. Cunningham Community Service Award to Shirley Benekin.

Report Prepared by: Andrea Pasquine

MONTHLY FINANCIAL REPORT

STATE OF NEW JERSEY
SCHOOLS DEVELOPMENT AUTHORITY1 WEST STATE STREET
P.O. BOX 991
MANTON, NJ 08625-0991
609-943-5955**MEMORANDUM**

TO: The Members of the Authority

FROM: Sherman E. Cole, CPA /s/ Sherman E. Cole
Controller

RE: Monthly Financial Report – December 2011

DATE: March 7, 2012

The Office of the Chief Financial Officer is providing the attached monthly financial report to the Members of the Authority for their information. Included on pages 1 and 2 of this report is a “Financial Summary” of the Authority’s activities for the year. On pages 3 and 4 of the report is a summary of the Authority’s operating expenditures and headcount information. The basic financial statements and cash flow report follow. **This information is subject to change due to our year-end financial statement audit.**

Authority Operating Expenses (Actual vs. Budget)

For the December 2011 year to date period, Authority operating expenses total \$35.7 million which is **\$11.6 Million lower** than budget for the corresponding period. The variation of actual expenses versus budget is mainly due to:

- Personnel Expense has a **\$6.4M** positive variance because; 1) the Authority is currently 55 FTEs under budget, \$5.9M, and 2) changes in policy have resulted to a cost savings of \$524K for business travel, temporary staffing, and employee training;
- Contract and Professional Outside Services has a **\$3.6M**, positive variance because; outside legal services and claims have been reclassified to project expenditures, \$2.7M, and interagency DAG services, internal audit fees, capital planning grant activity, and other professional services have not occurred in 2011 as anticipated, \$832K;
- Management Information System, **\$1.5M**, the DOE Long Range Facility Project will take place in 2012, \$1.2M. Overall spending reductions for system maintenance, software & hardware, and external services \$300K.

The Members of the Authority
March 7, 2012
Page 2

Authority Operating Expenses (Actual vs. Prior Year)

For the December 2011 year to date period, Authority operating expenses (\$35.7 million) have **decreased \$8.6M** as compared to the corresponding prior year. The decrease in expenses year-over-year is due to:

- Personnel Expense has a **\$5.9M** positive variance due to; 1) 49 fewer FTEs, which resulted to a \$5.2M reduction in payroll expense, 2) recognized cost savings of \$700K due to policy changes for temporary staffing, employee parking, business travel, and training & development;
- Contract and Professional Outside Services **\$1.9M positive** variance is due to; 1) reclassification of outside legal services and claims, \$1.5M, and 2) internal audit projects have not taken place in 2011 as anticipated, \$247K;
- General Office **\$710K** – primarily due to the 2010 Newark office lease termination.

School Facilities Project Expenditures (Actual vs. Prior Year)

For the December 2011 year to date period, project expenditures totaled \$174 million, which is **\$109 million lower** than the project expenditures for the corresponding prior year. The variance is associated with a decrease in construction work and related project cost \$128M, offset by a \$19M increase in grant activity.

Other

Since program inception, 65.2% of the funds authorized for the SDA Districts have been disbursed. Additionally, since inception, 96% of all SDA disbursements relate to school facilities projects and 4% relate to program administrative and general expenses. For the current year, program administrative and general expenses comprise about 16.7% of total disbursements.

Attachment



**New Jersey Schools Development Authority
Monthly Financial Report**

December 2011

(Unaudited)

(Preliminary - Subject to Year End Audit)



New Jersey Schools Development Authority
 Financial Summary
 December 31, 2011

To: The Audit Committee

From: Sherman E. Cole, Controller

The following unaudited financial statements (pages 5 & 6) and supplementary information is presented as of, and for the year-to-date ending, December 31, 2011.

Selected Financial Information:

► Overall **Cash and Cash Equivalents** has decreased by \$209 million to \$362 million, as follows:

■ Receipt of bond and note proceeds (Issued by EDA)	\$ -
■ Investment earnings	546,039
■ Miscellaneous revenue	316,761
■ Project costs	(173,991,754)
■ SDA operating expenses	(34,509,603)
■ SDA capital expenditures	(26,142)
■ Deposits (primarily district local shares)	(1,490,714)
Net Change in Cash	<u>\$ (209,155,413)</u>

► **Prepaid Expenses** total \$965,346 as follows:

- Prepaid insurance of \$589,724.
- Prepaid rents of \$172,845 for the Authority's leased office space in Trenton and Newark.
- Prepaid MIS maintenance service contracts of \$182,414.
- Prepaid security deposits of \$10,937 for the Authority's leased swing space.
- Other prepaids of \$9,426.

► **Capital Assets** total \$1.5 million (net of accumulated depreciation of \$12.3 million), consisting of leasehold improvements (SDA offices), capitalized software, equipment, furniture and fixtures in support of SDA operations. Depreciation on capital assets is calculated using the straight-line method over the life of each asset. For the year to date, **Capital Expenditures** are \$26,142 and **Depreciation Expense** is \$1,031,909.

► **Accrued Liabilities** total \$175.4 million, as follows:

- Accrued project costs of \$64.2 million consisting of unpaid invoices (\$52.2 million); retainage (\$12.1 million).
- Pollution remediation obligations (PRO) under GASB 49 net to \$37.9 million (PRO liability \$40.4 million, offset by expected cost recoveries of \$2.5 million).
- Estimated liability for loss contingencies totaling \$62.1 million (contractor claims \$62.1 million).
- Payroll related liabilities of \$1.3 million.
- Post-employment benefits obligation of \$9.6 million.
- Other accrued liabilities of \$3 million.

► **Deposits** total \$11.2 million, as follows:

- \$11.1 million is held for local share agreements (pass-through item).
- \$0.1 million is for bond refunding costs & other deposits (pass-through item).

(Continued on Next Page)



New Jersey Schools Development Authority
Financial Summary
December 31, 2011

Financial Summary (Continued)

School Construction Highlights:

▶ **Bond Proceeds & School Facilities Project Disbursements**

- During the current year to date, the SDA has received \$0 bond and note proceeds. The total amount of proceeds received from program inception is \$8.645 billion.
- Project disbursements for the month and year-to-date periods total \$16.1 million and \$174 million, respectively, as follows:

<u>Category</u>	<u>Month</u>	<u>Year-To-Date</u>	<u>From Inception</u>
■ Construction Contracts	\$ 3,515,769	\$ 44,494,078	\$ 3,674,631,378
■ Grant Agreements	9,836,538	98,144,129	2,269,870,097
■ Site Acquisition Contracts	2,733,092	8,766,786	567,096,233
■ Demonstration Projects	396,234	11,149,579	629,550,895
■ Project Management & Construction Management Firms	620,744	1,152,644	421,443,034
■ Design/Architect Contracts	65,068	2,615,901	392,414,462
■ Project Insurance	(1,836,127)	1,875,313	96,499,212
■ School Furniture & Technology Purchases	337,645	4,725,089	107,125,621
■ Interagency Agreements	130,274	1,088,298	44,690,166
■ Temporary Classroom Units (SDA owned)	-	-	34,157,261
■ Funding Agreements	-	121,224	29,475,950
■ Outside Legal & Claims Consulting Services	284,006	1,039,201	1,039,201
■ Other Project Costs	-	32,408	55,818,570
■ Project Credits	-	(4,834)	(40,146,574)
Total Project Disbursements	16,083,243	175,199,816	8,283,665,506
■ Less: Local Share Disbursements	(5,221)	(1,208,062)	(172,829,783)
Total Project Disbursements - State Share	\$ 16,078,022	\$ 173,991,754	\$ 8,110,835,723
■ Invoice Accruals at Month End (not included above)	\$ 52,177,734	\$ 52,177,734	

▶ **Program Funding & Disbursements Allocation** (From Inception)

	<u>Bonding Cap</u> ¹	<u>Available Funding</u> ²	<u>Paid to Date</u> ³	<u>% Paid to Date</u>
■ SDA Districts	\$ 8,900,000,000	\$ 9,006,357,884	\$ 5,869,591,060	65.2%
■ Regular Operating Districts	3,450,000,000	3,492,672,553	2,479,593,511	71.0%
■ Vocational Schools	150,000,000	151,705,102	95,361,810	62.9%
Totals - State Share	\$ 12,500,000,000	\$ 12,650,735,539	\$ 8,444,546,381	66.8%

▶ **Procurement Activity** (Current Year)

- 14 construction contract has been awarded with an aggregate contract value of \$8,126,770.
- 4 design contracts were awarded with an aggregate contract value of \$201,630 (CCE \$299,197).
- 2 design contract previously suspended has been restarted during 2011.
- 349 Section 15 Grant Agreements have been executed with an aggregate contract value of \$90,686,436 (State Share - Non-SDA Districts).
- 88 purchase orders have been issued for school furniture & technology (i.e., computers & related equipment) purchases with an aggregate contract value of \$3,797,498.

¹ Of the \$12.5 billion authorized for the school construction program, \$8,645,129,000 principal amount of bond and note proceeds have been received to date.

² Includes bonding cap amounts as well as other income and miscellaneous revenue earned to date, consisting primarily of interest income on invested funds and State appropriations.

³ These amounts include the allocation of SDA operating expenses and capital expenditures totaling \$333,710,658.



New Jersey Schools Development Authority
Flash Operating Report
December 31, 2011

	Year-To-Date Actual	Year-To-Date Budget	Year-To-Date Prior Yr	Variance - Favorable/(Unfavorable)		Annual Budget	Current Budget Reforecast
				Actual vs. YTD Budget	Actual vs. Prior Yr		
Authority Operating Expenses:							
Salaries	\$ 19,904,178	\$ 23,550,466	\$ 23,961,013	\$ 3,646,288	\$ 4,056,835	\$ 23,550,466	\$ 20,017,674
Employee Benefits	10,737,172	13,006,798	11,881,395	2,269,626	1,144,223	13,006,798	12,547,173
Total Salaries & Benefits	30,641,350	36,557,264	35,842,408	5,915,914	5,201,058	36,557,264	32,564,847
Temporary Employees	-	150,000	264,397	150,000	264,397	150,000	50,000
Interagency Agreements	263,904	623,000	315,409	359,096	51,505	623,000	294,236
Outside Legal & Claims Consulting Services (a)	-	2,741,000	1,518,557	2,741,000	1,518,557	2,741,000	-
Other Contract & Professional Outside Services	122,027	595,000	404,330	472,973	282,303	595,000	483,550
Employee Expense Reimbursements	9,473	243,298	184,258	233,825	174,785	243,298	15,000
Training & Professional Development	28,635	158,109	78,234	129,474	49,599	158,109	60,000
Parking	54,960	63,000	296,968	8,040	242,008	63,000	55,320
Automobiles	61,311	72,200	72,738	10,889	11,427	72,200	72,200
Communications & Outreach	232	14,704	9,375	14,472	9,143	14,704	10,000
Management Information Systems	931,328	2,410,000	1,113,900	1,478,672	182,572	2,410,000	2,420,000
General Office & Facilities	3,573,311	3,660,485	4,216,477	87,174	643,166	3,660,485	3,681,131
Other General	12,330	13,300	15,482	970	3,152	13,300	13,300
Total Authority Operating Expenses	35,698,861	47,301,360	44,332,533	11,602,499	8,633,672	47,301,360	39,719,584
Reserve for Unforeseen Events & New Initiatives	-	125,000	-	125,000	-	125,000	125,000
SDA Capital Expenditures (Internal)	26,142	-	52,379	(26,142)	26,237	-	-
Total Authority Operations	\$ 35,725,003	\$ 47,426,360	\$ 44,384,912	\$ 11,701,357	\$ 8,659,909	\$ 47,426,360	\$ 39,844,584

(a) Effective January 1, 2011, costs for outside legal & claims consulting services, \$1,039,201, (related to projects) are accounted for in School Facilities Project Costs (see page 2).

(Continued on Next Page)



New Jersey Schools Development Authority
Flash Operating Report
December 31, 2011

Flash Operating Report (Continued)

SDA Headcount by Division/Unit	Current Month	EOY Budget	Variance
Office of Chief Executive Officer (CEO)	3	3	-
COS, Program Assessment & Development	7	10	3
COS, Special Projects	12	11	(1)
Program Operations, Program Operations Management	6	4	(2)
Program Operations, Capital Planning & Grants Admin.	26	22	(4)
Program Operations, Safety	10	11	1
Program Operations, Project Teams	77	110	33
Corp Governance & Operations, Management	3	3	-
Corporate Governance & Operations, Human Resources	10	11	1
Corporate Governance & Operations, Chief Counsel	12	11	(1)
Corporate Governance & Operations, MIS/Project Services	15	24	9
Corporate Governance & Operations, Facilities	6	6	-
Corporate Governance & Operations, Communications	10	17	7
Financial Operations, CFO Management	4	3	(1)
Financial Operations, Controller	12	13	1
Financial Operations, Contract Management	14	16	2
Financial Operations, Real Estate Services	7	9	2
Financial Operations, Procurement & Contract Services	9	14	5
Financial Operations, Risk Management & Vendor Services	12	12	-
Total Full-Time Employees	255	310	55
EOM Budget	310		



New Jersey Schools Development Authority
Statement of Net Assets and General Fund Balance Sheet
December 31, 2011

			Statement of Net Assets	
	<u>General Fund Total</u>	<u>Adjustments</u>	<u>Current Yr</u>	<u>Prior Yr End</u>
ASSETS				
Cash and Cash Equivalents	\$ 362,471,682		\$ 362,471,682	\$ 571,627,095
Receivables	1,859,544	\$ 583,260	2,442,804	724,780
Prepaid Expenses	965,346		965,346	881,075
Capital Assets (Net of Accumulated Depreciation of \$12,346,638)		1,469,503	1,469,503	2,475,270
Total Assets	\$ 365,296,572	\$ 2,052,763	\$ 367,349,335	\$ 575,708,220
LIABILITIES				
Accrued Project Costs	\$ 64,219,241	\$ 99,991,981	\$ 164,211,222	\$ 183,255,070
Accrued Other Post-Employment Benefits Obligation		9,545,523	9,545,523	7,665,153
Other Accrued Liabilities	622,437	1,012,091	1,634,528	2,439,875
Deposits	11,153,524		11,153,524	12,644,238
Total Liabilities	75,995,202	110,549,595	186,544,797	206,004,336
FUND BALANCE/NET ASSETS				
Invested in Capital Assets		1,469,503	1,469,503	2,475,270
Nonspendable:				
Prepaid Expenses	965,346	(965,346)		
Restricted:				
Schools Construction Build America Bond Program	258,299,957		258,299,957	345,002,960
Schools Construction Special Revenue Fund	30,036,067	(109,000,989)	(78,964,922)	22,225,654
Total Fund Balance/Net Assets (Deficit)	289,301,370	(108,496,832)	180,804,538	369,703,884
Total Liabilities and Fund Balance/Net Assets	\$ 365,296,572	\$ 2,052,763	\$ 367,349,335	\$ 575,708,220



New Jersey Schools Development Authority
Statement of Activities and General Fund Revenues, Expenditures and Changes in Fund Balances
December 31, 2011 Year-To-Date

	<u>General Fund Total</u>	<u>Adjustments</u>	<u>Statement of Activities</u>	
			<u>Current Yr</u>	<u>Prior Yr</u>
Revenues				
Program Revenues:				
Bond and Note Proceeds (Issued by EDA)	\$ -		\$ -	\$ 499,200,000
Bidding Fees-Plans & Specs	4,579		4,579	725
General Revenues:				
Investment Earnings	546,039		546,039	1,299,175
Rental Income	309,298		309,298	(72,964)
Other Revenue-OPRA	2,884		2,884	3,274
Total Revenues	<u>862,800</u>	<u>-</u>	<u>862,800</u>	<u>500,430,210</u>
Expenditures/Expenses				
Employee Salaries & Benefits	28,680,243	\$ 1,961,107	30,641,350	35,842,408
Administrative & General Expenses	5,057,511		5,057,511	8,490,125
Capital Expenditures	26,142	(26,142)	-	-
Capital Depreciation		1,031,909	1,031,909	1,307,989
School Facilities Project Costs	150,738,774	2,292,602	153,031,376	274,583,882
Total Expenditures/Expenses	<u>184,502,670</u>	<u>5,259,476</u>	<u>189,762,146</u>	<u>320,224,404</u>
Excess of Revenues Over Expenditures	(183,639,870)	(5,259,476)		
Change in Net Assets			(188,899,346)	180,205,806
Fund Balance/Net Assets (Deficit)				
Beginning of Year	<u>472,941,240</u>	<u>(103,237,356)</u>	<u>369,703,884</u>	<u>189,498,079</u>
End of Period	\$ <u>289,301,370</u>	\$ <u>(108,496,832)</u>	\$ <u>180,804,538</u>	\$ <u>369,703,885</u>



New Jersey Schools Development Authority
Summary of Cash Receipts & Disbursements
From Inception through December 31, 2011

Cash Receipts - State Share

Cash Disbursements - State Share

Year	Principal Amount ¹ Bond Proceeds	Appropriations ² from State	Investment Earnings	Miscellaneous ³ Revenue	Project Costs	Operating Expenses	Gross Capital ⁴ Expenditures	Deposits ⁵	Totals
2000	-	\$1,510,975	\$5,013	-	-	\$639,406	\$1,150	-	\$875,432
2001	\$508,600,000	47,125,988	18,862,686	\$10	\$18,967,828	6,705,756	1,735,148	-	547,179,952
2002	629,400,000	(43,500,000)	9,991,010	221,897	460,970,915	11,318,973	1,440,184	\$11,453,239	133,836,074
2003	607,929,000	-	5,488,373	305,596	1,096,480,983	19,983,448	7,609,761	13,612,751	(496,738,472)
2004	1,700,000,000	-	8,098,130	356,167	1,289,801,167	28,882,347	844,489	6,299,119	395,225,413
2005	2,075,000,000	-	17,472,686	638,597	1,332,923,106	27,460,855	194,394	53,393,712	785,926,640
2006	600,000,000	-	39,701,591	446,994	1,069,330,378	30,483,062	349,158	(9,559,780)	(469,573,793)
2007	800,000,000	-	28,304,347	541,065	890,787,821	35,055,800	572,252	(24,223,201)	(121,793,662)
2008	450,000,000	-	13,584,070	837,796	880,936,507	39,760,922	940,178	12,538,723	(444,677,018)
2009	775,000,000	-	2,197,675	260,902	613,756,613	43,258,213	243,801	(40,375,956)	79,823,994
2010	499,200,000	-	(2,749,864)	171,035	282,888,651	41,612,847	82,769	(10,494,369)	161,542,535
2011	-	-	546,039	316,761	173,991,754	34,509,603	26,142	(1,490,714)	(209,155,413)
Totals	8,645,129,000	5,136,963	141,501,756	4,096,820	8,110,835,723	319,671,232	14,039,426	11,153,524	\$362,471,682

Cash & Cash Equivalents

¹ Pursuant to the provisions of the Educational Facilities Construction and Financing Act (C.18A:7G-14a), as amended, the aggregate principal amount of bonds, notes or other obligations the EDA may issue to finance school facilities projects, and the costs related thereto, shall not exceed \$12.5 billion. This limitation excludes indebtedness incurred for refunding purposes.

² Represents funds received prior to the first bond issuance by the EDA in 2001.

³ Consists of rental income and cash receipts for bidding fees and OPRA requests.

⁴ Consists of leasehold improvements (SDA offices), capitalized software, furniture, fixtures & equipment for SDA operations.

⁵ Consists of deposits held for Section 13(B) Local Share Agreements (\$11,012,714); bond proceeds received for the payment of bond refunding closing costs (\$11,133) and other deposits (\$129,677)

⁶ 2010 Investment Earnings includes: 2009 New Brunswick legal settlement, \$144,736, and interest income \$1,299,176, offset by the Rebate Arbitrage payment of \$4,193,776



New Jersey Schools Development Authority
Interagency Agreements
December 31, 2011

<u>State of New Jersey Department / Agency</u>	<u>Service(s) Provided to SDA</u>	<u>Current Yr Payments</u>	<u>Payments from Inception through December 31, 2010</u>	<u>Total Payments</u>
<u>Included in Project Costs:</u>				
Department of Community Affairs	Provide code inspections, plan reviews and permits for schools.	\$ 317,810	\$ 18,775,878	\$ 19,093,688
Department of Labor and Workforce Development	Provide training in construction trades to women and minorities pursuant to the Educational Facilities Construction & Financing Act (EFCFA). Also, provide enforcement of prevailing wage requirements on SDA projects.	-	10,541,812	10,541,812
Office of the Attorney General - Division of NJ State Police (services formerly provided by the Bureau of Fiscal Oversight and, prior to that, the Office of Government Integrity)	Perform prequalifying review and investigative services related to vendor integrity as required by the EFCFA.	379,131	4,659,347	5,038,478
Department of Education	Perform educational adequacy reviews for Abbott district schools.	-	3,276,059	3,276,059
New Jersey Institute of Technology	High Performance Schools guideline development and program implementation costs.	-	4,116,295	4,116,295
Rutgers University	Perform studies on the potential cost savings that could be realized through the use of standardized design elements, components, and construction materials. Also, includes fees paid to NJ Small Business Development Centers.	180,263	297,063	477,326
Department of Environmental Protection	Provide expedited environmental remediation review and support services.	211,094	1,399,987	1,611,081
Department of Transportation (terminated)	Provide relocation assistance services.	-	355,875	355,875
Other	Miscellaneous	-	179,552	179,552
Payments Included in Project Costs		<u>1,088,298</u>	<u>43,601,868</u>	<u>44,690,166</u>

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