

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

WEDNESDAY, AUGUST 7, 2013

A meeting of the Board of Directors of the New Jersey Schools Development Authority (“SDA” or “the Authority”) was held on Wednesday, August 7, 2013 at 9:00 AM at the offices of the Authority at One West State Street, Trenton, New Jersey.

Participating were:

Robert Nixon, Acting Chair

Jennifer D’Autrechy (Treasury)

Kevin Luckie (NJDCA)

Bernard Piaia (NJDOE)

Kevin Egan

Karim Hutson

Loren Lemelle

Lester Lewis-Powder

Michael Maloney

Joseph McNamara

Martin Perez

Mario Vargas

being a quorum of the Board. Ms. D’Autrechy, Mr. Hutson, Mr. Egan, Ms. Lemelle, Mr. McNamara, Mr. Lewis-Powder, Mr. Perez, and Mr. Piaia participated in the meeting via telephone conference.

Mr. Nixon chaired the meeting in the absence of the Chairman of the Board, Mr. Walsh. At Mr. Nixon’s request, Marc Larkins, chief executive officer; Jason Ballard, chief of staff; Jane Kelly, vice president & assistant secretary; Andrew Yosha, vice president; Donald Guarriello,

vice president and chief financial officer; Albert Barnes, acting chief counsel; Corrado Minervini, program director; Sean Murphy, procurement director; and Cecelia Haney, senior counsel, of the SDA participated in the meeting. Amy Herbold of the Governor's Authorities Unit also participated in the meeting.

The meeting was called to order by Mr. Nixon who 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 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. Nixon then presented for consideration and approval the Open Session Minutes of the July 2, 2013 Board Meeting. A copy of the minutes and a resolution had been provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Vargas, and seconded by Mr. Maloney, the Open Session meeting minutes of July 2, 2013 were approved by the Board upon its unanimous vote in favor of the resolutions attached hereto as *Exhibit 3a*.

Authority Matters

CEO Report

Mr. Nixon then asked Mr. Larkins to provide the Members with his CEO report. Mr. Larkins reported on the public events in which the SDA had participated during the past month. He said that SDA staff, along with members of the Irvington School District and Irvington's legislative representatives, participated in an emergent project event at the Irvington Madison Avenue Elementary School (Madison Ave.) Mr. Larkins reported that SDA staff also attended two (2) procurement workshops in the past month, including one on July 11 at the Thomas

Edison State College, which was sponsored by the College and the African American Chamber of Commerce (AACC). He said that this workshop was geared toward small minority and women owned businesses (SMWBEs). Mr. Larkins said that SDA staff also attended a workshop at Rutgers University on August 1 which was sponsored by the University and the Statewide Hispanic Chamber of Commerce (SHCC). He noted that SDA staff spoke at both events and also networked with the SBEs that were in attendance and encouraged them to get pre-qualified to compete for SDA projects.

With regard to active procurements, Mr. Larkins reported that the SDA is currently working on the Bridgeton project, which involves two (2) projects combined into one procurement. He said that seven (7) proposals were received in response to this procurement and that among these were proposals from four (4) general contractors (GCs) that do not ordinarily bid on SDA projects.

In continuing, Mr. Larkins reported that the SDA is preparing for this month's advertisement of the construction and design/build procurement for P.S. No. 16 Elementary School (PS No. 16) in the Paterson School district, along with a package associated with this project to demolish the existing school on the construction site. He said that once the project has been advertised, all of the SDA's 2011 Capital projects will have moved into construction.

Mr. Larkins reminded the Members that he had indicated that he would provide them with a mid-year snapshot of the status of the program. He said that it had been his plan to provide the report at today's meeting, but he would prefer to provide the report when all the Members are back from vacation and in attendance. Mr. Larkins reiterated that the SDA's ten (10) projects in the 2011 Capital Plan will either have moved into construction, be in procurement or have had construction contracts awarded by the end of this month. He said that

five (5) of the 2012 Capital Plan projects will have either been completed (i.e. the West New York High School project (WNY) or advanced toward construction activity. Mr. Larkins said that there is another group of projects that remains in the planning stages and a couple of projects that are moving into design. He said that one of the projects moving into the design phase is on today's agenda.

With regard to the emergent projects, Mr. Larkins reported that the list of seventy-six (76) projects has evolved into sixty-six (66) projects. He said that thirty-seven (37) of these projects were delegated back to the districts to manage and the other twenty-nine (29) SDA managed projects are advancing, with a couple nearing the closeout phase. Mr. Larkins noted that some of the projects are in construction, and a few more are in short-term design-build contracts, with the construction work starting soon. He said that a handful of the projects need full-blown separate design work permitting and then the SDA will advertise for construction of those projects. Mr. Larkins said that more information will be provided during the September discussion.

Mr. Larkins then noted the inclusion of an additional report in the monthly reports section of the meeting materials. He said that this report sets forth those items previously considered in Executive Session meetings of the Board that have now been determined by management to be complete. Mr. Larkins said that the information contained in the report includes real estate matters and claim resolutions. He noted that the SDA will continue to report upon the completion of Executive Session matters.

In conclusion, Mr. Larkins advised the Board that SDA staff is working diligently to open the Victor Mravlag School for this upcoming school year. He said that staff is working with the contractor and is making great progress. He said that SDA staff will be visiting the school later

this month and that a notice will be sent to the Members should they wish to participate. He reminded the Members that no more than seven (7) Members can attend at the same time. He said that the school is almost ready with the exception of the gymnasium floor. At the conclusion of Mr. Larkins' comments, Mr. Nixon expressed his agreement that Mr. Larkins' anticipated program update should be provided to the full Board at the September meeting.

Audit Committee Report

In beginning his remarks, Mr. Nixon drew the Members' attention to a memorandum in the meeting materials from Board Chairman Edward Walsh in which Mr. Walsh nominates Loren Lemelle to serve as Financial Expert to the Audit Committee, replacing Jim Petrino. Mr. Nixon thanked Ms. Lemelle for her willingness to serve the Committee and Board in this role. Mr. Nixon asked that the Members approve the Chairman's recommendation of Loren Lemelle to serve as the Audit Committee's Financial Expert.

A resolution pertaining to the approval of the Chairman's nomination of a financial expert for the SDA Audit Committee had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Luckie and seconded by Mr. Vargas, Loren Lemelle was approved as the SDA Audit Committee's Financial Expert upon the Board's unanimous vote in favor of the resolution attached hereto as Exhibit 5a.

Mr. Nixon then provided the report of the Audit Committee. He advised the Members that the Audit Committee met on July 15, 2013. He said that management had provided the Committee with the June 2013 New Funding Allocation and Capital Plan Update. He advised the Board that management had reported no changes in any of the reserve balances during the reporting period. Mr. Nixon added that the reserve balance for the Regular Operating Districts ("RODs") increased by \$300,000 during the reporting period.

In continuing, Mr. Nixon said that Management had also presented the results of a statutorily required audit of a Section 15 Grant focusing on processes and procedures. He said that the audit looked at documentation supporting execution of the grant and disbursement of funds from 2006 through 2011. He advised the Board that the audit had concluded that the state funds were expended in accordance with the grant agreement, applicable laws and regulations.

Mr. Nixon then reported that the Committee was provided with the June 2013 Monthly Financial Report with management advising that, as of June 2013, the Authority's operating expenditures totaled \$17.5 million which is \$2.1 million lower than budget for the period. He said that this is a \$1.1 million decrease from the corresponding period in the prior year. Mr. Nixon added that, as of year to date June 2013, project expenditures, at \$95.2 million, are up \$14.4 million as compared to corresponding prior year; and down \$31.6 million compared to the 2013 Capital spending forecast. He said that the year-over-year variance is attributable to an increase of \$17.2 million in construction and \$7.5 million in personnel expenses which are now allocated to project costs and not operating expenses as they were in previous years. He said that this is offset by decreases of \$1.2 million in grant activity, \$4.7 million in project insurance and \$4.4 million in other project related costs. Mr. Nixon reported that since the beginning of the program, 66.7% of the funds authorized for the SDA Districts have been disbursed. He advised that 96% of all SDA disbursements relate to school facilities projects and 4% relate to program administrative and general expenses. In conclusion, Mr. Nixon said that the estimated value of current school facilities project activity is approximately \$2.2 billion.

School Review Committee Report

1). Change Orders/Amendments – New James Madison School No. 10 ES; 2). Award of Construction Contract and Approval of Final Project Charter – New PS No. 20 Elementary School – Jersey City; 3). Construction Manager Award – New Elementary School No. 3 – Jersey City – Construction Management Services; 4). Final Adoption without Change: N.J.A.C. 19:38B Procedures for Price and Other Factors Procurement of Construction Contracts for School Facilities Projects; 5). Close Out of Open Design Contracts

Providing the report on behalf of the School Review Committee (Committee), Mr. Maloney advised the Members that the Committee met on July 15, 2013 and discussed various issues. He reported that the Committee recommends that the Board approve amendment No. 10 to Fraytak Veisz Hopkins Duthie, P.C. (Fraytak) in the amount of \$371,535.00 for the New James Madison School No. 10 Elementary School in the Garfield School District. Mr. Maloney explained that the amendment is for extended and additional design and construction administration phase services. He said that this project was authorized to advance by the 2012 Capital Plan following discussions held with the Garfield School District, in order to identify a project or projects to meet their educational needs. Mr. Maloney noted that, upon completion, the Madison School will be a 50,328 SF facility, designed to educate 275 K-5 students. He added that the Committee is also recommending Board approval of a revised preliminary project charter representing the estimated revised project budget inclusive of the dollar value of this amendment. At Mr. Maloney's request, Mr. Minervini then provided the Members with additional project details.

A resolution for the approval of Amendment No. 10 to Fraytak Veisz Hopkins Duthie, P.C. and a revised preliminary project charter had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Vargas, and seconded by Mr. Luckie,

the proposed amendment and preliminary project charter were approved by the Board upon its unanimous vote in favor of the resolution attached hereto as *Exhibit 6a1*.

Next, Mr. Maloney presented for Board approval an award in the amount of \$28,735,000 to Dobco, Inc. (Dobco) for construction services for the New P.S. No. 20 Elementary School (PS No. 20) in the Jersey City Public Schools District and a final project charter. He said that the PS No 20 Project was approved for advancement as part of the 2011 Capital Plan. Mr. Maloney noted that, when completed, it will be a new 108,867 SF facility designed to educate 628 K-5 students. He said that the Committee recommends Board approval of the contract award to Dobco. Referencing the memorandum previously provided to the Members, Mr. Murphy then provided additional details regarding the matter which was followed by a brief discussion by SDA staff and the Members. Mr. Vargas inquired as to whether the other litigation matters concerning Dobco were resolved. Mr. Larkins replied in the affirmative. He noted that Dobco is working on three (3) additional SDA projects, the New Marshall & Hazel Elementary School (Marshall Street) project, the New Henry Street Elementary School (Henry Street) project and the Elementary School No. 3 (ES No. 3) project. Mr. Larkins said that the SDA has taken a different approach by instituting a constructability review for all design-bid-build projects, of which PS 20 is one. He said the SDA is self-managing Henry Street, and has separate construction management (CM) firms on the ES No. 3 and PS 20 projects. He explained that, overall, the SDA has enhanced its site presence in terms of management. Mr. McNamara inquired as to whether the SDA is monitoring to ensure that the identified project team is, in fact, the team involved in SDA's project or projects. Mr. Larkins replied in the affirmative and noted that, at any time, the SDA can request and make changes depending on what is happening at the site. Mr. Yosha added that SDA's onsite manager remains close to a project to ensure that the

team that was identified at inception is the team that is working on the project along with any adjustments to the team that must first be approved by the SDA.

A resolution for approval of the construction contract award for the New PS No. 20 Elementary School project in the Jersey City Public Schools District and final project charter had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Vargas, and seconded by Mr. Luckie, the construction contract award and final project charter were approved by the Board upon its unanimous vote in favor of the resolution attached hereto as *Exhibit 6b*.

Next, Mr. Maloney presented a construction manager award for a total lump sum fee of \$1,140,962 to Epic Management, Inc., for construction management services for the New Elementary School No. 3 (ES No. 3) project in the Jersey City Public Schools District. Mr. McNamara interjected that he is recused from participating in this matter. Mr. Maloney said that ES No. 3 was authorized to advance as part of the 2011 Capital Plan and, when completed, will be a 123,394 SF facility designed to educate 778 K-5 students. Mr. Maloney noted that the design/builder for the project is Dobco, Inc. as approved by the Board in June 2013. He further noted that, prior to execution of the contract, the contract and related documentation will be reviewed and approved by the SDA Division of Chief Counsel. Mr. Murphy then provided additional comments relative to the ES No. 3 matter before the Board.

A resolution for approval of the construction manager award to Epic Management, Inc. had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Vargas, and seconded by Mr. Luckie, with Mr. McNamara abstaining, the construction manager award was approved by the Board upon its vote in favor of the resolution attached hereto as **Exhibit 6c**.

In continuing, Mr. Maloney discussed the Committee's recommendation for approval of the Final Adoption without Change of Title 19, Chapter 38B Procedures for Price and Other Factors Procurement of Construction Contracts for School Facilities Projects (Rules). He informed the Members that they are requested to approve completion of the adoption process for these Rules, noting that the Rules apply to procurements of construction contracts with a cost estimated to exceed \$5 million or to other procurements in the SDA's discretion. Ms. Haney provided brief details regarding the Final Adoption of the Rules.

A resolution for approval of the Final Adoption of the Rules had been provided to the Members in advance of the meeting. Following discussion, upon a motion by Mr. Vargas, and seconded by Mr. Luckie, the Final Adoption of the Rules was approved by the Board upon its unanimous vote in favor of the resolution attached hereto as **Exhibit 6d**.

Lastly, Mr. Maloney presented a memorandum regarding the Closeout of Open Design Contracts. He said that the Members of the Authority are requested to approve the execution of credit amendments in the amount of \$15.8 million to close out fourteen (14) open design consultant contracts for unused professional design services and/or allowances. Mr. Maloney informed the Members that Messrs. Ballard and Guarriello were available to provide additional details regarding the memorandum. Mr. Ballard explained that the items are credit amendments that involve de-obligating funds for unused services for projects that are not advancing into construction. Mr. Guarriello added that the consultants' services have already been paid for and that the remaining contract balance must be de-obligated. Mr. Ballard noted that the consultants have been given an opportunity to advise the SDA if they were owed additional funds. Mr. Larkins explained that under normal circumstances the contract would be canceled, but because of how the SDA's Operating Authority (OA) is drafted and the procedures that have to be

followed, the closeout mechanism is a credit amendment. Mr. Larkins said that in Open Session, the SDA is presenting the fourteen (14) contracts that have been identified as ready for closeout. He noted that, in Executive Session, the Board will consider a proposed delegation of authority to the Chief Executive Officer (CEO) to execute credit amendments to close out a potential ninety-two (92) additional open design consultant contracts that remain in the deliberative stage. Mr. Perez had a question regarding the contracts. He noted that, in one of the contracts, there is a dollar value of \$12 million and inquired as to whether the SDA considers it a loss. Mr. Larkins replied that it is a loss for most of the contracts. He said that, at that time, the SDA did not purchase ownership of the work, so the firms retained their ownership rights. Mr. Larkins said that the good news is that a lot of the projects are not advancing because they are no longer needed which means that the SDA is avoiding additional investment or cost. Mr. Perez inquired as to whether this would happen again under the new processes that are in place. Mr. Larkins replied that the SDA currently has controls and preventative measures in place. He said that one of the major controls is the new design procurements process whereby the SDA is actually purchasing ownership of its designs. After further discussion, Mr. Larkins said that, though he could never say that this could never happen again, the chances of it happening again are very slim. Mr. Nixon explained that the resolution presented in this matter will be considered by the Board upon its return to Open Session following discussion of these additional open contracts in Executive Session. He said that updates on the progress of these efforts will be provided via a monthly report to the Members.

Public Comments

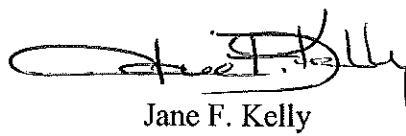
Mr. Nixon then called for the Public Comments portion of the meeting to begin. He asked that all those seeking to address the Board consistent with the Open Public Meetings Act, please limit their comments to between three (3) and five (5) minutes. Mr. Nixon asked if there were any members of the public present who wished to address the Board. Hearing none, Mr. Nixon then asked for a motion to adjourn into Executive Session. Upon motion duly made by Mr. Maloney, and seconded by Mr. Vargas, the Board adjourned into Executive Session. Ms. Kelly advised that the Board would adjourn into Executive Session to discuss a proposed settlement of claims filed by Ernest Bock and Sons, Inc. and for additional discussion regarding the close out of Open Design Contracts.

Following discussion in Executive Session, the Board returned to Open Session. A resolution for the approval of the proposed settlement of claims submitted by Bock in connection with Victor Mravlag E.S. No. 21 in Elizabeth had been provided to the Members in advance of the meeting. Following discussion, upon motion duly made by Mr. Vargas, and seconded by Mr. Luckie, the Board approved the proposed settlement upon its unanimous vote in favor of the resolution attached hereto as **Exhibit A1**.

In addition, a resolution approving the close out of certain Open Design Contracts and a delegation of authority to the CEO to address additional design contracts as appropriate had been provided to the Members in advance of the meeting. Upon a motion by Mr. Vargas, and seconded by Mr. Luckie, the Board unanimously approved the resolution attached hereto as **Exhibit 6e** as presented.

Mr. Nixon then asked for a motion to adjourn the meeting. Upon motion and with unanimous consent, the 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 August 7, 2013 meeting.

A handwritten signature in black ink, appearing to read "Jane F. Kelly". The signature is stylized with a large, sweeping initial "J" and "K".

Jane F. Kelly
Assistant Secretary