

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
BOARD OF DIRECTORS TELECONFERENCE MEETING
WEDNESDAY, MAY 6, 2020**

A teleconference meeting of the Board of Directors of the New Jersey Schools Development Authority (SDA or the Authority) was held on Wednesday, May 6, 2020 at 9:00 A.M.

Participating by teleconference were:

Robert Nixon, Chairman
Michael Kanef (Treasury)
Bernard Piaia (DOE)
Stephen Martorana (EDA)
Kevin Luckie (DCA)
Kevin Egan
Richard Elbert
Loren Lemelle
Lester Lewis-Powder
Michael Maloney
Mario Vargas

being all the Members of the Board.

At the Chairman's request, Manuel Da Silva, chief executive officer; Andrew Yosha, vice president; Jane F. Kelly, vice president and assistant secretary; Donald Guarriello, vice president and chief financial officer; Albert Barnes, chief counsel; and Andrew Oakley, director, of the SDA, participated in the meeting by teleconference. Joy Johnson of the Governor's Authorities Unit (GAU) also participated in the meeting by teleconference.

The meeting was called to order by the Chairman of the Board, Mr. Nixon. The Chairman then asked Ms. Kelly to 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. She said that a call-in number was provided on the SDA Website so that members of the public could participate in the meeting by teleconference. She also advised the Members that the call-in number for the meeting was posted at the SDA offices earlier in the morning. Ms. Kelly then conducted a roll call and indicated that all of the Members were present.

The Chairman asked that all participating in the meeting engage in a moment of silence to reflect on those who have lost their lives to the COVID-19 virus, and all those who are still suffering. The Chairman also asked for silent recognition of those on the frontlines-- first responders, those in the medical field, law enforcement officers, firefighters and EMS workers who are exposed to this virus each day.

Approval of Meeting Minutes

The Chairman then presented for consideration and approval the minutes of the Board's April 1, 2020 Open Session meeting. A copy of the meeting minutes and a resolution had been provided to the Members for review in advance of the meeting. Upon motion duly made by Ms. Lemelle and seconded by Mr. Piaia, the Open Session minutes of the April 1, 2020 SDA Board meeting were approved by the Board with the Members' unanimous vote in favor of the resolution attached hereto as ***Resolution 4a.***

Next, Mr. Nixon presented for consideration and approval the minutes of the Board's April 1, 2020 Executive Session meeting. A copy of the meeting minutes and a resolution had been provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Luckie and seconded by Mr. Lewis-Powder, the Executive Session meeting minutes of the April 1, 2020 SDA Board meeting were approved by the Board upon its unanimous vote in favor of the resolution attached hereto as ***Resolution 4b.***

Authority Matters

CEO Report

The Chairman then asked Mr. Da Silva for the Report of the CEO. At the outset, Mr. Da Silva requested a moment of silence for former Vice President Tom Schrum who recently passed away.

Next, Mr. Da Silva said that, in his report, he would be providing the Members with the highlights of activities on ongoing SDA projects that have occurred since his last report and an update on COVID-19 related issues.

Mr. Da Silva began his report with an update on design-build projects in the design phase. He reported that on April 10, SDA issued a final agency decision on the protest related to the procurement of construction management (CM) services for the Perth Amboy HS project. He noted that the bid protest was denied. He added that staff issued a notice-to-proceed (NTP) to Cambridge Construction Management to provide CM services for the project. For the Plainfield Woodland ES project, he said that the design-builder, Epic Management, has initiated design phase services as well as site condition review and testing. He advised the Board that technical and price proposals for CM services are due on May 8.

With respect to design-build projects in construction, Mr. Da Silva reported that interior mechanical, electrical, and plumbing rough-in work has begun on the Camden HS project.

Turning to design-bid-build projects in the construction stage, Mr. Da Silva informed the Members that for the Orange Cleveland Street ES project, the building permit was issued on March 10. He added that footings, foundations and underground utility work is ongoing. For the Orange HS project, he said that Terminal Construction's site clearing activities are complete. He added that footings, foundations and underground utility work is ongoing and structural steel work is anticipated to begin this month.

Mr. Da Silva informed the Members that, as of May 1, there are no positive cases of COVID-19 at the SDA. With regard to design-build/general contractor staff, he said that as of April 24, one positive COVID-19 case was reported on the Dayton Avenue project in Passaic and that SDA tracked two additional potential cases on the Dayton Avenue project as potential COVID-19 cases. He added that no additional reports of workers experiencing symptoms were made at this site. He said that the previous week there was one additional exposure reported at the Millville HS site.

Mr. Da Silva advised the Members that effective mid-March, SDA placed all 181 staff members on Work from Home (WFH) or Work from Field (WFF) status while ensuring continuity of operations. He added that, effective mid-April, the SDA Trenton Office has been open on Mondays, Wednesdays and Fridays only. He said that a staff member wishing to access the Trenton Office on Tuesdays and Thursdays must obtain their Vice President's approval. He explained that management is doing this to further reduce unnecessary proximal contact exposures. Mr. Da Silva said that SDA established a COVID-19 section on its website for contractors to easily access construction related Executive Orders, safety information and COVID related updates (<https://www.njsda.gov/NJSDA/Business/ConstructionPartner>).

Mr. Da Silva reported that staff continues to manage a COVID-19 hotline for contracted parties and their employees to report COVID-19 related exposure concerns to the Authority, allowing for consistent and quick responses to mitigate potential disruption to active construction. He said that the 4 cases he had referenced earlier were properly reported to the Hot Line enabling staff to proceed with the necessary follow-up.

Mr. Da Silva said the SDA has an amazing group of staff members that have adjusted to WFH and WFF very smoothly. He added that staff has continued to procure services for emergent projects and that he is very thankful to be a part of this team.

Audit Committee

Mr. Nixon, as Audit Committee Chairman, reported that the Audit Committee met on April 20, 2020 at which time management provided the Committee with the March 2020 New Funding Allocation and Capital Plan Update. He advised that there were no changes in any of SDA District Reserve balances. He reported that the reserve balance for the Regular Operating Districts (RODs) increased by \$1.6 million during the reporting period due to a reduction in state share for grant projects nearing completion.

Mr. Nixon advised the Board that the Committee was provided with the results of one audit that was conducted to comply with the statutory requirement that capital portfolio projects with a state share of over \$10 million be reviewed to assess whether state funds were expended in accordance with contract terms, SDA practices and state regulations. He reported that, based on the detailed testing performed, there were no findings. The audit revealed that State funds utilized for the project were expended prudently and consistent with legal requirements.

Next, Mr. Nixon provided the March 2020 Monthly Financial Report. He advised the Committee that the Authority's operating expenses (Actual vs. Budget) for the year-to-date period totaled \$2.3 million, \$439,000 lower as compared to the budget for the corresponding period. He explained that the decrease is mainly attributable to lower personnel costs due to 19 fewer full time employees (FTEs) than budgeted. He reported that Year-to-Date Authority Operating Expenses (Actual vs. Prior Year Actual) are \$594,000 lower as compared to the operating budget for the corresponding prior year period. He noted that this decrease is mainly attributable to SDA having on staff 42 fewer FTEs than the previous year. Mr. Nixon then reported that school facilities project expenditures (Actual vs. Forecast) for the year-to-date period total \$47.2 million, \$3.7 million lower as compared to the capital spending forecast for the

corresponding period. He advised that this variance is the result of lower than forecasted expenditures in construction activity and school furniture purchases. He reported that project expenditures (Actual vs. Prior Year Actual), at \$47.2 million, are \$3.8 million higher as compared to the corresponding prior year period. He explained that this variance is due to an increase in construction activity. Mr. Nixon then reported that, since program inception, approximately 86.3% of the funds authorized for SDA districts have been disbursed. Additionally, he said that, since program inception, 96% of all SDA disbursements relate to school facilities projects, while 4% relate to operating expenses. He advised that the estimated value of active school facilities capital, emergent and regular operating district grant projects is approximately \$2 billion.

Next, Mr. Nixon advised the Board that the Committee had considered one item that requires Board Action. Referencing material that previously was provided to the Members for review, he said that management and the Audit Committee are requesting approval to purchase a new three (3) year Builders' Risk Insurance policy (Policy) that would supplement the Authority's Owner Controlled Insurance Program (OCIP). He explained that Builders' Risk insurance is a special type of property insurance that protects the Authority from unexpected losses due to fire, lightning, and similar forces during construction. He reminded the members that, in February 2018, the Board approved and implemented a new 5-year OCIP that "wrapped-up" multiple types of insurance coverage into one program with the exception of Builders' Risk insurance. He explained that management did not purchase Builders' Risk insurance at that time as the Authority's then-existing Builders' Risk policy was not due to expire until March 1, 2020. Mr. Nixon advised that it was subsequently determined that a policy extension was the most cost effective way to provide Builders Risk coverage on the remaining five (5) capital and multiple emergent projects that would begin construction after the March 1,

2020 expiration date. He said that, in February 2020, management advised the Board that SDA's incumbent Builders' Risk provider had opted not to offer a policy extension and that the Authority was exploring a variety of options for coverage beyond the March 1, 2020 expiration date. Mr. Nixon advised that in response to SDA's solicitation for Builders' Risk insurance proposals, three (3) insurers proposed vastly differing limits, rates, terms and conditions. He said that in March 2020, SDA's insurance broker presented SDA with a final coverage comparison of the proposals. He informed the Board that the construction Total Insurable Value (TIV) is based upon SDA's estimated construction costs of \$467 million for all remaining projects in the current Capital Plan, plus an estimated \$60 million for new emergent project work. He added that all projects are scheduled to enter construction during the proposed three-year policy term. He said that, following a review of all proposals, management recommends that the Board approve the Authority's purchase of a new Builders' Risk insurance program from the Liberty Mutual Insurance Company (Liberty) at a cost not-to-exceed \$650,000 for the 3-year program term, effective June 1, 2020. He reported that the requested \$650,000 not-to-exceed cost is inclusive of contingency to account for both a 5% unanticipated increase in estimated TIV and a 5% increase in estimated construction durations. He said that management also is requesting approval of an amendment to the SDA's insurance broker's contract to perform policy and claims administration services in the amount of \$40,000. Mr. Nixon added that this coverage will include the Perth Amboy High School project. He advised that Liberty was the only insurer to offer a three (3) year proposal; that the cost includes a 280% increase in flood insurance resulting in a rate increase of 8.3% over the expiring program; and that the new program provides smaller deductibles for projects under \$5 million over the previous program; and lastly, that the new program provides \$1 million in Owner's Extra Expenses at no additional cost.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon a motion duly made by Mr. Piaia and seconded by Mr. Kanef, the Board approved the proposed Builders' Risk Insurance policy and contract amendment with its unanimous vote in favor of ***Resolution 6a***.

In concluding his report, Mr. Nixon advised the Board that management had also discussed a proposed litigation settlement with the Committee. He said that this matter would be presented to the Board for informational purposes in Executive Session. He added that the reports of the SRC and Real Estate Committee will be provided in Executive Session.

Public Comments

The Chairman then opened the Public Comments portion of the meeting. At the Chairman's request, Ms. Kelly asked Ms. Linda Stork to address the Board. Ms. Stork had technological difficulties and the Chairman indicated that the Board would hear from the next speaker and attempt to receive Ms. Stork's comments later in the meeting.

At the Chairman's request, Ms. Kelly asked Mr. Charles Kratovil to address the Board. Mr. Kratovil advised the Members that he is from New Brunswick. He said that he was appearing to inquire as to the role SDA plays in the district Long Range Facilities Plan (LRFP) process. He also asked what opportunities for public comment are provided in that process. Mr. Da Silva responded that the LRFP approval process is a state Department of Education (DOE) process in which the SDA is not involved.

Mr. Kratovil said that he wanted to update the Board regarding the Lincoln Annex School situation in New Brunswick. He advised the Board that he was informed by the New Brunswick School Board's Business Administrator that a LRFP plan had been filed with the state DOE but that, upon contacting the DOE, he was advised that this was not the case. He said that the DOE advised him that they were expecting the filing but had not yet received it. He said that

the School Board was thus taking concrete steps to advance the Lincoln Annex plan without an LRFP filing with the DOE and without providing an opportunity for the public to comment. He said that when the School Board considered amendments to the LRFP, it did so in Executive Session and did not return to Open Session until 10:30 PM, long after the public had left the meeting. He said that he would appreciate an opportunity to meet with the DOE and/or SDA to discuss this.

Mr. Kratovil said that he believes that the New Brunswick officials are using the challenging time of the COVID-19 crisis to push forward their agenda. He encouraged the Board to view a video pertaining to the issue that appears on the New Brunswick Today website.

In continuing, Mr. Kratovil said that, in addition to denying the public meaningful input in this process, public officials established a secret committee that will be considering where to locate the school. He said that the names of those who have been appointed to serve on the Committee have not been revealed to the public.

The Chairman then asked Ms. Stork to address the Board. Again, technological issues prevented Ms. Stork's participation. The Chairman expressed regret that Ms. Stork was unable to obtain access in order to offer her comments and advised her that the SDA website provides a mechanism for the public to share their comments with the Members.

At the Chairman's request, Ms. Kelly asked Ms. Lilia Fernandez to address the Board. Ms. Fernandez indicated that this was her first appearance before the SDA Board. She said that she would echo the concerns expressed by Mr. Kratovil regarding the plans for the Lincoln Annex School. She said that the plans have not been released to the public, noting that one potential contaminated site for locating the replacement school has already been rejected. She asked whether, since the SDA does not oversee the LRFP process, they have any other role to play. Mr. Nixon responded in the negative. He said that even though New Brunswick is an SDA

district, no SDA funds were utilized in connection with the Lincoln Annex renovations, that no state assets were utilized and, again, that the LRFP process is not controlled by SDA. He said that SDA has no jurisdiction to intervene in this matter.

In continuing, Ms. Fernandez said that the plan is to send the Lincoln Annex students to the Van Dyke “warehouse” space until such time as a new school is built. Mr. Da Silva noted that the Van Dyke space was actually retrofitted by SDA to serve as temporary school “swing space” for New Brunswick students. Ms. Fernandez questioned the fitness of contaminated sites as locations for schools utilized by children. She asked who is liable when this occurs. She also noted that, as a taxpayer, she objects to demolition of the Lincoln Annex School as \$22 million in taxpayer money was spent to renovate that facility. She said that she would like the SDA Board to consider who is benefiting by this arrangement.

Mr. Nixon then announced that the Board would be adjourning into Executive Session. Ms. Kelly announced that the Board will adjourn into Executive Session to discuss four (4) items: 1) an informational item regarding a settlement of personnel related litigation; 2) a proposed Settlement of a Claim Asserted by Torcon, Inc. in connection with the Elizabeth ES project; 3) proposed change orders for Hall Construction, Co. Inc. for the Millville Senior HS project; and 4) a request for approval to exercise lease extension options for 375 McCarter Highway in Newark, along with a Memorandum of Agreement (MOA) and Sublease with the state Department of Community Affairs (DCA) providing for DCA’s full assumption of the SDA’s obligations under its existing Lease. She said that the Board will vote on the three (3) non-informational matters upon its return to Open Session. She asked that the Chairman present **Resolution 11**, reflecting the Members’ resolve to move into Executive Session, for a vote.

Upon motion duly made by Mr. Vargas and seconded by Mr. Piaia, the Board resolved to adjourn the meeting into Executive Session to discuss the matters so described with its unanimous vote in favor of ***Resolution 11.***

Following discussion in Executive Session, the Board returned to Open Session.

School Review Committee

Mr. Luckie announced that in Executive Session, the Board had discussed the School Review Committee's recommendation that the Board approve the proposed Settlement of a Claim asserted by Torcon, Inc. in connection with the new Elizabeth ES project. A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Vargas and seconded by Ms. Lemelle, the Committee's recommendation in this matter was approved by the Board with its unanimous vote in favor of ***Resolution A1.***

Next, Mr. Luckie said that in Executive Session the Board had discussed the School Review Committee's recommendation that the Board approve four (4) Change Orders for Hall Construction Company, Inc. for the Millville HS project. A resolution pertaining to this matter was provided to the Members for review in advance of the meeting. Upon motion duly made by Ms. Lemelle and seconded by Mr. Vargas, the Committee's recommendation in this matter was approved by the Board with its unanimous vote in favor of ***Resolution A2.***

Real Estate Committee

Mr. Vargas said that in Executive Session the Board discussed the Real Estate Committee's recommendation that the Board authorize management to exercise lease extension options for SDA's Newark Office space and approve a Memorandum of Agreement and, thereafter, a Sub-lease, with the New Jersey Department of Community Affairs (DCA) providing

for the full assumption by DCA of the obligations of the Authority under its Lease for office space located at 375 McCarter Highway, Newark.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Elbert and seconded by Mr. Nixon, and with Mr. Luckie abstaining, the Committee's recommendation in this matter was approved by the Board with its unanimous vote in favor of ***Resolution A3***.

Mr. Luckie advised the Members and SDA management that DCA inspection staff is still out inspecting project sites. He added that DCA staff is taking all of the necessary precautions. He said that DCA would contact the Authority if there were any potential COVID-19 cases on SDA job sites identified.

Adjournment

There being no further business to come before the Board, upon motion by the Chairman 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 May 6, 2020 meeting.

/s/ Jane F. Kelly
Assistant Secretary