

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
BOARD MEETING  
MONDAY, JULY 1, 2019 AT 9:00 A.M.  
32 E. FRONT STREET, TRENTON, NJ  
BOARD ROOM**

- 1. NOTICE OF PUBLIC MEETING**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. APPROVAL OF MEETING MINUTES**
  - a. Board Open Session Meeting Minutes of June 5, 2019 **[TO BE PROVIDED]**
  - b. Board Executive Session Meeting Minutes of June 5, 2019 **[TO BE PROVIDED]**
- 5. AUTHORITY MATTERS**
  - a. CEO Report
  - b. Chairman's Report
- 6. REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE (CHAIRMAN'S REPORT)**
  - a. Approval of Builders Risk (Property) Insurance Contract Amendment No. 2 - GP-0208-R01
- 7. REPORT AND RECOMMENDATIONS OF THE SCHOOL REVIEW COMMITTEE (CHAIRMAN'S REPORT)**
  - a. Approval of Proposed Memorandum of Understanding Between the State Treasurer and NJSDA for Project Review in Support of the Public-Private Partnership Program
- 8. REPORT AND RECOMMENDATIONS OF THE REAL ESTATE COMMITTEE (CHAIRMAN'S REPORT)**
  - a. Approval of Award - State-Wide Property Management and Maintenance Services - GP-0257-R02
- 9. MONTHLY REPORTS**
  - a. *For Informational Purposes*
    - i. Active Projects Report
    - ii. Project Close Out Status Report
    - iii. Project Status Reports
    - iv. Contracts Executed Report/Amendments & Change Orders Executed Report
    - v. Contract Terminations Report (*no activity*)
    - vi. Settlement Activities Report (*no activity*)
    - vii. Contractor and Workforce Compliance Report
    - viii. Regular Operating District Grant Activity Report
    - ix. Notification of Amendments to Goods and Services Contracts Not Exceeding \$100,000 or 10% of the Contract Value (*no activity*)
    - x. Communications Report
    - xi. Monthly Financial Report
    - xii. Design Contract De-Obligations Report (*no activity*)
- 10. PUBLIC COMMENTS**

**11. EXECUTIVE SESSION**

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

**12. ADJOURNMENT**

**APPROVAL OF MEETING MINUTES**

**JUNE 5, 2019 OPEN SESSION MINUTES**

**[TO BE PROVIDED]**

## **AUTHORITY MATTERS**

**CEO REPORT (*ORAL*)**

**CHAIRMAN'S REPORT (*ORAL*)**

**REPORT AND RECOMMENDATIONS OF THE AUDIT COMMITTEE (CHAIRMAN'S  
REPORT)**



**APPROVAL OF BUILDERS RISK (PROPERTY) INSURANCE CONTRACT  
AMENDMENT NO. 2 - GP-0208-R01**



32 EAST FRONT STREET  
P.O. BOX 991  
TRENTON, NJ 08625-0991  
609-943-5955

### MEMORANDUM

TO: Members of the Authority

FROM: Karon Simmonds  
Director, Risk Management

DATE: July 1, 2019

SUBJECT: Builders Risk (Property) Insurance Contract  
Amendment No. 2 - GP-0208-R01

Management is requesting the Board's approval for a contract amendment in the amount Not to Exceed (NTE) \$15,000 for Builders Risk insurance premium costs. The "Operating Authority by Level" requires Board approval of contract amendments which exceed \$100,000 or 10% of the contract value. The proposed increase in the contract NTE amount exceeds 10% of the original contract value.

Builders Risk insurance is a special type of property insurance that protects the Authority from unexpected losses due to fire, vandalism, lightning, wind, and similar forces during construction of a school facilities project. Coverage begins upon issuance of the construction Notice to Proceed (NTP) and terminates upon substantial completion of construction, the point in time when the School District is responsible for insuring the property.

### BACKGROUND

In 2013 a new Builders Risk insurance program was marketed by NJSDA's Broker, Turner Surety and Insurance Brokerage, Inc. (TSIB). In connection with this new program the Authority performed a review of its approved portfolio of projects to determine an appropriate contract NTE amount for the program based upon various factors, including estimated TIV (Total Insured Value), construction type, construction duration of individual projects, quoted insurance rates, and flood hazard zone. This review ultimately revealed that projects with an estimated TIV of \$555 million would enter construction during the three year policy term commencing December 31, 2013. Further, TSIB's marketing efforts determined that the premium costs associated with a program of this size and other particulars would be approximately \$485,000; however, final premium costs would be based on actual TIV. Since the award amount of this Goods and Services contract was not expected to exceed \$500,000, the Members approval was not required in accordance with the "Operating Authority By Level". Nonetheless, in December 2013, the Members of the Authority were informed of the Authority's intent to purchase a new three year term Builders Risk insurance program commencing December 31, 2013.

During 2016, an updated review of the capital portfolio revealed that the expected TIV had increased by approximately 5% to \$582 million as a result of additional projects advancing in to construction during the 3-year policy term and project scopes increasing. Conversely, it was

*Members of the Authority  
Amendment No. 2 to Builders Risk Insurance Contract  
GP-0208-R01  
July 1, 2019  
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determined that certain other projects would not be advancing into construction during the policy term, partially offsetting the increase in TIV. As a result, in August 2016, the Members approved Amendment #1 for an additional NTE cost of \$215,000 to account for the increased TIV.

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### CURRENT PROGRAM STATUS

During the three year term of this policy, seventeen (17) capital projects and various emergent projects began construction. All but one project has reached substantial completion and the remaining project should complete by July 2019. The total TIV is currently projected to be \$610 million, 4.8% higher than projected in August of 2016. In addition, the duration to reach substantial completion has increased for certain projects. This combination of increases requires the Builders Risk contract to be further amended

### CALCULATIONS

a. Original Contract Not to Exceed Amount	\$485,000.00
b. Amendments to Date (Excluding Proposed Amendment)	\$215,000.00
c. Proposed Amendment Amount (Not to Exceed)	\$15,000.00
d. Total Amendments to Date Including this Amendment (Total of Line b. and Line c.)	\$230,000.00
e. Percentage Change to Original Contract (Line d. as a Percent of Line a.)	47.4%
f. Proposed Adjusted Contract Amount (Not to Exceed)	\$715,000.00

### RECOMMENDATION

The Members of the Authority are requested to approve this amendment for a NTE amount of \$15,000. The requested \$15,000 increase includes contingency for unanticipated changes in construction values and durations for one remaining project which has not yet reached substantial completion. In accordance with the Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, any amendment which exceeds \$100,000 or 10% of the contract value requires approval by the Members of the Authority. The proposed amendment exceeds 10% of the original contract value.

/s/ Karon Simmonds

Karon Simmonds, Director, Risk Management

Reviewed and recommended by:  
Donald Guarriello, Vice President and Chief Financial Officer

**Resolution—6a.**

Builders Risk (Property) Insurance Contract  
Amendment No. 2 - Package No. GP-0208-R01

**Resolution**

**WHEREAS**, the Operating Authority of the New Jersey Schools Development Authority (SDA or the Authority) requires that the Members of the Authority approve amendments to contracts for Goods and Services exceeding \$100,000 or 10% of the original contract's value; and

**WHEREAS**, Builders Risk insurance is property insurance that protects the SDA from unexpected losses due to fire, vandalism, lightning, wind, and similar forces during construction of a school facilities project; and

**WHEREAS**, consistent with the SDA Operating Authority, in December 2013, the Authority purchased a new three year term Builders Risk insurance program commencing December 31, 2013 at a cost not-to-exceed (NTE) \$485,000; and

**WHEREAS**, a 2016 review of the capital portfolio revealed that the expected Total Insured Value (TIV) had increased by approximately 5% to \$582 million due to the addition of projects and increases in project scopes; and

**WHEREAS**, in August 2016, the Members approved Amendment No. 1 for an additional NTE cost of \$215,000 to account for the increased TIV; and

**WHEREAS**, management now is recommending approval of a contract amendment (Amendment No. 2) to increase the NTE amount of its Builders Risk insurance premium costs from \$700,000 to \$715,000, a \$15,000 increase; and

**WHEREAS**, this proposed increase in the contract NTE amount requires Board approval; and

**WHEREAS**, a full description of the current program status, financial calculations and details of the ensuing Builder's Risk insurance program are set forth in detail in the memorandum provided to the Board on this date and incorporated herein.

**NOW, THEREFORE, BE IT RESOLVED**, that the Members of the Authority hereby authorize and approve Amendment No. 2 to the SDA's Builders Risk contract (Package No. GP-0208-R01) in the increased amount of \$15,000.

**BE IT FURTHER RESOLVED**, that this increase includes contingency for unanticipated changes in construction values and durations for one remaining project which has not yet reached substantial completion.

**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, Package No. GP-0208-R01, Builders Risk (Property) Insurance Contract, Amendment No. 2, dated July 1, 2019

Dated: July 1, 2019

**REPORT AND RECOMMENDATIONS OF THE SCHOOL REVIEW COMMITTEE  
(CHAIRMAN'S REPORT)**

**APPROVAL OF PROPOSED MEMORANDUM OF UNDERSTANDING BETWEEN  
THE STATE TREASURER AND NJSDA FOR PROJECT REVIEW IN SUPPORT OF  
THE PUBLIC-PRIVATE PARTNERSHIP PROGRAM**



### MEMORANDUM

**TO:** Members of the Authority

**FROM:** Jane Kelly, Vice President, Corporate Governance and Legal Affairs  
Cecelia Haney, Deputy Chief Counsel and Administrative Practice Officer

**DATE:** July 1, 2019

**RE:** Approval of Proposed Memorandum of Understanding Between the State Treasurer and NJSDA for Project Review in Support of the Public-Private Partnership Program

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On August 14, 2018, the Legislature enacted L. 2018, c.90 (the "Act") establishing a Public-Private Partnership program (referred to herein as the "P3 Program") to allow local government units, school districts and State government entities, as well as colleges and universities, to enter into a public-private partnership agreement under which a private entity assumes final and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity (a "P3 Project"). The Act requires that each proposed P3 Project be submitted to the State Treasurer for review and approval, and further requires that certain state entities participate in the review process to provide advice and guidance for the Treasurer's review.

On June 17, 2019 the State Treasurer promulgated proposed new rules, to be codified at N.J.A.C. 17:1-8 (the "P3 Rules"), to implement the P3 Program, and establish procedures for the submission and review of P3 Projects. A copy of the Notice of Proposal for the proposed rules is attached. The proposed rules require that the Office of Public Finance within the Department of the Treasury convene a Project Review Committee for each proposed P3 Project. The rules further provide that when a proposed P3 Project includes a school facility aspect, NJSDA is required to provide a representative to participate in the Project Review Committee to evaluate the viability and advisability of the P3 Project.

The State Treasurer has requested that the State Agencies and State Authorities that are to participate in the Project Review Committee process memorialize their commitment of personnel and resources in the form of a Memorandum of Understanding. The attached draft Memorandum



of Understanding is based upon a template provided by the State Treasurer, and has been modified for execution by the NJSDA.

The Memorandum of Understanding provides for an exchange of obligations with respect to the commitment of resources to the P3 Program Project Review Committee process. Notably, the MOU provides that in exchange for the NJSDA's commitment to provide a representative to serve on a Project Review Committee when requested by the Department of Treasury, the Department of Treasury will provide compensation to NJSDA in the form of a payment in the amount of \$5000.00, constituting a portion of the P3 Project application fee for each proposed P3 Project submitted for review.

**Requested Board Action**

The Members of the Authority are requested to approve the execution of the proposed Memorandum of Understanding between the State Treasurer and the NJSDA regarding the NJSDA's participation in the Project Review Committee process in support of the P3 Program.

/s/Jane F. Kelly

Jane F. Kelly, Vice President  
Corporate Governance & Legal Affairs

Prepared by Cecelia Haney, Deputy Chief Counsel and Administrative Practice Officer

JFK/ceh

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE STATE TREASURER**  
**AND**  
**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

This Memorandum of Understanding (MOU), made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”) is between the TREASURER OF THE STATE OF NEW JERSEY (the “State Treasurer”) and the NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY (the “NJSDA”) (collectively the Parties).

**WHEREAS** on August 14, 2018, the Legislature enacted L. 2018, c.90 (the “Act”) establishing a program (referred to herein as the “P3 Program”) to allow local government units, school districts and State government entities, as well as colleges and universities to enter into a public-private partnership agreement under which a private entity assumes final and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity; and

**WHEREAS** the Act requires that each P3 project (the “P3 Project”) proposed shall be submitted to the State Treasurer for review and approval; and

**WHEREAS**, the Act provides that the State Treasurer shall confer with relevant State Agencies and/or or State Authorities, including the NJSDA, when applicable, in the State Treasurer’s review of a proposed P3 Project; and

**WHEREAS**, on June 17, 2019, the State Treasurer proposed rules at N.J.A.C. 17:1-8 (the “P3 Rules”) to implement the P3 Program, which among other things, establishes procedures for the submission and review of P3 Projects; and

**WHEREAS** the Rules require the Office of Public Finance within the Department of the Treasury (“OPF”) to convene a project review committee (each, a Project Review Committee”) consisting of representatives of the relevant State Agencies and/or State Authorities, including at least one representative of the NJSDA, when applicable; and

**WHEREAS** the Project Review Committee shall review the viability of the P3 Project as well as the advisability of the P3 Project for the public entity, request additional information as needed, and provide a review and recommendation to the State Treasurer; and

**WHEREAS**, N.J.S.A. 52:14-1, et seq. addresses cooperation between departments, and the State Treasurer and the NJSDA are desirous of working with each other to effectuate the

procedures set forth in the Act and the Rules and of setting forth in this MOU the respective duties and responsibilities of each Party in connection therewith;

**NOW THEREFORE**, it is hereby agreed by the Parties as follows:

Section A. Responsibilities of NJSDA and the State Treasurer

1. The NJSDA shall provide at least one representative for each Project Review Committee when requested by OPF for review of a P3 Project.
2. The NJSDA agrees the representative will be reasonably available to attend meetings or otherwise diligently participate in such review and work with the other members of the Project Review Committee to provide to the State Treasurer a review and recommendation within ninety (90) days of assignment of the P3 project proposal for review, pursuant to the Rules;
3. The NJSDA agrees to provide a replacement representative if the designated representative is unable for any reason to participate in the review process at any time before the Project Review Committee is complete and a recommendation is provided to the State Treasurer.
4. Upon completion by the Project Review Committee of its review and submission of its recommendation to the State Treasurer, the State Treasurer shall remit to the NJSDA a portion of the application fee in the amount of \$5,000.00.

Section B. Miscellaneous

- 1) The State Treasurer and the NJSDA shall retain all of their respective powers, obligations and immunities provided by law.
- 2) The Parties acknowledge that the successful completion of each Party's duties hereunder will require cooperation between the Parties. The Parties agree to work cooperatively to achieve the goals of this MOU.
- 3) This MOU shall be effective as of the date of final execution by the Parties and shall continue so long as the Act remains in effect.
- 4) This MOU may be amended at any time by the written agreement of the Parties.
- 5) The recitals appearing before Section A are made part of this MOU and are specifically incorporated herein by reference.
- 6) There are no third party beneficiaries of this MOU.

**IN WITNESS HEREOF**, the Parties have executed this MOU on the date set forth above.

**STATE TREASURER**

By: \_\_\_\_\_

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Name:  
Title

51 N.J.R. 956(a)

**51 N.J.R. 956(a)**

VOLUME 51, ISSUE 12, JUNE 17, 2019

**RULE PROPOSALS****Reporter**

51 N.J.R. 956(a)

***NJ - New Jersey Register > 2019 > JUNE > JUNE 17, 2019 > RULE PROPOSALS > TREASURY--GENERAL -- OFFICE OF PUBLIC FINANCE*****Interested Persons Statement****INTERESTED PERSONS**

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of [N.J.S.A. 52:14B-3](#). An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at [N.J.A.C. 1:30-6.3](#). The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

**Agency****TREASURY--GENERAL > OFFICE OF PUBLIC FINANCE****Administrative Code Citation****Proposed New Rules: N.J.A.C. 17:49****Text****Public-Private Partnership Rules**

Authorized By: Elizabeth Maher Muoio, State Treasurer.

Authority: P.L. 2018, c. 90.

## 51 N.J.R. 956(a)

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

Proposal Number: PRN 2019-086.

Please submit written comments by August 16, 2019, to:

Jennifer Keyes-Maloney  
Department of the Treasury  
225 W State Street, 4th Floor  
Trenton, NJ 08625-0211  
Attn: Public-Private Partnership Rule Proposal

[Jennifer.maloney@treas.nj.gov](mailto:Jennifer.maloney@treas.nj.gov)

The agency proposal follows:

### Summary

The Department of the Treasury ("Department" or "Treasury") proposes new rules at N.J.A.C. 17:49 to implement the Public-Private Partnership Program established pursuant to P.L. 2018, c. 90.

The law is intended to give State, county, and local officials flexibility to improve their communities while leveraging private capital to invest in public infrastructure. The government bodies, which include school districts, municipalities, counties, and State entities, including State colleges and universities, may enter into a public-private partnership agreement with a private organization, which would assume the financial [page=957] and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a government-related project that is financed in whole by the private sector organization. The law requires specific opportunities for local public input, along with extensive finance controls, and land use and financial approvals, when a municipality, county, or school district considers pursuing a public-private partnership agreement. If the agreement includes the lease of a public building, road, infrastructure, or facility in exchange for upfront or structured financing by the private entity, the term of the lease may not be for a period greater than 30 years. Title to land contributed by one of the public entities must remain with the entity.

The law includes specialized provisions for a small number (eight) of Statewide roadway or highway projects that require not only private investment, but also public support (at least \$ 100 million). For local projects this limit is significantly lower (\$ 10 million). A private entity is required to establish a construction account to fully capitalize and fund the project, while the general contractor, construction manager, or design-build team is required to post performance and payment bonds to ensure the completion of the project. The legislation prohibits the bundling of multiple projects. All projects are required to undergo a procurement process, and must be approved by the State Treasurer, who must provide the status on each public-private partnership agreement on the Department of the Treasury's website. Postings must indicate the status of each agreement by designating it as a proposed, under review, or active public-private partnership project.

The law authorizes the Treasurer to establish the procedures for reviewing and approving public-private partnership agreements involving all of the various governmental entities -- local government units, school districts, and State government entities, as well as county colleges, and State colleges and universities. The Treasurer's determination to approve is made in consultation with relevant agencies and departments, including the Economic Development Authority, Schools Development Authority, Department of Education, Educational Facilities Authority, the Department of Community Affairs, the Division of Property Management and Construction, and the Department of Transportation, as appropriate. The agreements can provide for the development, construction, reconstruction, repair, alteration, improvement, extension, and may include maintenance and operation for an extended period of time. A private entity may receive some or all of the revenues associated with the project, provided the private entity assumes either a portion, or all, of the financial responsibility for the project. However, the public entity retains ownership of the land.

## 51 N.J.R. 956(a)

Before any of the public entities addressed by the new law can actually enter such agreements, the new law requires proposals be reviewed by the State Treasurer.

The proposed new rules are intended to provide guidance, general operating guidelines, any exemptions, and any special circumstances for entities seeking to enter into a public-private partnership.

A summary of each proposed new subchapter follows.

Subchapter 1 outlines the purpose and scope of the new rules, including where questions may be addressed.

Subchapter 2 provides definitions for terms such as building project, bundling, design-build team, highway project, local government unit, private entity, project, public-private partnership advisor, among others, relevant to the chapter.

Subchapter 3 provides specifics on the minimum qualifications of experts and professionals utilized as part of a public-private partnership project. These include pre-qualifications for third-party financial institutions (N.J.A.C. 17:49-3.1); pre-qualification of construction contractors, legal counsel, and other professionals (N.J.A.C. 17:49-3.2); and pre-qualification of public-private partnership advisors that are utilized by the Office of Public Finance within the Department of the Treasury for expert review of proposals (N.J.A.C. 17:49-3.3).

Subchapter 4 provides specifics on various fees project applicants are subject to.

Subchapter 5 outlines annual reporting requirements for entities with a public-private partnership project.

Subchapter 6 outlines the particular project submission, review, and approval process for local government entities. N.J.A.C. 17:49-6.1 outlines the minimum standards of a local government unit to operate a project. N.J.A.C. 17:49-6.2 sets forth the minimum project analysis requirements for a local government unit seeking to pursue a public-private partnership. N.J.A.C. 17:49-6.3 outlines the public notice and hearing requirements for projects considered by the local government unit. N.J.A.C. 17:49-6.4 establishes the process for unsolicited proposals. N.J.A.C. 17:49-6.5 specifies the required documentation for submission of an application to the Office of Public Finance, including required elements of a public-private partnership agreement. The subchapter also outlines the process and timelines for the review to be conducted by the Office of Public Finance in conjunction with relevant agencies, such as the Division of Local Government Services within the Department of Community Affairs, the Economic Development Authority, and, where a transportation element is considered, the Department of Transportation. N.J.A.C. 17:49-6.6 sets forth standards for any lease arrangements. N.J.A.C. 17:49-6.7 outlines specific construction standards and construction account requirements.

Subchapter 7 outlines the particular project submission, review, and approval process for school districts. N.J.A.C. 17:49-7.1 outlines the minimum standards of a school district to operate a project. N.J.A.C. 17:49-7.2 sets forth the minimum project analysis requirements for a school district seeking to pursue a public-private partnership. N.J.A.C. 17:49-7.3 outlines the public notice and hearing requirements for projects considered by the school district. N.J.A.C. 17:49-7.4 establishes the process for unsolicited proposals. N.J.A.C. 17:49-7.5 specifies the required documentation for submission of an application to the Office of Public Finance, including required elements of a public-private partnership agreement. The subchapter also outlines the process and timelines for the review to be conducted by the Office of Public Finance in conjunction with relevant agencies such as the Department of Education, Schools Development Authority, Division of Local Government Services within the Department of Community Affairs, the Economic Development Authority, and, where a transportation element is considered, the Department of Transportation. N.J.A.C. 17:49-7.6 sets forth standards for any lease arrangements. N.J.A.C. 17:49-7.7 outlines specific construction standards and construction account requirements.

Subchapter 8 outlines the particular project submission, review, and approval process for State governmental entities. N.J.A.C. 17:49-8.1 outlines the minimum standards of a State governmental entity to operate a project. N.J.A.C. 17:49-8.2 sets forth the minimum project analysis requirements for a State governmental entity seeking to pursue a public-private partnership. N.J.A.C. 17:49-8.3 outlines the public notice and hearing requirements for projects considered by the State governmental entity. N.J.A.C. 17:49-8.4 establishes the process for unsolicited proposals. N.J.A.C. 17:49-8.5 specifies the required documentation for submission of an application to the Office of Public

## 51 N.J.R. 956(a)

Finance, including required elements of a public-private partnership agreement. The subchapter also outlines the process and timelines for the review to be conducted by the Office of Public Finance in conjunction with relevant agencies such as the Department of Education, the Economic Development Authority, the Division of Property Management and Construction within the Department of the Treasury, and, where a transportation element is considered, the Department of Transportation. N.J.A.C. 17:49-8.6 sets forth standards for any lease arrangements and availability of payments. N.J.A.C. 17:49-8.7 outlines specific construction standards and construction account requirements.

Subchapter 9 outlines the particular project submission, review, and approval process for State or county colleges or universities. N.J.A.C. 17:49-9.1 outlines the minimum standards of a State or county college or university to operate a project. N.J.A.C. 17:49-9.2 sets forth the minimum project analysis requirements for a State or county college or university seeking to pursue a public-private partnership. N.J.A.C. 17:49-9.3 outlines the public notice and hearing requirements for projects considered by a State or county college or university. N.J.A.C. 17:49-9.4 establishes the process for unsolicited proposals. N.J.A.C. 17:49-9.5 specifies the required documentation for submission of an application to the Office of Public Finance, including required elements of a public-private partnership agreement. The subchapter also outlines the process and timelines for the review to be conducted by the Office of Public Finance in conjunction with relevant agencies such as the Office of the [page=958] Secretary of Higher Education, Education Facilities Authority, the Economic Development Authority, and, where a transportation element is considered, the Department of Transportation. N.J.A.C. 17:49-9.6 sets forth standards for any lease arrangements and availability of payments. N.J.A.C. 17:49-9.7 outlines specific construction standards and construction account requirements.

Subchapter 10 establishes standards for revocation or termination of a project by the State Treasurer.

Subchapter 11 establishes rules related to the Public-Private Partnership Fund, as well as required action by approved entities upon close of an agreement related to a one-percent set-aside of the total project value.

Subchapter 12 outlines the appeal process for entities seeking to appeal a decision of the State Treasurer.

As the Treasurer 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](#).

**Social Impact**

The goal of P.L. 2018, c. 90 and the proposed new rules is to enhance opportunities for State and local governments to build needed facilities and improve the efficiency of their operations without negatively impacting taxpayers in general. At the same time, they incorporate safeguards to ensure that the public is not exposed to an unacceptable level of risk by provisions such as review of long-term operating agreements and maintenance rule to ensure that whatever is constructed is responsibly maintained and provides a quality product for a long period of time. It is anticipated the proposed new rules will have an overall positive social impact by creating and improving facilities available to the public.

**Economic Impact**

The proposed new rules are expected to have a beneficial impact by incentivizing infrastructure improvements throughout the State. Construction and infrastructure improvement will have a positive impact on the New Jersey economy. The building and repair of roads, buildings, and other facilities is expected to foster creation and maintenance of construction-related jobs and enhance development by other private sector entities by improving New Jersey's transportation network. Improvements in infrastructure overall, including university-related research facilities and additions to county colleges may enhance development of STEM-related training and jobs through the State. The proposed new rules also seek to reduce compliance issues for entities interested in availing themselves of this option, giving them clear guidance on how to participate in the program.

**Federal Standards Statement**



## 51 N.J.R. 956(a)

A Federal standards analysis is not required because the proposed new rules relate strictly to the State of New Jersey. These proposed new rules are independent from any Federal systems or requirements. However, if Federal funds are being used for a specific procurement, such as a road project that involves current or prior Federal funds, then the Federal rules would supersede the rules set forth here.

**Jobs Impact**

The proposed new rules may result in the creation of jobs. The proposed new rules are expected to have a beneficial impact by incentivizing construction and infrastructure improvements throughout the State. Because P.L. 2018, c. 90 also requires that workers employed in the construction, rehabilitation, or building maintenance services of a project be subject to the applicable provisions of the New Jersey Prevailing Wage Act, that building construction projects contain a project labor agreement, and that the general contractor, construction manager, design-build team, or subcontractor for a project be registered and classified by the State to perform work on a project, it is expected that the various projects will result in the creation of good-paying jobs. Improvements in infrastructure overall, including university-related research facilities and additions to county colleges, may enhance development of STEM-related training and jobs throughout the State.

**Agricultural Industry Impact**

The proposed new rules will not have any particular or direct impact on the agricultural industry.

**Regulatory Flexibility Analysis**

The proposed new rules are designed to be used by public entities in submission of a public-private partnership agreement to the State for review and approval, which may impact small businesses as defined under the Regulatory Flexibility Act, [N.J.S.A. 52:14B-16](#) et seq. Often, large scale infrastructure projects seek to involve smaller subcontractors, particularly regionally based. Moreover, any large-scale project brings in employees who often utilize local business for day-to-day activities. Public-private partnerships can provide a more nimble means of procurement and reduce compliance requirements for private entities, including small businesses, that do business with public entities. The proposed new rules contain reporting, recordkeeping, and compliance requirements as discussed in the Summary above relating to prevailing wage, project labor agreements, and business registration. However, because the project scope, size, and parameters are so diverse, and because the requirements imposed are not administratively burdensome, the Department has not provided any exceptions or lesser requirements for small businesses.

**Housing Affordability Impact Analysis**

The proposed new rules may have an impact on housing, including the affordability of housing or the average costs of housing, as projects built may have a direct or indirect impact on housing stock. Directly, it is envisioned that multi-use projects may be undertaken, creating additional or diversified housing stock, of which an affordable housing component may be expected. Moreover, certain improvements, such as utility or road, related to infrastructure may positively impact feasibility of certain housing projects.

**Smart Growth Developmental Impact Analysis**

The proposed new rules could have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The rules could have a positive impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to implementation of public-private partnership agreements, which can facilitate development, including housing development, in certain circumstances. The rules allow for a myriad of project types, including a mixed-use project of which a public (that is, higher education, school district, or local government) component may also incorporate a private housing component.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

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

## Regulations

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**Full text** of the proposed new rules follows:

### CHAPTER 49

#### PUBLIC-PRIVATE PARTNERSHIPS RULES

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 17:49-1.1 Purpose and scope

(a) The rules in this subchapter are promulgated by the Department of the Treasury to implement P.L. 2018, c. 90.

(b) The rules in this subchapter apply to the identification, screening, selection, development, and delivery of projects through the public-private partnership procurement model authorized by P.L. 2018, c. 90. The rules outline the process by which project criteria are developed and how project reviews will be conducted. The rules provide guidelines for authorized public entities who are working through the process of deciding whether to seek or respond to a partnership opportunity, to reject a partnership or negotiate the terms of one, and whether to enter and how to monitor over time the partnership arrangement. They include particular rules as to interacting with the private entities who seek to partner with them, as well as the rules for engagement of the public and other key stakeholders critical to the advancement of a project.

[page=959] (c) These guidelines include a process for both solicited and unsolicited project proposals for each type of project authorized under the law, provide the structure for the selection of a private sector partner, and finally, outline the structure of the public-private partnership agreement in accordance with P.L. 2018, c. 90. The organization of the rules follows the anticipated chronological steps that will be undertaken through the life cycle of a project. The rules ensure the requisite analysis is conducted by public entities seeking to enter into a public-private partnership so as to ensure resources are properly committed and that the public's interest is protected.

(c) Submissions and questions regarding public-private partnerships should be addressed to:

Department of the Treasury  
Attn: P3 Review  
50 W. State Street, 5th Floor  
PO Box 005  
Trenton, New Jersey 08625-0005

(d) Questions of a private entity or the public concerning the award of contracts under this chapter should be directed to the local or State contracting agency issuing the public-private partnership agreement.

#### SUBCHAPTER 2. DEFINITIONS

##### 17:49-2.1 Definitions

"Approval letter" means the letter sent by the State Treasurer authorizing a public entity who has submitted a project for approval to proceed forward with final agreement with a private entity.

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L. 1974, c. 80 ([N.J.S.A. 34:1B-4](#)).

"Availability payment" means fixed payments to a private entity by a public entity in return for the design, construction, long-term operation and maintenance, and financing of the project. Availability payments shall only be permitted where a State or county college or university or State governmental entity is an applicant.

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"Building project" means the construction, reconstruction, repair, alteration, improvement, or extension of any public building, structure, or facility constructed or acquired by a State government entity to house State government functions, including any infrastructure or facility used or to be used by the public or in support of a public purpose or activity.

"Bundling" means the use of a solicitation for multiple projects in one single contract, through a public-private partnership project delivery method. A project shall include only one project focus, operations, financing plan, and financial structure in order to seek project approval. Bundling is not permitted across multiple applicants.

"Charter school" means an entity established pursuant to [N.J.S.A. 18A:36A-1](#) et seq.

"Design-build contractor" means the entity that is contractually responsible for the performance of construction of a project as a member of a design-build team.

"Design-build team" means a contractually created combination of entities formed to undertake a construction project to be advanced using a design-build methodology, including design professionals responsible for the design and construction companies responsible for the construction, of such a project.

"Highway or transportation project" means the construction, reconstruction, repair, alteration, improvement, or extension of public expressways, freeways, and parkways, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, and park and ride facilities, including any infrastructure or facility used or to be used by the public or in support of a public purpose or activity, provided that the project shall include an expenditure of at least \$ 100 million in public funds or any expenditure in solely private funds.

"Local government unit" means a county, a municipality, or any board, commission, committee, authority, or agency thereof that is subject to the provisions of the Local Public Contracts Law, P.L. 1971, c. 198 ([N.J.S.A. 40A:11-1](#) et seq.), including a housing authority or redevelopment agency created or continued under the Local Redevelopment and Housing Law, P.L. 1992, c. 79 ([N.J.S.A. 40A:12A-1](#) et seq.). A local government unit shall not include a public entity that has entered into a contract with a private firm or a public authority pursuant to the New Jersey Wastewater Treatment Public-Private Contracting Act, P.L. 1995, c. 216 ([N.J.S.A. 58:27-19](#) et seq.), for the provision of wastewater treatment services.

"No-Build" means the decision to not proceed with a project or procurement.

"Office of Public Finance" means the Office of Public Finance within the Department of the Treasury.

"Private entity" means a natural person, corporation, limited liability company, partnership, joint venture, or other private business entity that assumes full financial and administrative responsibility for the construction, reconstruction, repair, alteration, improvement, extension, operation, and/or maintenance of a building, structure, facility or other structure, including a highway, for the benefit of the local government unit, school district, State governmental entity, or State or county college. A private entity, or its majority shareholder or parent company, shall meet at least the minimum qualification standards in existing statutes and rules issued by the relevant public entity involved in a project, and within the last five years, shall have participated in a lead role in at least two public-private projects or complex lease or lease back arrangements or other complex transactions, of at least \$ 10 million in size, or \$ 100 million in the case of highway or transportation projects, unless otherwise expressly stated in a public entity's solicitation, to be considered qualified to participate in a public-private partnership agreement.

1. Where the public entity is a school district, the private entity shall have a clearly articulated commitment to public education demonstrated by either a record of collaboration with elementary or secondary public or private schools in this State, or any other state, over the last two years or, alternatively, the private entity may demonstrate a clear commitment to public education through its charter, mission statement, or application for approval as a non-profit corporation, foundation, bylaws, or other organizing document.
2. Where a highway or transportation element is considered, regardless of the type of public entity involved, a private entity shall also be pre-qualified by the Department of Transportation.

"Project" means:

1. For a local government unit, the development, construction, reconstruction, repair, alteration, improvement, extension, or operation, and maintenance of any building, local or county road, vertical

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structure, or facility constructed or acquired by a local government unit to operate local government functions, including any infrastructure or facility used, or to be used, by the public or in support of a public purpose or activity, including fixtures, furnishings, and equipment, as well as any site acquisition, provided that, with respect to a project, a qualifying project shall include an expenditure of at least \$ 10 million in public funds, or any expenditure in solely private funds, and provided that the project is financed in whole by the private entity and the local unit retains full ownership of the land upon which the project is located.

2. For a school district, the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, and/or capital maintenance of all or any part of a school facility, infrastructure, or 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, where used by the public or in support of a public purpose or activity, provided the private entity assumes full financial and administrative responsibility for a project of, or for the benefit of, the school district, and provided that the project is financed in whole by the private entity.
3. For a State government entity, the construction, reconstruction, repair, alteration, improvement, extension, and/or operation and maintenance of any public building, structure, or facility constructed or acquired by a State government entity to house State government functions, including any infrastructure or facility used, or to be used, by the public or in support of a public purpose or activity, and including any fixtures, furnishings, and equipment, provided that the private entity may assume full financial and administrative responsibility for the construction, reconstruction, repair, alteration, improvement, extension, [page=960] operation, and maintenance of a building or highway of, or for the benefit of, the State government entity, and provided that the building or highway project is financed in whole or in part by the private entity and the State government entity retains full ownership of the land upon which the project is located.
4. For a State or county college or university, the on-campus or off-campus design, build, maintenance, financing, construction, reconstruction, repair, alteration, improvement, extension, management, and/or operation of a building, structure, or facility of, or for the benefit of, the State or county college or university, including any fixtures, furnishings, and equipment, provided that the private entity may assume full financial and administrative responsibility for the construction, reconstruction, repair, alteration, improvement, extension, management, or operation of a building, structure, or facility, of, or for, the benefit of the State or county college or university and, provided that the project is financed in whole or in part by the private entity and that the State or county college or university, as applicable, retains full ownership of the land upon which the project is completed.

"Public building, road, structure, infrastructure, or facility" means any site building, road, structure, infrastructure, or facility used or to be used by a local government unit, including a housing authority or redevelopment agency created or continued under the Local Redevelopment and Housing Law, P.L. 1992, c. 79 ([N.J.S.A. 40A:12A-1](#) et seq.), to house a local government function or functions, including any infrastructure or facility used or to be used by the public, or in support of a public purpose or activity.

"Public-private partnership advisor" means an expert retained by the Office of Public Finance for purposes of assisting the State Treasurer's review of a project by completing a financial and technical review of a proposed public-private partnership project.

"Public-private partnership agreement" means an agreement entered into by a local government unit, a school district, State governmental entity, or a State or county college or university and a private entity for the purpose of permitting a private entity to assume full financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the local government unit, school district, or State governmental entity or a State or county college or university.

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"Public-private partnership program" means the public-private partnership procurement model as authorized by P.L. 2018, c. 90.

"School district" means, consistent with the definition in [N.J.S.A. 18A:7G-3](#), a local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of Chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of Chapter 54 of Title 18A of the New Jersey Statutes, a district under full State intervention pursuant to [N.J.S.A. 18A:7A-34](#) et seq., and a charter school established pursuant to [N.J.S.A. 18A:36A-1](#) et seq., that can demonstrate, to the satisfaction of the Commissioner of Education and the Chief Executive Officer of the Schools Development Authority, that a new school facility is necessary due to overcrowding, or the existing school facility is in need of replacement.

"State government entity" means the State or any department, agency, commission, or authority thereof subject to the public contracting provisions of P.L. 1954, c. 48 ([N.J.S.A. 52:34-6](#) et seq.), including the South Jersey Port Corporation created pursuant to "The South Jersey Port Corporation Act," P.L. 1968, c. 60 ([N.J.S.A. 12:11A-1](#) et seq.), and New Jersey Transit. State government entity shall not include any State institution of higher education.

"State or county college or university" means an institution of higher education organized pursuant to Chapter 64 or Chapter 64A of Title 18A of the New Jersey Statutes and the New Jersey Institute of Technology established pursuant to Chapter 64E of Title 18A of the New Jersey Statutes and Rowan University established pursuant to Chapter 64M, as well as Rutgers, the State University established pursuant to Chapter 65 of Title 18A of the New Jersey Statutes.

"Stipend" means the payment of a private entity for work product submitted in response to a public-private partnership proposal released by a local government unit or State government entity, where the cost of the development of a proposal is significant and there is a substantial opportunity for innovation on the part of the local government unit or State government entity. All work product in this instance shall then be jointly owned, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan, by the local government unit or State governmental entity.

"Tax Exempt Bond" means a bond issued by a municipal, county, or State government, whose interest payments are not subject to Federal, State, or local income tax.

"Unsolicited proposal process" means the process required for consideration of an unsolicited proposal by a local government unit, school district, State entity, or State or county college or university, including the procedures for providing notice of receipt of an unsolicited proposal, solicitation of additional competitive proposals from qualified entities, evaluation and ranking of all proposals received, including the unsolicited proposal, public hearing regarding the proposed project, and determination of the selected proposal.

### **SUBCHAPTER 3. QUALIFICATION OF EXPERTS AND PROFESSIONALS**

#### **17:49-3.1 Pre-qualification of third-party financial institutions**

- (a) The Office of Public Finance shall pre-qualify third-party financial institutions that shall act as collateral agents and manage construction accounts for public-private partnership agreements.
- (b) The minimum standards to qualify shall include:
  1. Current authorization to conduct business in the State of New Jersey;
  2. Participation as a trustee in at least five complex public bonding transactions or participation in five public-private partnership projects over the last five years in this or any other jurisdiction; and
  3. Capital stock surplus and aggregate earnings of at least \$ 10 million under a state or national banking charter;

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- (c) A financial institution seeking to become pre-qualified shall submit a letter to the Office of Public Finance outlining how its institution successfully satisfies the minimum standard required and its commitment to (d) below.
- (d) Financial institutions shall agree to provide the appropriate public entity pre-audit access during the term of engagement and for six years thereafter.
- (e) The Office of Public Finance shall maintain a list of third-party institutions that have been pre-qualified.

**17:49-3.2** Pre-qualification of construction contractors, counsel, and design professionals

- (a) Contractors, including subcontractors, construction managers, and design-build teams (including design-build contractors and design professionals) shall be, at a minimum, registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction pursuant to [N.J.S.A. 52:35-1](#) et seq., and N.J.A.C. 17:19-3, or be pre-qualified by the Department of Transportation, New Jersey Transit, or New Jersey Turnpike authority, as appropriate. Design professionals, including architectural and engineering professionals shall be pre-qualified by the Division of Property Management and Construction pursuant to [N.J.S.A. 52:34-9.1](#) et seq., and N.J.A.C. 17:19-2, or be pre-qualified by the Department of Transportation, New Jersey Schools Development Authority, New Jersey Transit, or New Jersey Turnpike Authority, as appropriate.
- (b) Counsel to an entity, except a State government entity, shall possess the following minimum experience to provide legal representation and support for purposes of a public-private partnership agreement:
  1. Experience as counsel or underwriter on at least five complex financial transactions, including public-private partnership agreements, in this State or any other state within the last five years;
  2. Expertise in construction, land use, real estate development, lease, construction, and related financing; and
  3. Where relevant, experience in highway or transportation projects, including financing of projects.
- (c) All other professionals, including planners, financial analysts, and other consultants shall, at a minimum, have participated or worked on at [page=961] least five public-private partnership agreements or complex lease or lease back arrangements or other complex transactions, within the last five years and possess relevant credentials for the task assigned.
- (d) The qualifications of all professionals shall be provided to the State Treasurer as a part of the application process.

**17:49-3.3** Qualification of public-private partnership advisors

- (a) The Office of Public Finance shall pre-qualify and maintain a pool of public-private partnership advisors who shall assist the Department of the Treasury by undertaking a financial and technical review of projects submitted for consideration.
- (b) Public-private partnership advisors shall possess the following minimum criteria to qualify for consideration:
  1. Participation in at least five public-private partnership projects in this or any other jurisdiction in the last five years;
  2. Understanding of land use, construction, redevelopment, and public financing law;
  3. Experience with financial modeling, return on investment analysis, risk analysis and allocation, stress testing assessment, conduction of feasibility studies in assessing public-private partnership suitability, market testing, public sector comparability, net present value cost, and comparison development, as well as a review of project life cycle cost and reserve analysis;
  4. Ability to provide recommendations on appropriate discount rates and investment measures for projects;

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5. Exposure to public infrastructure construction and financing;
6. Experience with construction in New Jersey;
7. Ability to review, summarize, and prepare a summary of legal agreements; and
8. Any additional criteria as determined to be necessary by the Department of the Treasury.

**SUBCHAPTER 4. FEES****17:49-4.1 Fees**

- (a) An application review fee of \$ 75,000 shall be paid upon submission of an application for approval of a public-private partnership project to the Office of Public Finance by the local government unit, school district, State government entity, or county or State college or university.
- (b) To the extent additional funds are necessary to complete review of a project by a public-private partnership advisor as set forth in N.J.A.C. 17:49-3.3, as based upon a review of the project by the Department of the Treasury, including any post application change, an applicant shall be billed for the additional costs necessary to facilitate project review. Project review shall not commence until such time as funds are received to facilitate project review.
- (c) Applicants shall submit an additional fee of \$ 50,000 for any project involving a material transportation element.
- (d) Applicants shall submit a non-refundable fee of \$ 25,000 for each request for any material change in project scope at any time.
- (e) These application fees shall be in addition to any set-aside amount required pursuant to N.J.A.C. 17:49-11. The Department of the Treasury reserves the right to reduce the amount of required set-aside, for application fee amounts not expended for project review, upon request of a public entity. Such request shall be made upon receipt of project approval.

**SUBCHAPTER 5. REPORTING****17:49-5.1 Public-private partnership project report**

- (a) The Office of Public Finance shall maintain a list of public-private projects within the State of New Jersey. Projects shall be entered on the list upon submission of an application to the Office of Public Finance for project approval. Project entries shall be updated upon commencement of review, upon approval or rejection by the State Treasurer, upon cancellation of procurement or upon termination of approval, upon commencement of financing, during all stages of construction, and upon completion and/or any post-construction operation and maintenance of a project.
- (b) Semi-annually the Office of Public Finance shall publish a report based upon the list of projects maintained. The report shall include projects at all stages of the public-private partnership program process.
- (c) Local government units, school districts, State government entities, and/or a State or county college or university shall be required to regularly report to the Office of Public Finance on the status of the project in a format and at a frequency proscribed by the Office of Public Finance. The Office of Public Finance may request additional information of an applicant.

**SUBCHAPTER 6. LOCAL GOVERNMENT UNIT PROCEDURES AND REQUIREMENTS****17:49-6.1 Minimum local government unit standards for entrance into a public-private agreement and operation of a project**

- (a) A local government unit, with approval by the governing body, may enter into a public-private partnership agreement with a private entity to develop, construct, reconstruct, repair, alter, improve, extend, operate, or manage a building, road, vertical structure, or facility, if:

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1. The project, including any site acquisition, includes an expenditure of at least \$ 10 million in public funds, or any expenditure of solely private funds; and
  2. The project is financed in whole by the private entity and that the local government retains full ownership of the land upon which the project is completed.
- (b) In order to pursue a public-private partnership project, a local government unit shall, at a minimum, possess an investment grade bond rating from at least one nationally recognized statistical rating agency.
- (c) No project shall be exempt from the provision of the Local Bond Law, [N.J.S.A. 40A:2-1](#) et seq., the Local Authorities Fiscal Control Law, [N.J.S.A. 40A:5A-1](#) et seq., or any other law that may apply to a local government unit borrowing or financing, including, but not limited to, the review by, and approval of, the Local Finance Board or the Division of Local Government Services in the Department of Community Affairs.
- (d) A local government unit shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle, and accelerated delivery requirements requisite within a public-private partnership agreement:
1. Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at [www.treasury.nj.gov/p3screening1](http://www.treasury.nj.gov/p3screening1). A local government unit shall submit this self-assessment screening with their application to the Office of Public Finance; and
  2. Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance that it is considering pursuing a public-private partnership. The local government unit shall conduct a project analysis, in conjunction with legal, financial, and other experts possessing the requisite minimum criteria outlined in N.J.A.C. 17:49-3.2, to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A local government unit shall submit all supporting documents and requisite fees with its application to the Office of Public Finance, including information on the credentials of the experts retained for purposes of conducting the project analysis, as required by N.J.A.C. 17:49-6.5.

**17:49-6.2** Project analysis

- (a) A local government unit, via a finding by the governing body, shall determine whether to apply for approval to enter into a public-private partnership and shall document in its application to the Office of Public Finance, its analyses based upon the following threshold criteria:
1. A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
  2. An assessment of the benefits or risks to be realized by the project;
  3. The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built, or the length (in years) of the potential public-private partnership agreement; both for delivery as a public-private partnership [page=962] and delivery under a conventional public sector approach, supported by evidence from comparable projects;
  4. The maximum public contribution that a local government unit will invest in or contribute to the project under the public-private partnership;
  5. A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of the project, as contrasted with other options including a public sector option or not proceeding with a project;
  6. A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the local government unit as well as an analysis of the financial capacity of the private



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entity and local government unit, including an analysis of how the project's execution shall impact the financial status of the local government unit;

7. An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis) and quality outcomes for the project, relative to a public sector option; and
  8. Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.
- (b) A local government unit's governing body shall make the following findings to establish that a project is in the best interest of the public and shall provide supporting documents, including information on the financial strength and bonding capacity of the local government unit, to support the findings that:
1. There is a public need for the project and the project is consistent with existing long-term plans;
  2. There are specific significant benefits to the project;
  3. The project, including risk-adjusted costs associated with procurement, financing, design, construction, operation, and maintenance, including oversight costs, over the useful life of the asset that will be built, or the length, in years, of the potential public-private partnership agreement, will cost less than the public sector option, or if it costs more, there are demonstrable factors that warrant the additional expense;
  4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;
  5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  6. The private development will result in timely and efficient development and operation; and
  7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

**17:49-6.3** Public notice and hearing requirements

(a) A request for qualification shall include the following:

1. A request for qualification, soliciting response from private entities for participation in a public-private partnership project shall be advertised by a local government unit a minimum of 45 days prior to the required date of receipt.
2. The advertisement of the request for qualification shall be published on the official Internet website of the local government unit and at least one newspaper with Statewide circulation.
3. A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-6.5(a).
4. The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.

(b) A request for proposal shall include the following:

1. After a local government unit determines the qualified respondents utilizing the qualification standards, the local government unit shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 45 calendar days prior to the date established for submission of the proposals.
2. The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical submissions, or other required

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documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.

3. A local government unit may authorize the use of stipends on public-private partnership projects when there is a substantial opportunity for innovation and the costs of developing a proposal are significant. The extent of such stipend shall solely relate to the costs associated with work product of unsuccessful proposers submitted in response to a request for proposals.
    - i. The aggregate value of stipends provided to all private entities afforded stipends shall not exceed 0.05 percent of the total projected cost of the project.
    - ii. The extent to which any stipend will be available for work product submitted shall be affirmatively outlined in the request for proposal.
- (c) The ranking of proposals shall be as set forth in this subsection:
1. After the proposal or proposals have been received, and any public notification period has expired, the local government unit shall rank the proposals based upon the established evaluation criteria.
  2. The local government unit may consider, in addition to cost, factors that include, but are not limited to, professional qualifications and capacity of the entity and its agents, timing of project delivery, general business terms, innovative engineering, architectural services, cost-reduction terms, finance plans, and the need for local government funds to deliver the project and discharge the agreement.
  3. The private entity selected shall comply with all laws and regulations, including, but not limited to, section 1 of P.L. 2001, c. 134 ([N.J.S.A. 52:32-44](#)), sections 2 through 8 of P.L. 1975, c. 127 ([N.J.S.A. 10:5-32](#) to 38), section 1 of P.L. 1977, c. 33 ([N.J.S.A. 52:25.24-2](#)), P.L. 2005, c. 51 ([N.J.S.A. 19:44A-20.13](#) et seq.), P.L. 2005, c. 271 ([N.J.S.A. 40A:11-51](#) et seq.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.
  4. If only one proposal is received, the local government unit shall negotiate in good faith and, if not satisfied with the results of the negotiations, the local government unit may, at its sole discretion, terminate negotiations.
- (d) All public hearing and findings shall include the following:
1. After ranking the proposals, and the identification of a potential private entity for the project under review, the local government unit shall conduct a public hearing on the project, in accordance with the Open Public Meetings Act, [N.J.S.A. 10:4-6](#) et seq., prior to submitting the public-private proposal to the State Treasurer for consideration. The hearing shall be conducted in accordance with (d)2 through 6 below.
  2. Notice under this subsection shall include:
    - i. Notice of a public hearing must be provided not less than 14 days prior to a hearing, and shall state the date, time, and location of the public hearing;
    - ii. The notice must state the purpose and nature of the project under consideration by the local government unit;
    - iii. The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing;
    - iv. The notice must be published in at least one newspaper with Statewide circulation and on the official website of the local government unit;
  3. The public hearing shall occur within 14 days of the ranking of proposals;
  4. Public comments regarding the proposed project shall be received at or before the public hearing, in accordance with any procedures specified in the public notice, and the local government unit shall keep a record of such public comments. The local government unit shall respond to such public

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comments, either informally at the hearing, or in a writing made available to the public after the hearing, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A local government unit may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made;

5. The local government unit shall determine, on the record at a public hearing, that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:
  - [page=963] i. The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
  - ii. There is a public need for the project and the project is consistent with existing long-term plans;
  - iii. There are specific significant benefits to the project;
  - iv. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  - v. The private development will result in timely and efficient development and operation; and
  - vi. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement;
6. A record of the public hearing, including the required findings, and any public comments received and responses thereto, either made at the hearing or issued in writing after the hearing, shall be made available within seven days after conclusion of the public hearing.

**17:49-6.4** Unsolicited proposals

- (a) A local government unit may accept unsolicited proposals from private entities for public-private partnership agreements. A local government unit shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.
- (b) An unsolicited proposal shall include, at a minimum, the following:
  1. A description of the proposed public-private project, including the identified local government unit need to be fulfilled by the proposed project;
  2. The estimated construction and life-cycle costs;
  3. A timeline for development;
  4. Proposed plan of financing, including projected revenues, public or private, debt, equity investment, and a description of how the project meets needs identified in existing plans;
  5. An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project; and
  6. A projected schedule for obtaining such permits and approvals, and a statement of risks, liabilities, and responsibilities to be assumed by the private entity.
- (c) A private entity submitting an unsolicited proposal shall provide a copy in which all proprietary information has been redacted, so that the description of the proposed public-private project may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.
- (d) In the event that an unsolicited proposal is received, a local government unit's governing body shall determine, on the record, whether the following factors have been met:
  1. There is a public need for the project and the project is consistent with existing long-term plans;
  2. The project will cost less than a public sector option, or if it costs more, there are factors that warrant the additional expense;
  3. There are specific significant benefits to the project;

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4. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  5. The private development will result in timely and efficient development and operation; and
  6. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
- (e) If the local government unit receives an unsolicited proposal, and determines that it meets the above factors, the local government unit shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The local government unit shall:
1. Publish a notice of the receipt of the proposal on the Internet site of the local government unit and through advertisement in at least one newspaper with Statewide circulation;
  2. Provide notice of the proposal at its next scheduled public meeting of the local government unit and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;
  3. The notice shall provide that the local government unit shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and
  4. Mail a copy of the notice to each municipal and county local government body in the geographic area affected by the proposal.
- (f) After the 120 days of public notice have expired and any additional proposals have been received, the local government unit shall rank the proposals in order of preference.
1. In ranking the proposals, the local government unit shall, at a minimum, rely upon the factors outlined in (d) above.
  2. The local government unit may also consider factors that include, but are not limited to: professional qualifications of the entities participating in the proposed project; general business terms and conditions of the proposed project; any innovative engineering, architectural services, or cost-reduction terms, included in the project; the terms of the finance plan for the project; and the need for any contribution of local government funds required to deliver the project and/or discharge the agreement.
  3. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 ([N.J.S.A. 52:32-44](#)), sections 2 through 8 of P.L. 1975, c. 127 ([N.J.S.A. 10:5-32](#) to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 ([N.J.S.A. 19:44A-20.13](#) et seq.), P.L. 2005, c. 271 ([N.J.S.A. 40A:11-51](#) et seq.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.
- (g) If no proposals are received in addition to the unsolicited proposal, then the local government unit shall negotiate in good faith and, if not satisfied with the results of the negotiations, the local government unit may, at its sole discretion, terminate negotiations.
- (h) All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-6.2 and 6.3.
- 17:49-6.5 Project review**
- (a) A local government unit shall provide the Office of Public Finance the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:
1. A full description of the proposed public-private partnership project;
  2. A copy of the proposed public-private partnership agreement between the local government unit and the private entity, including any supporting documents such as the development agreement, any

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relevant contracts and leases, and all information obtained by, and findings of, the local government unit, as well as a redacted copy of all materials for purposes of providing any public document as required under the Open Public Records Act;

3. A proposed public-private partnership agreement between the local government unit and the private entity, including the following minimum criteria:
  - i. An agreement term length clearly defined to include the estimated construction and operational period, as needed;
  - ii. A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the local government unit and the private entity;
  - iii. Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;
  - iv. A provision allowing express permission of the public entity, and State and local officials, to inspect project-related assets or property; such provision shall include any specific limitations, particular requirements or allowances related to such review. Examples of limitations, particular requirements or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;
  - v. The roles and responsibilities of the parties for the duration of the agreement;
  - vi. Requirements for bonds or other forms of security in amounts acceptable to the local government unit;
  - vii. Standards and rights of parties relating to payments by the local government unit to the private entity if payments are part of the project;
  - [page=964] viii. Requirements for any payment by the private entity of any costs incurred by the local government unit before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the local government unit with respect to the project;
  - ix. Standards for construction and maintenance of the project;
  - x. Standards for allocation of costs of development, including allocation of liability for cost overruns;
  - xi. Performance criteria and incentives, if any;
  - xii. Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance, for both the private entity and local government unit;
  - xiii. The rights that the local government unit and the private entity may have, if any, to revenue generated as a result of the agreement, and any standards for allocation of such revenue between the parties;
  - xiv. A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the local government unit or to the private party for debt reduction;
  - xv. The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics, including performance points systems, monitoring rights of the local government unit, and penalties for failure to achieve these standards;
  - xvi. A maintenance plan for the full life cycle of the public-private partnership project;
  - xvii. A hand-back plan that includes requirements regarding return of the facility in a state of good repair and standards for determining such state of repair;

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- xviii.** Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);
  - xix.** Rights and remedies, including, but not limited to, compensatory, liquidated or other types of damages, and dispute resolution procedures available or applicable in the event of nonperformance or breach of contract, up to and including, material default;
  - xx.** Procedures for notice and cure of default;
  - xxi.** Insurance requirements for any project to be operated by the private entity;
  - xxii.** Grounds for termination of the public-private partnership agreement by the local government unit and the financial impact of that termination;
  - xxiii.** Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;
  - xxiv.** Procedures for amending the public-private partnership agreement;
  - xxv.** Provisions for the termination of the public-private partnership agreement and the disposition of the public-private partnership facility upon termination;
  - xxvi.** Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;
  - xxvii.** The nature of the local government and private entity's property interest including the acquisition of any property, of which the local government unit shall retain full ownership of the land upon which the project is located;
  - xxviii.** An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties, as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement;
  - xxix.** Details on distribution of costs between the private entity and local government unit, including costs of retaining independent experts to review, analyze, and advise the local government unit with respect to the proposal; and any stipends authorized for work completed, which shall not exceed 0.5 percent of the project total; and
  - xxx.** When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Outstanding Tax-Exempt Bonds under *Section 103 of the Internal Revenue Code* (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.
- 4.** A project agreement, including the following terms and conditions:
- i.** Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a local government unit be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.);
  - ii.** Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to [N.J.S.A.](#)

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[52:38-1](#) et seq., and shall be in a manner that, to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location;

- iii. Ensure the general contractor, construction manager, design-build team, or subcontractor for a construction project be registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a Public-Private Partnership project;
  - iv. When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 ([N.J.S.A. 52:27D-130.6](#));
  - v. Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of [N.J.S.A. 2A:44-143](#) et seq.;
  - vi. Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;
  - vii. Where appropriate, include a requirement that work performed under the agreement are subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 ([N.J.S.A. 34:20-1](#) et seq.); and
  - viii. In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the local government unit at which the project is completed, including, but not limited to, the Local Public Contracts Law, P.L. 1971, c. 198 ([N.J.S.A. 40A:11-1](#) et seq.);
5. The estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:
    - i. At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios; and
    - ii. A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;
  6. A completed Initial Screening Tool, including any changes to the project made in response to the results of the self-assessment;
- [page=965] 7. A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the project analysis;
7. A timetable for completion of the construction of the project, including all pre-development and development phases;
  8. All relevant engineering and architectural plans, drawings, and schematics;

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10. An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;
  11. A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the local government unit will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points systems, the use of possible performance-points systems, and any performance bonuses or reductions based upon the early or late completion and delivery of a project;
  12. A record of the public hearing held, including any public comments received and responses to public comments;
  13. A resolution by the local government unit's governing body of its intent to enter into a public-private partnership agreement pursuant to this section;
  14. A list of all experts retained, including information on expert qualification and industry experience;
  15. An affirmation that any proposed procurement contains all necessary elements, based upon minimum contract standards outlined in this section; and
  16. When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.
- (b) Upon receipt of a complete proposed project:
1. Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Division of Property Management and Construction within the Department of the Treasury, the Division of Local Government Services within the Department of Community Affairs, and, as appropriate, the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted.
  2. The project shall be added to the project report maintained by the Office of Public Finance.
  3. The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project.
    - i. The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the local government unit when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project.
    - ii. The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; such time limit shall be extended at the discretion of the Office of Public Finance.
  4. An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied.
  5. The Director of the Division of Local Government Services shall determine if a project is subject to review by the Local Finance Board or whether enhanced review is required by the Division of Local Government Services. If a project is subject to review and approval, such approval is required prior



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to progressing through the procurement process. Project approvals shall be held in abeyance pending determination by the Division.

6. The project review committee shall assess the viability of the project as well as the advisability of the project for the local government unit. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:
  - i. All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering and design, and operation and maintenance of the project.
  - ii. All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the local government unit for the project as proposed.
7. The review shall include, but is not limited to, a review of the following:
  - i. The feasibility of the project's design, construction, and operation;
  - ii. The local government unit's assumptions regarding the project's scope, benefits, risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;
  - iii. The sufficiency of the experience and qualifications of the private entity;
  - iv. The soundness of the financial plan, within the context of the local government unit;
  - v. The adequacy of the long-range maintenance plan to protect the investment; and
  - vi. The validity of the local government unit's determination that the project is in the best interest of the public, including an evaluation of the local government unit's determination that:
    - (1) The development and operation of the project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
    - (2) There is a public need for the project and the project is consistent with existing long-term plans;
    - (3) There are specific significant benefits to the project;
    - (4) There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
    - (5) The private development will result in timely and efficient development and operation; and
    - (6) The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
8. Members of the project review committee may request additional information as needed to make a complete assessment of the project.
9. The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary.
10. The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature.
11. The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter.
12. Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the local government unit of the finding of the State Treasurer in writing.

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13. Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, within the Department of the Treasury, as necessary to ensure a complete review of a project.
14. No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer.
15. In the event that a project materially deviates from the approved project parameters, the local government unit shall immediately notify the Office of Public Finance of the change and seek approval of the material change.
16. A signed copy of the agreement and any post agreement documents, with appropriate redaction, shall be provided to the Office of Public Finance.

[page=966] 17:49-6.6 Lease arrangements

- (a) Any lease arrangement with a private entity pursuant to a public-private partnership agreement may provide that a private entity shall assume some or all of the financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project, provided that the project is financed in whole by the private entity and the local government unit retains full ownership of the land upon which the project is located.
- (b) A project may include a lease of a revenue-producing public building, road, structure, infrastructure, or facility in exchange for an up-front or structured financing by a private entity for the project, provided that the private entity is responsible for the management, operation, and maintenance of the building, road, structure, infrastructure, or facility.
- (c) The private entity may receive some or all of the revenue generated by the building, road, structure, infrastructure, or facility and shall, in turn, operate the building, structure, infrastructure, or facility in accordance with local government standards.
- (d) A lease term shall not exceed 30 years and shall be subject to all applicable laws governing leases by a local government unit.
- (e) Upon completion of the lease term, subsequent revenue generated shall revert to the local government unit.
- (f) Leases may include lease back arrangements.

**17:49-6.7 Construction contract standards and account requirements**

- (a) Any construction contract shall meet NJ Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance plan requirements:
  1. The performance of a Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, number of floors, an evaluation of all systems, equipment, and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
  2. Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
  3. Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;

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4. Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
  5. Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;
  6. Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns, planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and
  7. Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and conforming to, the requirements of [N.J.S.A. 2A:44-143](#) et seq.
- (b) Upon approval by the State Treasurer, but prior to commencing work on a project, the local government unit shall require a private entity to:
1. Establish a construction account and appoint a third-party financial institution, which shall be pre-qualified by the State Treasurer pursuant to Subchapter 2, to act as a collateral agent, and manage the construction account.
    - i. The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project.
    - ii. The collateral agent shall maintain a full accounting of the funds and instruments in the account.
    - iii. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project.
    - iv. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full.
    - v. The construction account shall not be designated for more than one project.

**SUBCHAPTER 7. SCHOOL DISTRICT PROCEDURES AND REQUIREMENTS****17:49-7.1** Minimum school district standards for operation of a project

- (a) A school district, except a charter school, may enter into a public-private partnership agreement with a private entity to assume full financial and administrative responsibility for the development, construction, reconstruction, repair, alternation, improvement, extension, operation, and maintenance of a school facility project consistent with P.L. 2000, c. 72 ([N.J.S.A. 18A:7G-3](#)), including any infrastructure or facility to be used by the public, or in support of a public purpose, for the benefit of a school district, provided that:
1. The project is financed in whole by a private entity; and
  2. The school district has received approvals by all appropriate governing bodies, including the board of education and, where appropriate, a municipal governing body.
- (b) In order to pursue a public-private partnership project, a school district shall, at a minimum, possess an investment grade bond rating from at least one nationally recognized statistical rating agency.
- (c) A school district shall demonstrate compliance with the provisions at [N.J.S.A. 18A:7G-1](#) et seq., unless the provision has been specifically exempted by [N.J.S.A. 18A:18A-60](#) et seq., [18A:18A-16](#), [18A:18A-16.1](#), and [18A:18A-17](#) regarding the preparation and approval of plans and specification for public school buildings, capacity requirements, and facilities requirements for students with disabilities, respectively. A school district shall conduct a public hearing for facility lease in excess of five years as required by [N.J.A.C. 6A:26-10.11](#). A school district shall provide documentation necessary to obtain the approval of

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the Commissioner of Education for the proposed project prior to filing an application for approval to enter into a public-private partnership with the Office of Public Finance.

- (d) Where applicable, a school district, shall include the New Jersey Schools Development Authority to facilitate the transfer of property for the benefit of the school district, contingent upon inclusion of the New Jersey Schools Development Authority's involvement and expertise in the construction and management of the project.
- (e) A school district shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle, and accelerated delivery requirements requisite within a public-private partnership agreement:
1. Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at [www.treasury.nj.gov/p3screening1](http://www.treasury.nj.gov/p3screening1). A school district shall submit this self-assessment screening, along with the formal letter of project approval received from the Commissioner of Education, with their application to the Office of Public Finance; and
  2. Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance that it is considering pursuing a public-private partnership. The school district shall conduct a project analysis, in conjunction with legal, financial and other experts possessing the requisite minimum criteria outlined in N.J.A.C. 17:49-3.2, to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A school district shall submit all supporting documents with their application to the Department of the Treasury Office of Public Finance, including information on the credentials of the experts retained for purposes of conducting the project analysis, as required by N.J.A.C. 17:49-7.5.

[page=967] 17:49-7.2 Project analysis

- (a) In addition to a formal letter of project approval obtained from the Commissioner of Education, a school district, via a determination by the board of education, and where relevant, a municipal governing body, shall determine and document, for submission of an application to the Office of Public Finance, for approval to enter into a public-private partnership, its analyses based upon the following threshold criteria:
1. A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
  2. An assessment of the benefits or risks to be realized by the project;
  3. The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built or the length (in years) of the potential public-private partnership agreement, both for delivery as a public-private partnership and delivery under a conventional public sector approach, or, for a charter school, the cost of using an existing facility, including rehabilitation of an existing building, in accordance with [N.J.S.A. 18A:36B-10](#), supported by evidence from comparable projects. Except for a charter school, the analysis must include, at a minimum, a comparison of the present value of the future cost of leasing the completed project from the private entity over the lease term to the cost of self-financing the project using available capital reserve fund balances, and/or financing at the anticipated rate of debt issuance and debt service aid. The analysis must also include assumptions about the cost of early termination of the lease in accordance with the provisions at [N.J.A.C. 6A:26-10.10](#);
  4. A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of a project, compared to other options, including a public sector option, or not proceeding with a project;

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5. A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the school district as well as an analysis of the financial capacity of the private entity and school district, including an analysis of how the project's execution shall impact the financial status of the school district;
  6. An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis) and quality outcomes for the project, relative to a public sector option; and
  7. Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.
- (b) A school district's governing body, or in the case of a school district that requires municipal approval, both the school district's and municipality's governing body, shall make the following findings to establish that a project is in the best interests of the public, and shall provide supporting documents, including information on the financial strength of the school district, to support the findings made by a school district's governing body that:
1. There is a public need for the project and the project is consistent with the school district's long-range facilities plan pursuant to [N.J.S.A. 18A:7G-4](#), or for a charter school, with the charter school's existing long-term plans, including its charter;
  2. There are specific significant benefits to the project;
  3. The project, including procurement, land acquisition, development approval, and financial analysis costs, will cost less than the public sector option, or if it costs more, there are demonstrable factors that warrant the additional expense, and that the project is consistent with Core Curriculum Content Standards established pursuant to [N.J.S.A. 18A:7F-46](#);
  4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;
  5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  6. The private development will result in timely and efficient development and operation; and
  7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement and preserve the health, safety, and welfare of the building's occupants.

**17:49-7.3** Public notice and hearing requirements**(a)** A request for qualification shall include the following:

1. A request for qualification, soliciting response from private entities for participation in a public-private partnership project shall be advertised by a school district a minimum of 45 days prior to the required date of receipt.
2. The advertisement of the request for qualification shall be published on the official Internet website of the school district and at least one newspaper with Statewide circulation.
3. A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-7.5(a).
4. Prior to issuing the request for qualification, the school district shall ensure there is a public need for the project, including a determination that the district can demonstrate to the satisfaction of the Commissioner of Education and the Chief Executive Officer of the Schools Development Authority that a school facility is necessary due to overcrowding or is in need of replacement, and that the project is consistent with the school district's long-range facilities plan pursuant to [N.J.S.A. 18A:7G-4](#), or for charter schools, the existing long-term plans, including its charter.

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5. The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.
- (b) A request for proposal shall include the following:
1. After a school district determines the qualified respondents utilizing the qualification standards, the school district shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 45 days prior to the date established for submission of the proposals.
  2. The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical submissions, or other required documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.
  3. The request for proposal shall include a provision allowing a school district to terminate a public-private agreement without penalty should the Department of Education or the State Treasurer deny approval of a school facilities project, or any local or State code official deny approval to the project, or, in the case of a charter school, the non-renewal or revocation of its charter.
- (c) The ranking of proposals shall be in accordance with this subsection.
1. After the proposal or proposals have been received, and any public notification period has expired, the school district shall rank the proposals based upon the established evaluation criteria.
  2. The school district may consider, in addition to cost, factors that include, but are not limited to: professional qualifications and capacity of the entity and its agents; timing of project delivery; general business terms; innovative engineering and architectural services; cost-reduction terms; finance plans; and the need for school district funds to complete the project and discharge the agreement.
  3. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 ([N.J.S.A. 52:32-44](#)), sections 2 through 8 of P.L. 1975, c. 127 ([N.J.S.A. 10:5-32](#) to 38), section 1 of P.L. 1977, c. 33 ([N.J.S.A. 52:25.24-2](#)), P.L. 2005, c. 51 ([N.J.S.A. 19:44A-20.13](#) et seq.), P.L. 2005, c. 271 ([N.J.S.A. 40A:11-51](#) et seq.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.
  4. If only one proposal is received, the school district shall negotiate in good faith and, if not satisfied with the results of the negotiations, the school district may, at its sole discretion, terminate negotiations.
- (d) All public hearing and findings shall include the following:
1. After the school district has ranked the proposals and identified a potential private entity for the project under consideration, the school district shall conduct a public hearing on the project prior to submitting the public-private proposal to the State Treasurer for review. The public [page=968] hearing shall be held at a regular meeting of the school district's board of education, conducted pursuant to the Open Public Meetings Act, [N.J.S.A. 10:4-6](#) et seq., or for a charter school, at a meeting of the charter school board of trustees. The hearing shall be conducted in accordance with (d)2 through 6 below.
  2. Notice under this subsection shall include:
    - i. Notice of a public hearing must be provided not less than 14 days prior to a hearing, and shall state the date, time, and location of the public hearing;
    - ii. The notice must state the purpose and nature of the project under consideration by the school district;

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- iii. The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing; and
  - iv. The notice must be published in at least one newspaper with Statewide circulation and on the official website of the school district.
3. The public hearing shall occur within 14 days of the ranking of proposals.
  4. Public comments regarding the proposed project shall be received at or before the public hearing, in accordance with any procedures specified in the public notice, and the school district shall keep a record of such public comments. The school district shall respond to such public comments, either informally at the hearing, or in a writing made available to the public after the hearing, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A school district may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made.
  5. The school district shall determine, on the record at a public hearing, that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:
    - i. The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
    - ii. There is a public need for the project and the project is consistent with existing long-term plans;
    - iii. There are specific significant benefits to the project;
    - iv. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
    - v. The private development will result in timely and efficient development and operation; and
    - vi. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
  6. A record of the public hearing, including the required findings, and any public comments received and responses thereto, either made at the hearing or issued in writing after the hearing, shall be made available within seven days after conclusion of the public hearing.

**17:49-7.4** Unsolicited proposals

- (a) A school district may accept unsolicited proposals from private entities for public-private partnership agreements. A school district shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.
- (b) An unsolicited proposal shall include, at a minimum, the following:
  1. A description of the proposed public-private project, including the identified school district need to be fulfilled by the proposed project;
  2. The estimated construction and life-cycle costs;
  3. A timeline for development;
  4. Proposed plan of financing, including projected revenues, public or private, debt, equity investment, and a description of how the project meets needs identified in existing plans;
  5. An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project; and
  6. A projected schedule for obtaining such permits and approvals, a statement of risks, liabilities, and responsibilities to be assumed by the private entity.

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- (c) A private entity submitting an unsolicited proposal shall provide a redacted copy of the description of the proposed public-private project, excluding all proprietary information, so that the proposal may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.
- (d) In the event that an unsolicited proposal is received, a school district's governing body shall determine, on the record, whether the following factors have been met:
1. There is a public need for the project and the project is consistent with existing long-term plans;
  2. The project will cost less than a public sector option, or if it costs more there are factors that warrant the additional expense;
  3. There are specific significant benefits to the project;
  4. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  5. The private development will result in timely and efficient development and operation; and
  6. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
- (e) If the school district receives an unsolicited proposal, and determines that it meets the above factors, the school district shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The school district shall:
1. Publish a notice of the receipt of the proposal on the Internet site of the school district and through advertisement in at least one newspaper with Statewide circulation;
  2. Provide notice of the proposal at its next scheduled public meeting of the school district and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;
  3. Provide notice that the school district shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and
  4. Mail a copy of the notice to each municipal and county local government body in the geographic area affected by the proposal.
- (f) After the 120 days of public notice have expired and any additional proposals have been received, the school district shall rank the proposals in order of preference.
1. In ranking the proposals, the school district shall, at a minimum, rely upon the factors outlined in (d) above.
  2. The school district may also consider factors that include, but are not be limited to, professional qualifications of the entities participating in the proposed project, general business terms and conditions of the proposed project, any innovative engineering, architectural services, or cost-reduction terms included in the project, the terms of the finance plan for the project, and the need for any contribution of local government funds required to deliver the project and/or discharge the agreement.
  3. The private entity selected shall comply with all laws and regulations, including, but not limited to, section 1 of P.L. 2001, c. 134 ([N.J.S.A. 52:32-44](#)), sections 2 through 8 of P.L. 1975, c. 127 ([N.J.S.A. 10:5-32](#) to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 ([N.J.S.A. 19:44A-20.13](#) et seq.), P.L. 2005, c. 271 ([N.J.S.A. 40A:11-51](#) et seq.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.



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(g) If no proposals are received in addition to the unsolicited proposal, then the school district shall negotiate in good faith and, if not satisfied with the results of the negotiations, the school district may, at its sole discretion, terminate negotiations.

(h) All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-7.2 and 7.3.

**17:49-7.5 Project review**

(a) A school district shall provide the Office of Public Finance, the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:

1. A full description of the proposed public-private partnership project;
2. A copy of the school facilities project approval letter issued by the Commissioner of Education pursuant to the requirements of [N.J.A.C. 6A:26-3.3](#);
- [page=969] 3. A copy of the proposed public-private partnership agreement between the school district and the private entity, as well as any supporting documents including the development agreement, any relevant contracts and leases between the school district and the private entity, and all information obtained by, and findings of, the school district, including redacted copies of all documents for purposes of providing any public document as required under the Open Public Records Act;
3. A proposed public-private partnership agreement between the school district and the private entity, including the following minimum criteria:
  - i. An agreement term length clearly defined to include the estimated construction and operational period, as needed;
  - ii. A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the school district and the private entity;
  - iii. Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;
  - iv. A provision allowing express permission of the public entity, and State and local officials, to inspect project-related assets or property; such provision shall include any specific limitations, particular requirements or allowances related to such review. Examples of limitations, particular requirements or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;
  - v. The roles and responsibilities of the parties for the duration of the agreement;
  - vi. Requirements for bonds or other forms of security in amounts acceptable to the school district;
  - vii. Standards and rights of parties relating to payments by the school district to the private entity if payments are part of the project;
  - viii. Requirements for any payment by the private entity of any costs incurred by the school district before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the school district with respect to the project;
  - ix. Standards for construction and maintenance of the project, which shall be consistent with [N.J.A.C. 6A:26-6.1](#) et seq., and the facilities efficiency standards developed by the Commissioner pursuant to [N.J.S.A. 18A:7G-4](#), or for charter schools, consistent with those sections of N.J.A.C. 6A:26-6, pertaining to the health and safety of pupils;
  - x. Standards for allocation of costs of development including allocation of cost overruns; under no circumstance shall cost overruns result in the expenditure of funds by a school district;
  - xi. Performance criteria and incentives, if any;

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- xii.** Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance, for both the private entity and the school district;
- xiii.** The rights and the standards for allocation of any revenue generated by the project and the agreement, in addition to the school district's retention of full ownership of the land upon which a project is located;
- xiv.** A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the school district or to the private party for debt reduction;
- xv.** The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics, including performance points systems, monitoring rights of the school district, and penalties for failure to achieve these standards;
- xvi.** A maintenance plan for the full life cycle of the project, which shall include, at a minimum, the criteria set forth in [N.J.A.C. 6A:26-20.3](#);
- xvii.** A hand-back plan that includes requirements regarding return of the facility in a state of good repair and standards for determining such state of repair;
- xviii.** Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);
- xix.** Rights and remedies, including, but not limited to, compensatory, liquidated, or other types of damages, and dispute resolution procedures available or applicable in the event of nonperformance or breach of contract, up to and including, material default;
- xx.** Procedures for notice and cure of default;
- xxi.** Insurance requirements for any project to be operated by the private entity;
- xxii.** Grounds for termination of the public-private partnership agreement by the school district and the financial impact of that termination, which shall include express permission to terminate a lease due to lack of availability and appropriation annually of sufficient funds as provided for in [N.J.S.A. 18A:18A-42\(n\)](#) or non-renewal or revocation of a charter of a charter school. Under no circumstance shall a public-private partnership agreement require payment of a termination penalty by a school district for lack of availability or appropriation annually of sufficient funds or the non-renewal or revocation of a charter by a charter school;
- xxiii.** Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;
- xxiv.** Procedures for amending the public-private partnership agreement;
- xxv.** Provisions for the termination of the public-private partnership agreement by either party and upon expiration of term of the agreement and the disposition of the public-private partnership facility upon termination;
- xxvi.** Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;
- xxvii.** The nature of the school district and private entity's property interest including the acquisition of any property, of which the school district shall retain full ownership of the land upon which the project is located;

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- xxviii.** An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement;
- xxix.** Details on distribution of costs between the private entity and school district, including costs of retaining independent experts to review, analyze, and advise the school district with respect to the proposal; and
- xxx.** When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Outstanding Tax-Exempt Bonds under *Section 103 of the Internal Revenue Code* (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code;
- 4.** A project agreement, including the following terms and conditions:
- i.** Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a school district be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.);
  - ii.** Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to [N.J.S.A. 52:38-1](#) et seq., and shall be in a manner that, to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location;
  - iii.** Ensure the general contractor, construction manager, design-build contractor, or subcontractor for a construction project be registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Schools Development Authority, Department of Transportation, New [page=970] Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a public-private partnership project;
  - iv.** When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 ([N.J.S.A. 52:27D-130.6](#));
  - v.** Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of [N.J.S.A. 2A:44-143](#) et seq.;
  - vi.** Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;
  - vii.** Where appropriate, include a requirement that work performed under the agreement is subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 ([N.J.S.A. 34:20-1](#) et seq.); and

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- viii. In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the school district at which the project is completed, including, but not limited to, the Public School Contracts Law, [N.J.S.A. 18A:18A-1](#);
5. In addition, a school district shall provide the estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:
    - i. At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios;
    - ii. A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;
  6. A completed Initial Screening Tool, including any changes to the project made in response to the results of the self- assessment;
  7. A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the Project Analysis;
  8. A timetable for completion of the construction of the project, including all pre-development and development phases;
  10. All relevant engineering and architectural plans, drawings, and schematics;
  11. An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;
  12. A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the school district will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points systems, and any performance bonuses or reductions based upon the early or late completion and delivery of a project;
  13. A record of the public hearing held, including any public comments received and responses to public comments:
    - i. In the event that a lease is considered, a copy of the minutes of the meeting of the board of education at which the public hearing for facility leases in excess of five years was discussed accompanied by a copy of the district board of education resolution endorsing a facility lease in excess of five years, if a project involves a lease;
  14. A resolution by the school district's governing body of its intent to enter into a public-private partnership agreement pursuant to this section;
  15. A list of all experts retained, including information on expert qualification and industry experience;
  16. An affirmation that any proposed procurement contains all necessary elements, based upon minimum contract standards outlined in this section; and
  17. When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.

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**(b)** Upon receipt of a complete proposed project:

1. Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Department of Education, the Division of Property Management and Construction within the Department of the Treasury, the Schools Development Authority, and as appropriate, the Division of Local Government Services within the Department of Community Affairs for projects where municipal approval is required, and the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted;
2. The project shall be added to the project report maintained by the Office of Public Finance in the Department of the Treasury;
3. The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project;
  - i. The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the school district when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project;
  - ii. The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; such time limit shall be extended at the discretion of the Office of Public Finance;
4. An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied;
5. The Commissioner of the Department of Education shall:
  - i. Verify that the project conforms to the requirements in [N.J.S.A. 18A:36A-1](#) et seq., and [18A:7G-3](#), and that the project is consistent with the provisions of [N.J.S.A. 18A:7G-1](#) et seq., unless specifically exempted by [N.J.S.A. 18A:18A-60](#) et seq., [18A:18A-16](#), [18A:18A-16.1](#), and [18A:18A-17](#) regarding the preparation and approval of plans and specification for public school buildings, capacity requirements, and facilities requirements for students with disabilities, respectively; and
  - ii. Where necessary, determine if a project is subject to voter approval pursuant to [N.J.S.A. 18A:24-10](#). If the project is subject to voter approval, such approval is required to progress through the review process. Project approvals shall be held in abeyance pending approval by the voters;
6. The project review committee shall review the viability of the project as well as the advisability of the project for the school district. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:
  - i. All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering, and design, and operation and maintenance of the project;
  - ii. All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the school district for the project as proposed;
7. The review shall include, but is not limited to, a review of the following:
  - i. The feasibility of the project's design, construction, and operation;
  - ii. The school district's assumptions regarding the project's scope, benefits, risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;

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- iii. The sufficiency of the experience and qualifications of the private entity;
- iv. The soundness of the financial plan, within the context of the school district;
- v. The adequacy of the long-range maintenance plan to protect the investment;
- vi. The validity of the school district's determination that the project is in the best interest of the public, including an evaluation of the school district's determination that:
  - (1) The development and operation of the project will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense;
  - (2) There is a public need for the project and the project is consistent with existing long-term plans;
  - (3) There are specific significant benefits to the project;
  - (4) There are specific significant benefits to using the public-private partnership instead of other options including No-Build; and
  - (5) The private development will result in timely and efficient development and operation;
- 8. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement;
- 9. Members of the project review committee may request additional information as needed to make a complete assessment of the project;
- 10. The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary;
- 11. The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature;
- 12. The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter;
- 13. Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the school district of the finding of the State Treasurer in writing;
- 14. Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, as necessary, to ensure a complete review of a project;
- 15. No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer;
- 16. In the event that a project materially deviates from the approved project parameters, the school district shall immediately notify the Office of Public Finance of the change and seek approval of the material change; and
- 17. A signed copy of the agreement and any post agreement documents, with appropriate redaction, shall be provided to the Office of Public Finance.

**17:49-7.6** Lease arrangements

- (a) Any lease arrangement between a school district and a private entity shall specify that the private entity shall assume all of the financial and administrative responsibility for the management, operation, and maintenance of a school facility in return for an annual lease payment, and, if applicable, some or all of the revenue generated by a building, structure, or facility. In addition, for a school district other than a charter school, such a lease agreement shall be subject to [N.J.A.C. 6A:26-10.10](#) and [10.11](#).

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- (b) A project involving a lease between the school district and the private entity shall be financed in whole by the private entity.
- (c) The private entity shall assume full financial and administrative responsibility for a project of, or for the benefit of, the school district.
- (d) A private entity shall operate the building, structure, infrastructure, or facility in accordance with school district standards, including, but not limited to, those involving health and safety, building maintenance, and repair.
- (e) A lease term shall not exceed 30 years and shall be subject to all applicable law governing leases by a school district.
- (f) Upon completion of the lease term, subsequent revenue generated as well as any management, maintenance, and operation responsibility shall revert to the school district or charter school, where applicable.

**17:49-7.7** Construction contract standards and account requirements

- (a) Any construction contract shall be consistent with N.J.A.C. 6A:26-6, and the facilities efficiency standards developed by the Commissioner of Education pursuant to [N.J.S.A. 18A:7G-4](#), or for a charter school, N.J.A.C. 6A:26-6, pertaining to health or safety of pupils and meet NJ Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements, and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance plan requirements:
  1. A Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, number of floors, an evaluation of all systems, equipment, and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
  2. Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
  3. Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;
  4. Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
  5. Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;
  6. Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns, planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and
  7. Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and conforming to, the requirements of [N.J.S.A. 2A:44-143](#) et seq.
- (b) Upon approval by the State Treasurer, but prior to commencing work on a project, the school district shall require a private entity to:
  1. Establish a construction account and appoint a third-party financial institution, who shall be pre-qualified by the State Treasurer pursuant to N.J.A.C. 17:49-2, to act as a collateral agent, and manage the construction account.

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- i. The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project.
- ii. The collateral agent shall maintain a full accounting of the funds and instruments in the account.
- iii. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project.
- iv. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full.
- v. The construction account shall not be designated for more than one project.

[page=972] SUBCHAPTER 8. STATE GOVERNMENT ENTITY PROCEDURES AND REQUIREMENTS

**17:49-8.1** Minimum State government entity standards for operation of a project

- (a) A State government entity may enter into a public-private partnership agreement with a private entity to assume full financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a public building or highway, including any infrastructure or facility to be used by the public or in support of a public purpose, or for the benefit of the public, provided that the project is financed in whole or part by the private entity, and the State government entity retains full ownership of the land upon which the project is located.
- (b) A State government entity shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle, and accelerated delivery requirements requisite within a public-private partnership agreement:
  1. Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at [www.treasury.nj.gov/p3screening1](http://www.treasury.nj.gov/p3screening1). A State government entity shall submit this self-assessment screening, along with proof of any necessary approvals by the State House Commission or Legislature, with its application to the Office of Public Finance; and
  2. Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance that it is considering pursuing a public-private partnership. The State government entity shall conduct a project analysis, in conjunction with financial and other experts possessing the requisite minimum criteria outlined in N.J.A.C. 17:49-3.2, to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A State government entity shall submit all supporting documents with its application to the Office of Public Finance, including information on the credentials of the experts retained for purposes of conducting the project analysis, as required by N.J.A.C. 17:49-8.5.

**17:49-8.2** Project analysis

- (a) An application to enter into a public-private partnership from a State government entity, shall include full documentation of the following information and analyses for submission to the Office of Public Finance, for approval to enter into a public-private partnership:
  1. A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
  2. An assessment of the benefits or risks to be realized by the project;
  3. The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built or the length (in years) of the potential public-private partnership agreement, both for delivery as a public-private partnership and delivery under a conventional public sector approach, supported by evidence from comparable projects;
  4. The maximum public contribution of public funds or assets that a State government entity will invest in or contribute to the project under the public-private partnership;



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5. A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of a project, compared to other options including a public sector option or not proceeding with a project;
  6. A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the State government entity as well as an analysis of the financial capacity of the private entity and State government entity, including an analysis of how the project's execution shall impact the financial status of the State government entity;
  7. An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis), and quality outcomes for the project, relative to a public sector option; and
  8. Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.
- (b) A State government entity shall make the following findings to establish that a project is in the best interests of the public, and shall provide supporting documents, to support the findings that:
1. There is a public need for the project and the project is consistent with existing long-term plans;
  2. There are specific significant benefits to the project;
  3. The project, including procurement, land acquisition, development approval, and financial analysis costs, will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
  4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;
  5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  6. The private development will result in timely and efficient development and operation; and
  7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
- (c) The State government entity shall also document that the findings were made at a public hearing or through notice to the public.

**17:49-8.3** Public notice and hearing requirements

- (a) A request for qualification shall include the following:
1. A request for qualification, soliciting a response from private entities for participation in a public-private partnership project shall be advertised sufficiently in advance to generate competitive interest, but at a minimum at least 45 days prior to the advertised date for submission of responses to the request for qualification.
  2. The advertisement of the request for qualifications shall be published on the official Internet website of the State government entity and at least one newspaper with Statewide circulation.
  3. A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-8.5(a).
  4. The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.
- (b) A request for proposal shall include the following:

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1. After a State government entity determines the qualified respondents utilizing the qualification standards, the State government entity shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 45 days prior to the date established for submission of the proposals.
  2. The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical submissions, or other required documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.
  3. A State governmental entity may authorize the use of stipends on public-private partnership projects when there is a substantial opportunity for innovation and the costs for developing a proposal are significant. The extent of such stipend shall solely relate to the costs associated with work product of unsuccessful proposers submitted in response to a request for proposals.
    - i. The aggregate value of stipends provided to all private entities afforded stipends shall not exceed 0.05 percent of the total projected cost of the project.
    - ii. The extent to which any stipend will be available for work product submitted shall be affirmatively outlined in the request for proposal.
- (c) The ranking of proposals shall be in accordance with this subsection.
1. After the proposal or proposals have been received, and any public notification period has expired, the State government entity shall rank the proposals based upon the established evaluation criteria. [page=973] 2. The State government entity may consider, in addition to cost, factors that include, but are not limited to: professional qualifications and capacity of the entity and its agents; timing of project delivery; general business terms; innovative engineering and architectural services; cost-reduction terms; finance plans; and the need for State government funds to deliver the project and discharge the agreement.
  2. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 ([N.J.S.A. 52:32-44](#)), sections 2 through 8 of P.L. 1975, c. 127 ([N.J.S.A. 10:5-32](#) to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 ([N.J.S.A. 19:44A-20.13](#) et seq.), section 2 of P.L. 2018, c. 9 ([N.J.S.A. 10:5-12](#)), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.
  3. If only one proposal is received, the State government entity shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State government entity may, at its sole discretion, terminate negotiations.
- (d) All public hearings or public comments shall include the following:
1. After the State government entity has ranked the proposals and identified a potential private entity for the project under consideration, the State government entity shall conduct a public hearing or provide a public comment period on the project, prior to submitting the public-private proposal to the State Treasurer for approval.
  2. Notice under this subsection shall include:
    - i. Notice of a public hearing or public comment period must be provided not less than 14 days prior to a hearing or public comment period opening, and shall state the date, time, and location of the public hearing or public comment period;
    - ii. The notice must state the purpose and nature of the project under consideration by the State government entity;
    - iii. The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing;

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- iv. The notice must state the process for receipt of public comments, either at or before a public hearing, including any procedure for participation in the public hearing; and
  - v. The notice must be published in at least one newspaper with Statewide circulation and on the official website of the State government entity.
3. The public hearing or comment period shall occur within 14 days of the ranking of proposals.
  4. Public comments regarding the proposed project shall be received at or before the public hearing in accordance with any procedures specified in the public notice, and the State government entity shall keep a record of such public comments. The State government entity shall respond to such public comments, either informally at the hearing, or in a writing made available to the public after the hearing or public notice period, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A State government entity may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made.
  5. The State government entity shall determine, on the record at a public hearing or via notice following the end of a public comment period conducted in lieu of a hearing, that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:
    - i. The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
    - ii. There is a public need for the project and the project is consistent with existing long-term plans;
    - iii. There are specific significant benefits to the project;
    - iv. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
    - v. The private development will result in timely and efficient development and operation; and
    - vi. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
  6. A record of the public hearing and all public comment received, as well as the responses to the comments, either made at the hearing or issued in writing after the hearing shall be made within seven days after conclusion of the public hearing. Where public engagement was solicited through a comment period in lieu of a public hearing, the State government entity shall retain a record of all comments received, and shall issue a document summarizing the comments and the State government entity's response to those comments within seven days after the conclusion of the public comment period.

**17:49-8.4** Unsolicited proposals

- (a) A State governmental entity may accept unsolicited proposals from private entities for public-private partnership agreements. A State government entity shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.
- (b) An unsolicited proposal shall include, at a minimum, the following:
  1. A description of the proposed public-private project, including the State government entity need to be fulfilled by the proposed project;
  2. The estimated construction and life-cycle costs;
  3. A timeline for development;
  4. The proposed plan of financing, including projected revenues, public or private, debt, equity investment, and a description of how the project meets needs identified in existing plans;

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5. An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project;
  6. A projected schedule for obtaining such permits and approvals; and
  7. A statement of risks, liabilities, and responsibilities to be assumed by the private entity.
- (c) A private entity submitting an unsolicited proposal shall provide a copy in which all proprietary information has been redacted, so that the description of the proposed public-private project may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.
- (d) In the event that an unsolicited proposal is received, a State government entity's governing body shall determine, on the record, whether the following factors have been met:
1. There is a public need for the project and the project is consistent with existing long-term plans;
  2. The project will cost less than a public sector option, or if it costs more, there are factors that warrant the additional expense;
  3. There are specific significant benefits to the project;
  4. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  5. The private development will result in timely and efficient development and operation; and
  6. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
- (e) If the State government entity determines that the unsolicited proposal meets the above factors, the entity shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The State government entity shall:
1. Publish a notice of the receipt of the proposal on the Internet site of the State governmental entity and through advertisement in at least one newspaper with Statewide circulation;
  2. Provide notice of the proposal at its next scheduled public meeting of the State governmental entity and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;
  3. Provide notice that the State government entity shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and
  4. Mail a copy of the notice to each municipal and county local government body in the geographic area affected by the proposal.
- (f) After the 120 days of public notice have expired and any additional proposals have been received, the State government entity shall rank the proposals in order of preference.
- [page=974] (g) If no proposals are received in addition to the unsolicited proposal, then the State governmental entity shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State governmental entity may, at its sole discretion, terminate negotiations.
- (g) All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-8.2 and 8.3.

**17:49-8.5 Project review**

- (a) A State government entity shall provide the Office of Public Finance the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:
1. A full description of the proposed public-private partnership project;

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2. A copy of the entire proposed public-private partnership agreement, including, without limitation, riders, appendices, sub-agreements, and contingency agreements between the State government entity and the private entity, as well as any supporting documents including the development agreement, any relevant contracts and leases between the State government entity and the private entity, and all information obtained by, and findings of, the State government entity, including redacted copies of all documents for purposes of providing any public document as required under the Open Public Records Act.
3. In order to be eligible for consideration as a public-private partnership, an agreement between the State government entity and the private entity shall include adequate documentation of, at a minimum, the following:
  - i. An agreement term length clearly defined to include the estimated construction and operational period, as needed;
  - ii. A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the State government entity and the private entity;
  - iii. Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;
  - iv. A provision allowing express permission of the public entity, and State and local officials, to inspect project-related assets or property; such provision shall include any specific limitations, particular requirements, or allowances related to such review. Examples of limitations, particular requirements, or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;
  - v. The roles and responsibilities of the parties for the duration of the agreement;
  - vi. Procedures for amendment of the public-private partnership agreement;
  - vii. Requirements for bonds or other forms of security in amounts acceptable to the State government entity;
  - viii. Standards and rights of parties relating to payments by the State government entity to the private entity if payments are part of the project;
  - ix. Requirements for any payment by the private entity of any costs incurred by the State governmental entity before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the local government unit with respect to the project;
  - x. Standards for construction and maintenance of the project;
  - xi. Standards for allocation of costs of development including allocation of liability for cost overruns;
  - xii. Performance criteria and incentives, if any;
  - xiii. Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance for both the private entity and State government entity;
  - xiv. The rights that the State government entity and the private entity may have, if any, to revenue generated as a result of the agreement, and any standards for allocation of such revenue between the parties;
  - xv. A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the State government entity or to the private party for debt reduction;

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- xvi.** The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics, including performance points systems, monitoring rights of the State government entity, and penalties for failure to achieve these standards;
  - xvii.** A maintenance plan for the full life cycle of the public-private partnership project;
  - xviii.** A hand-back plan that includes requirements regarding return of the facility in a state of good repair, and standards for determining such state of repair;
  - xix.** Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);
  - xx.** Rights and remedies, including, but not limited to, compensatory, liquidated, or other types of damages, and dispute resolution procedures available or applicable in the event of nonperformance or breach of contract, up to and including, material default;
  - xxi.** Procedures for notice and cure of default;
  - xxii.** Insurance requirements for any project to be operated by the private entity;
  - xxiii.** Grounds for termination of the public-private partnership agreement by the State government entity and the financial impact of that termination;
  - xxiv.** Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;
  - xxv.** Provisions for the termination of the public-private partnership agreement and the disposition of public-private partnership facility upon termination;
  - xxvi.** Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;
  - xxvii.** The nature of the State government entity and private entity's property interest including the acquisition of any property, which must provide that the State government entity shall retain full ownership of the land upon which the project is located;
  - xxviii.** An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement; and
  - xxix.** Details on distribution of costs between the private entity and State government entity, including costs of retaining independent experts to review, analyze, and advise the State government entity with respect to the proposal, and any stipends authorized for work completed, which shall not exceed 0.5 percent of the project total; and
  - xxx.** When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Outstanding Tax-Exempt Bonds under *Section 103 of the Internal Revenue Code* (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code;
- 4.** A project agreement, including the following terms and conditions:

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- i. Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State government entity be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.);
  - ii. Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to [N.J.S.A. 52:38-1](#) et seq., and shall be in a manner that, to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location;
 

[page=975] iii. Ensure the general contractor, construction manager, design-build team, or subcontractor for a construction project be registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a public-private partnership project;
  - iv. When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 ([N.J.S.A. 52:27D-130.6](#));
  - v. Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of [N.J.S.A. 2A:44-143](#) et seq.;
  - vi. Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;
  - vii. Where appropriate, include a requirement that work performed under the agreement is subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 ([N.J.S.A. 34:20-1](#) et seq.); and
  - viii. In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the State government entity at which the project is completed, including, but not limited to, the public contracting provisions of P.L. 1954, c. 48 ([N.J.S.A. 52:34-6](#) et seq.);
5. A State government entity shall provide the estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:
    - i. At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed, and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios; and
    - ii. A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;
  6. A completed Initial Screening Tool, including any changes to the project made in response to the results of the self-assessment;

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7. A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the project analysis;
  8. A timetable for completion of the construction of the project, including all pre-development and development phases;
  9. All relevant engineering and architectural plans, drawings, and schematics;
  10. An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;
  11. A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the State government entity will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points systems;
  12. The record of the entity's compliance with N.J.A.C. 17:49-8.3(d);
  13. A list of all experts retained, including information on expert qualification and industry experience;
  14. An affirmation that any proposed procurement contains all necessary elements, based upon minimum contract standards outlined in this section; and
  15. When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.
- (b) Actions for application review upon receipt of a complete proposed project shall include:
1. An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied.
  2. Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Division of Property Management and Construction within the Department of the Treasury, and, as appropriate, the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted.
  3. The project shall be added to the project report maintained by the Office of Public Finance in the Department of the Treasury.
  4. The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project.
    - i. The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the State government entity when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project.
    - ii. The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; however, such time limit shall be extended at the discretion of the Office of Public Finance.



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5. The project review committee shall review the viability of the project as well as the advisability of the project for the State government entity. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:
  - i. All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering and design, and operation and maintenance of the project; and
  - ii. All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the State government entity for the project as proposed.
6. Members of the project review committee may request additional information as needed to make a complete assessment of the project.
7. The review shall include, but is not limited, to a review of the following:
  - i. The feasibility of the project's design, construction, and operation;
  - ii. The State government entity's assumptions regarding the project's scope, benefits, risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;
  - iii. The sufficiency of the experience and qualifications of the private entity;
  - iv. The soundness of the financial plan, within the context of the State government entity;
  - v. The adequacy of the long-range maintenance plan to protect the investment;
  - vi. The validity of the State government entity's determination that the project is in the best interest of the public, including an evaluation of the State government entity's determination that:
    - (1) The development and operation of the project will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense;
    - (2) There is a public need for the project and the project is consistent with existing long-term plans;
    - (3) There are specific significant benefits to the project;
    - [page=976] (4) There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
    - (4) The private development will result in timely and efficient development and operation; and
    - (5) The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
8. The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary.
9. The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature.
10. The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter.
11. Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the State government entity of the finding of the State Treasurer in writing.
12. Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, as necessary, to ensure a complete review of a project.

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13. No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer.
14. In the event that a project materially deviates from the approved project parameters, the State government entity shall immediately notify the Office of Public Finance of the change and seek approval of the material change.
15. Two signed copies of the agreement and any post agreement documents, one with appropriate redaction, shall be provided to the Office of Public Finance.

**17:49-8.6** Lease arrangements and availability payments

- (a) Any availability payment or lease arrangement with a private entity pursuant to a public-private partnership agreement may include a lease of a revenue-producing public building, road, structure, infrastructure, or facility in exchange for upfront or structured financing by a private entity for the project, provided that the private entity is responsible for the management, operation, and maintenance of the building, road, structure, infrastructure or facility, so long as the State government entity retains full ownership of the land upon which the project is located.
- (b) The private entity may receive some or all of the revenue generated by the building, road, structure, infrastructure, or facility and shall, in turn, operate the building, structure, infrastructure, or facility in accordance with State standards.
- (c) A lease term shall not exceed 30 years, unless it includes a highway project component in which case the lease agreement shall be limited in duration to a term not more than 50 years, and shall be subject to all applicable law governing leases by a State government entity.
- (d) Upon completion of the lease term, subsequent revenue generated shall revert to the State government entity.
- (e) Leases may include lease back arrangements.

**17:49-8.7** Construction contract standards and account requirements

- (a) Any construction contract shall meet NJ Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance plan requirements:
  1. The performance of a Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, number of floors, an evaluation of all systems, equipment, and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
  2. Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
  3. Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;
  4. Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
  5. Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;

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6. Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns, planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and
  7. Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and conforming to, the requirements of [N.J.S.A. 2A:44-143](#) et seq.
- (b) Upon approval by the State Treasurer, but prior to commencing work on a project, the State government entity shall require a private entity to:
1. Establish a construction account and appoint a third-party financial institution, which shall be pre-qualified by the State Treasurer pursuant to N.J.A.C. 17:49-2, to act as a collateral agent and manage the construction account.
    - i. The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project;
    - ii. The collateral agent shall maintain a full accounting of the funds and instruments in the account;
    - iii. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project;
    - iv. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full; and
    - v. The construction account shall not be designated for more than one project.

**SUBCHAPTER 9. STATE OR COUNTY COLLEGE OR UNIVERSITY PROCEDURES AND REQUIREMENTS****17:49-9.1** Minimum county college, State college, or State university standards for operation of a project

- (a) Contingent upon approval of its governing body, a county college, State college, or State university may enter into a public-private partnership agreement with a private entity to construct, reconstruct, repair, alter, improve, extend, operate, or manage an on-campus or off-campus building, structure or facility, if:
1. The project is financed in whole or in part by the private entity and the State or county college or university retains full ownership of the land upon which the project is completed.
- (b) In order to pursue a public-private partnership project, a county college, State college, or State university shall, at a minimum, possess an investment grade bond rating from at least one nationally recognized statistical rating agency.
- (c) A county college, State college, or State university shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle, and accelerated delivery requirements requisite within a public-private partnership agreement:
1. Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at [www.treasury.nj.gov/p3screening1](http://www.treasury.nj.gov/p3screening1). A county college, State college, or [page=977] State university shall submit this self-assessment screening with its application to the Office of Public Finance;
  2. Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance that it is considering pursuing a public-private partnership. The county college, State college, or State university shall conduct a project analysis, in conjunction with legal, financial, and other experts possessing the requisite minimum criteria outlined in N.J.A.C. 17:49-3.2, to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A county college, State college, or State university shall submit all supporting documents with its application to the Office of Public Finance, including information on the credentials of the experts retained for purposes of conducting the project analysis, as required by N.J.A.C. 17:49-9.5.

**17:49-9.2** Project analysis

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- (a)** A county college, State college, or State university, via a finding by the governing body, shall determine whether to apply for approval to enter into a public-private partnership and shall document in its application to the Office of Public Finance, its analyses based upon the following threshold criteria:
1. A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
  2. An assessment of the benefits or risks to be realized by the project;
  3. The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built or the length (in years) of the potential public-private partnership agreement, both for delivery as a public-private partnership and delivery under a conventional public sector approach, supported by evidence from comparable projects;
  4. The maximum public and institutional contribution that the county college, State college, or State university will invest in or contribute to the project under the public-private partnership;
  5. A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of a project, compared to other options including a public sector option or not proceeding with a project;
  6. A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the county college, State college, or State university as well as an analysis of the financial capacity of the private entity and county college, State college, or State university, including an analysis of how the project's execution will impact the financial status of the county college, State college, or State university;
  7. An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis), and quality outcomes for the project, relative to a public sector option; and
  8. Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.
- (b)** A county college, State college, or State university's governing body shall make the following findings to establish that a project is in the best interests of the public, and shall provide supporting documents, including information on the financial strength and bonding capacity of the State or county college or university, to support the findings that:
1. There is a public need for the project and the project is consistent with existing long-term plans;
  2. There are specific significant benefits to the project;
  3. The project, including procurement, land acquisition, development approval, and financial analysis costs, will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
  4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;
  5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  6. The private development will result in timely and efficient development and operation; and
  7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

**17:49-9.3** Public notice and hearing requirements

- (a)** A request for qualification shall include:

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1. A request for qualification, soliciting response from private entities for participation in a public-private partnership project shall be advertised by a county college, State college, or State university a minimum of 45 days prior to the required date of receipt.
  2. The advertisement of the request for qualifications shall be published on the official Internet website of the county college, State college, or State university and at least one newspaper with Statewide circulation.
  3. A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-9.5(a).
  4. The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.
- (b) A request for proposal shall include:
1. After a county college, State college, or State university determines the qualified respondents satisfied the qualification standards, it shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 45 days prior to the date established for submission of the proposals.
  2. The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical submissions, or other required documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.
  3. A county college, State college, or State university may authorize the use of stipends on public-private partnership projects when there is a substantial opportunity for innovation and the costs of developing a proposal are significant. The extent of such stipend shall solely relate to the costs associated with work product of unsuccessful proposers submitted in response to a request for proposals.
    - i. The aggregate value of stipends provided to all private entities afforded stipends shall not exceed 0.05 percent of the total projected cost of the project.
    - ii. The extent to which any stipend will be available for work product submitted shall be affirmatively outlined in the request for proposal.
- (c) The ranking of proposals shall be in accordance with this subsection.
1. After the proposal or proposals have been received, and any public notification period has expired, the county college, State college, or State university shall rank the proposals based upon the established evaluation criteria.
  2. The county college, State college, or State university may consider, in addition to cost, factors that include, but are not limited to, professional qualifications and capacity of the entity and its agents, timing of project delivery, general business terms, innovative engineering, architectural services, cost-reduction terms, finance plans, and the need for State or county college or university funds to deliver the project and discharge the agreement.
  3. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 ([N.J.S.A. 52:32-44](#)), sections 2 through 8 of P.L. 1975, c. 127 ([N.J.S.A. 10:5-32](#) to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 ([N.J.S.A. 19:44A-20.13](#) et seq.), P.L. 2005, c. 271 ([N.J.S.A. 40A:11-51](#) et seq.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

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4. If only one proposal is received, the county college, State college, or State university shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State or county college or university may, at its sole discretion, terminate negotiations.

[page=978] (d) All public hearing and findings requirements shall include the following:

1. After the county college, State college, or State university has ranked the proposals and identified a potential private entity for the project under consideration, it shall conduct a public hearing on the project, prior to submitting the public-private proposal to the State Treasurer for approval. The hearing shall be conducted in accordance with the Open Public Meetings Act, [N.J.S.A. 10:4-6](#) et seq., prior to submitting the public-private proposal to the State Treasurer for consideration. The hearing shall be conducted in accordance with (d)2 through 6 below.
2. Notice under this subsection shall include:
  - i. Notice of a public hearing must be provided not less than 14 days prior to a hearing, and shall state the date, time, and location of the public hearing;
  - ii. The notice must state the purpose and nature of the project under consideration;
  - iii. The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing; and
  - iv. The notice must be published in at least one newspaper with Statewide circulation and on the official website of the county college, State college, or State university.
3. The public hearing shall occur within 14 days of the ranking of proposals.
4. Public comments regarding the proposed project shall be received at or before the public hearing, in accordance with any procedures specified in the public notice, and the county college, State college, or State university shall keep a record of such public comments. The county college, State college, or State university shall respond to such public comments, either informally at the hearing, or in a writing made available to the public after the hearing, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A State or county college or university may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made.
5. The county college, State college, or State university shall determine, on the record at a public hearing that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:
  - i. The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
  - ii. There is a public need for the project and the project is consistent with existing long-term plans;
  - iii. There are specific significant benefits to the project;
  - iv. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  - v. The private development will result in timely and efficient development and operation; and
  - vi. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
6. A record of the public hearing, including the required findings, the public comments received on the proposal, and the county college, State college, or State university's responses to those comments shall be made available within seven days after conclusion of the public hearing. The documentation of comments and responses must include written comments received before or

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during the hearing, responses made orally during the hearing, and responses made in writing after the hearing.

**17:49-9.4** Unsolicited proposals

- (a)** A county college, State college, or State university may accept unsolicited proposals from private entities for public-private partnership agreements. A county college, State college, or State university shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.
- (b)** An unsolicited proposal shall include, at a minimum, the following:
1. A description of the proposed public-private project, including the identified county college, State college, or State university need to be fulfilled by the proposed project;
  2. The estimated construction and life-cycle costs;
  3. A timeline for development;
  4. Proposed plan of financing, including projected revenues, public or private, debt, and equity investment;
  5. A description of how the project meets needs identified in existing plans;
  6. An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project;
  7. A projected schedule for obtaining such permits and approvals; and
  8. A statement of risks, liabilities, and responsibilities to be assumed by the private entity.
- (c)** A private entity submitting an unsolicited proposal shall provide a copy in which all proprietary information has been redacted, so that the description of the proposed public-private project, may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.
- (d)** In the event that an unsolicited proposal is received, a county college, State college, or State university's governing body shall determine, on the record, whether the following factors have been met:
1. There is a public need for the project and the project is consistent with existing long-term plans;
  2. The project will cost less than a public sector option, or if it costs more there are factors that warrant the additional expense;
  3. There are specific significant benefits to the project;
  4. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  5. The private development will result in timely and efficient development and operation; and
  6. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
- (e)** If the county college, State college, or State university receives an unsolicited proposal and determines that it meets the above factors, the State or county college or university shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The State or county college or university shall:
1. Publish a notice of the receipt of the proposal on the Internet site of the State or county college or university and through advertisement in at least one newspaper with Statewide circulation;
  2. Provide notice of the proposal at its next scheduled public meeting of the State or county college or university and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;

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3. The notice shall provide that the county college, State college, or State university shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and
  4. A copy of the notice shall be mailed to each municipal and county local government body in the geographic area affected by the proposal.
- (f) After the 120 days of public notice have expired and any additional proposals have been received, the county college, State college, or State university shall rank the proposals in order of preference, relying, at a minimum, on the factors outlined above in (d) above.
1. The State or county college or university may also consider factors that include, but are not be limited to: professional qualifications of the entities participating in the proposed project; general business terms and conditions of the proposed project; any innovative engineering, and architectural services, or cost-reduction terms; the terms of the finance plan for the project; and the need for any contribution of local government funds required to deliver the project and/or discharge the agreement.
  2. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 ([N.J.S.A. 52:32-44](#)), sections 2 through 8 of P.L. 1975, c. 127 ([N.J.S.A. 10:5-32](#) to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 ([N.J.S.A. 19:44A-20.13](#) et seq.), P.L. 2005, c. 271 ([N.J.S.A. 40A:11-51](#) et seq.), section 2 of P.L. 2018, c. 9 ([N.J.S.A. 10:5-12](#)), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.
- [page=979] (g) If no proposals are received in addition to the unsolicited proposal, then the county college, State college, or State university shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State or county college or university may, at its sole discretion, terminate negotiations.
- (g) All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-9.2 and 9.3.

**17:49-9.5** Project review

- (a) A county college, State college, or State university shall provide the Office of Public Finance, the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:
1. A full description of the proposed public-private partnership project;
  2. A copy of the proposed public-private partnership agreement between the county college, State college, or State university and the private entity, including any supporting documents such as the development agreement, any relevant contracts and leases, and all information obtained by, and findings of, the local government unit, as well as a redacted copy of all materials for purposes of providing any public document as required under the Open Public Records Act;
  3. A proposed public-private partnership agreement between the county college, State college, or State university and the private entity shall include the following minimum criteria:
    - i. An agreement term length clearly defined to include the estimated construction and operational period, as needed;
    - ii. A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the county college, State college, or State university and the private entity;
    - iii. Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;



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- iv. A provision allowing express permission of the public entity, and State and local officials, to inspect project related assets or property; such provision shall include any specific limitations, particular requirements, or allowances related to such review. Examples of limitations, particular requirements or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;
- v. The roles and responsibilities of the parties for the duration of the agreement;
- vi. Requirements for bonds or other forms of security in amounts acceptable to the State or county college or university;
- vii. Standards and rights of parties relating to payments by the State or county college or university to the private entity if payments are part of the project;
- viii. Requirements for any payment by the private entity of any costs incurred by the State or county college or university before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the local government unit with respect to the project;
- ix. Standards for construction and maintenance of the project;
- x. Standards for allocation of costs of development including allocation of liability for cost overruns;
- xi. Performance criteria and incentives, if any;
- xii. Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance, for both the private entity and county college, State college, or State university;
- xiii. The rights that the county college, State college, or State university and the private entity may have, if any, to revenue generated as a result of the agreement, and any standards for allocation of such revenue between the parties;
- xiv. A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the State or county college or university or to the private party for debt reduction;
- xv. The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics including performance points systems, monitoring rights of the State or county college or university, and penalties for failure to achieve these standards;
- xvi. A maintenance plan for the full life cycle of the public-private partnership project;
- xvii. A hand-back plan that includes requirements regarding return of the facility in a state of good repair and standards for determining such state of repair;
- xviii. Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);
- xix. Rights and remedies, including, but not limited to, compensatory, liquidated, or other types of damages, and dispute resolution procedures available or applicable in the event of nonperformance or breach of contract, up to and including material default;
- xx. Procedures for notice and cure of default;
- xxi. Insurance requirements for any project to be operated by the private entity;
- xxii. Grounds for termination of the public-private partnership agreement by the State or county college or university and the financial impact of that termination;

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- xxiii.** Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;
  - xxiv.** Procedures for amending the public-private partnership agreement;
  - xxv.** Provisions for the termination of the public-private partnership agreement and the disposition of the public-private partnership facility upon termination;
  - xxvi.** Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;
  - xxvii.** The nature of the State or county college or university and private entity's property interest including the acquisition of any property, of which the State or county college or university shall retain full ownership of the land upon which the project is located;
  - xxviii.** An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement;
  - xxix.** Details on distribution of costs between the private entity and county college, State college, or State university, including costs of retaining independent experts to review, analyze, and advise the county college, State college, or State university with respect to the proposal, and any stipends authorized for work completed, which shall not exceed 0.5 percent of the project total; and
  - xxx.** When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Outstanding Tax-Exempt Bonds under *Section 103 of the Internal Revenue Code* (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code;
- 4.** A project agreement, including the following terms and conditions:
- i.** Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State or county college or university be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.);
  - ii.** Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to [N.J.S.A. 52:38-1](#) et seq., and shall be in a manner that, to the greatest extent possible, enhances [page=980] employment opportunities for individuals residing in the county of the project's location;
  - iii.** Ensure the general contractor, construction manager, design-build team, or subcontractor for a construction project be registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a public-private partnership project;
  - iv.** When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building

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manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 ([N.J.S.A. 52:27D-130.6](#));

- v. Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of [N.J.S.A. 2A:44-143](#) et seq.;
  - vi. Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;
  - vii. Where appropriate, include a requirement that work performed under the agreement is subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 ([N.J.S.A. 34:20-1](#) et seq.); and
  - viii. In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the county college, State college, or State university at which the project is completed, including, but not limited to, the State College Contracts Law, P.L. 1986, c. 43 ([N.J.S.A. 18A:64-52](#) et seq.), and the County College Contracts Law, P.L. 1982, c. 189 ([N.J.S.A. 18A:64A-25.1](#) et seq.);
5. A county college, State college, or State university shall provide the estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:
    - i. At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios; and
    - ii. A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;
  6. A completed Initial Screening Tool, including any changes to the project made in response to the results of the self-assessment;
  7. A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the project analysis;
  8. A timetable for completion of the construction of the project, including all pre-development, development phases;
  9. All relevant engineering and architectural plans, drawings, and schematics;
  10. An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;
  11. A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the State or county college or university will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points systems, including any performance bonuses or reductions based upon the early or late completion and delivery of a project, the use of possible performance-points systems,

## 51 N.J.R. 956(a)

and any performance bonuses or reductions based upon the early or late completion and delivery of a project;

12. A record of the public hearing held, including any public comments received and responses to public comments;
13. A resolution by the county college, State college, or State university's governing body of its intent to enter into a public-private partnership agreement pursuant to this section;
14. Information on experts' qualification and industry experience;
15. An affirmation by both parties that any proposed procurement springing from the public private partnership project contains all necessary elements, based upon minimum contract standards outlined in N.J.A.C. 17:49-9.5; and
16. When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.

**(b)** Upon receipt of a complete proposed project:

1. An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied.
2. Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Office of the Secretary of Higher Education, the Division of Property Management and Construction within the Department of the Treasury, and, as appropriate, the New Jersey Educational Facilities Authority or the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted.
3. The project shall be added to the project report maintained by the Office of Public Finance.
4. The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project.
  - i. The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the State or county college or university when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project.
  - ii. The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; however, such time limit shall be extended at the discretion of the Office of Public Finance.
5. The project review committee shall review the viability of the project as well as the advisability of the project for the county college, State college, or State university. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:
  - i. All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering and design, and operation and maintenance of the project; and
  - ii. All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the county college, State college, or State university for the project as proposed.
6. Members of the project review committee may request additional information as needed to make a complete assessment of the project.
7. The review shall include, but is not limited to, a review of the following:

## 51 N.J.R. 956(a)

- i. The feasibility of the project's design, construction, and operation;
- ii. The county college, State college, or State university's assumptions regarding the project's scope, its benefits, its risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;
- [page=981] iii. The sufficiency of the experience and qualifications of the private entity;
- iv. The soundness of the financial plan, within the context of the county college, State college, or State university;
- v. The adequacy of the long-range maintenance plan to protect the investment;
- vi. The validity of the county college, State college, or State university's determination that the project is in the best interest of the public, with any relevant supports, and that, based on facts:
  - (1) The development and operation of the project will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense;
  - (2) There is a public need for the project and the project is consistent with existing long-term plans;
  - (3) There are specific significant benefits to the project;
  - (4) There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
  - (5) The private development will result in timely and efficient development and operation; and
  - (6) The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.
8. The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary.
9. The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature.
10. The State Treasurer may exempt a county college, State college, or State university from conveyance of capital improvements or personal property owned by the State from approval by the State House Commission or the State Legislature.
11. The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter.
12. Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the county college, State college, or State university of the finding of the State Treasurer in writing.
13. Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, as necessary, to ensure a complete review of a project.
14. No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer.
15. In the event that a project materially deviates from the approved project parameters, the State or county college or university shall immediately notify the Office of Public Finance of the change and seek approval of the material change.
16. A signed copy of the agreement and any post agreement documents, with appropriate redaction, shall be provided to the Office of Public Finance.

## 51 N.J.R. 956(a)

**17:49-9.6** Lease arrangements and availability payments

- (a) Any availability payment or lease arrangement with a private entity pursuant to a public-private partnership agreement may provide that a private entity shall assume some or all of the financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project, provided that the project is financed in whole or part by the private entity and the county college, State college, or State university retains full ownership of the land and the facility upon which the project is located.
- (b) A project may include a lease of a revenue-producing public building, road, structure, infrastructure, or facility in exchange for an up-front or structured financing by a private entity for the project, provided that the private entity is responsible for the management, operation, and maintenance of the building, road, structure, infrastructure, or facility.
- (c) The private entity may receive some or all of the revenue generated by the building, road, structure, infrastructure, or facility and shall, in turn, operate the building, structure, infrastructure, or facility in accordance with State or county college or university standards.
- (d) A lease term shall not exceed 30 years and shall be subject to all applicable law governing leases by a State or county college or university.
- (e) Upon completion of the lease term, subsequent revenue generated shall revert to the county college, State college, or State university.
- (f) A lease agreement shall not affect the status or employment rights of county college, State college, or State university employees who are assigned to, or provide services to, the leased facility.
- (g) Leases may include lease back arrangements.

**17:49-9.7** Construction contract standards and account requirements

- (a) Any construction contract shall meet NJ Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance play requirements:
  1. The performance of a Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, number of floors, an evaluation of all systems, equipment and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
  2. Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
  3. Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;
    - i. Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
    - ii. Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;
  4. Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns, planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and

## 51 N.J.R. 956(a)

5. Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and conforming to, the requirements of [N.J.S.A. 2A:44-143](#) et seq.
- (b) Upon approval by the State Treasurer, but prior to commencing work on a project, the county college, State college, or State university shall require a private entity to:
1. Establish a construction account and appoint a third-party financial institution, which shall be pre-qualified by the State Treasurer pursuant to N.J.A.C. 17:49-2, to act as a collateral agent, and manage the construction account.
    - i. The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project.
    - ii. The collateral agent shall maintain a full accounting of the funds and instruments in the account.
    - iii. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project.
    - iv. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full.
    - v. The construction account shall not be designated for more than one project.

## [page=982] SUBCHAPTER 10. REVOCATION OR TERMINATION OF APPROVAL

**17:49-10.1** Revocation or termination of approval

- (a) The State Treasurer may:
1. Revoke approval for a project, if it comes to the attention of the State Treasurer, after investigation, that a project has significantly deviated from the project approved; or
  2. Terminate an approval for non-payment of the one percent set-aside required under N.J.A.C. 17:49-11.1.

**SUBCHAPTER 11. PUBLIC-PRIVATE PARTNERSHIP FUND****17:49-11.1** Public-Private Partnership Fund

- (a) A local government unit, school district, State governmental entity or county college, State college or State university shall set aside one percent of a project and remit that amount upon execution of the project documentation to the Office of Public Finance for deposit within the Public-Private Partnership Fund.
- (b) Upon written request, a local government unit, State governmental entity, school district, or county college, State college, or State university may request a reduction in the set-aside amount equal to the amount of application fees paid but not necessary for review of a project. Such request shall be received by the Office of Public Finance within 14 days of the receipt of the approval letter by the local government unit, State governmental entity, or county college, State college, or State university, or in the case of project involving a school district, the private entity with which the school district has contracted.

**SUBCHAPTER 12. APPEAL****17:49-12.1** Appeal

- (a) A local government unit, school district, State government entity or county college, State college, or State university may appeal the Treasurer's approval or denial by submitting in writing to the Office of Public Finance, within 20 calendar days from the date of the action, an explanation as to how the applicant has met the criteria required. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq., and the Uniform Administrative Procedure Rules, [N.J.A.C. 1:1](#).
- (b) Appeals that are timely submitted shall be handled as follows:

## 51 N.J.R. 956(a)

1. The Treasurer shall designate an employee to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The hearing officer may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Office of Public Finance containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Office of Public Finance may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Office of Public Finance, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
3. The State Treasurer shall consider the hearing officer's report, the recommendation of the Office of Public Finance, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, a final decision on the appeal shall be issued.
4. Final decisions rendered by the State Treasurer shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

NEW JERSEY REGISTER

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End of Document



**Resolution – 7a.**

Approval of Proposed Memorandum of Understanding Between the State Treasurer and NJSDA for Project Review in Support of the Public-Private Partnership Program

**Resolution**

**WHEREAS**, interagency cooperation is permitted by N.J.S.A. 52:14-1 et seq.; and

**WHEREAS**, the Operating Authority of the New Jersey Schools Development Authority (SDA or Authority) requires that the Members of the Authority approve Memoranda of Understanding (MOU) between the SDA and other state agencies; and

**WHEREAS**, in August 2018, the legislation was enacted (the Act) establishing a Public-Private Partnership program (P3 Program); and

**WHEREAS**, the P3 Program allows State governmental entities, among others, to enter into public-private partnership agreements under which a private entity assumes responsibility for certain projects of, or for the benefit of, the government entity, provided that the project is financed in whole or in part by the private entity (P3 Project); and

**WHEREAS**, the Act requires that each proposed P3 Project be submitted to the State Treasurer for review and approval, and further requires that certain state entities participate in the review process to provide advice and guidance for the Treasurer's review; and

**WHEREAS**, on June 18, 2019 the State Treasurer promulgated proposed new rules to implement the P3 Program, and establish procedures for the submission and review of P3 Projects; and

**WHEREAS**, the proposed new rules require that the Office of Public Finance within the Department of the Treasury convene a Project Review Committee for each proposed P3 Project; and

**WHEREAS**, the rules further provide that when a proposed P3 Project includes a school facility aspect, SDA must provide a representative to participate in the Project Review Committee to evaluate the viability and advisability of the P3 Project; and

**WHEREAS**, the State Treasurer has requested that State Agencies and Authorities that are to participate in the Project Review Committee process memorialize their commitment of personnel and resources in the form of a MOU; and

**WHEREAS**, the draft MOU relevant to SDA's participation and the proposed new rules were presented for review to the Members of the Authority; and

**WHEREAS**, the MOU provides for an exchange of obligations with respect to the commitment of resources to the P3 Program Project Review Committee process as described in the memorandum presented to the Board on this date and incorporated herein.

**NOW, THEREFORE, BE IT RESOLVED**, that the Members of the Authority hereby authorize and approve the execution of the proposed MOU between the State Treasurer and the SDA regarding the SDA's participation in the Project Review Committee process in support of the P3 Program.

**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, Approval of Proposed Memorandum of Understanding Between the State Treasurer and NJSDA for Project Review in Support of the Public-Private Partnership Program, dated July 1, 2019

Dated: July 1, 2019

**REPORT AND RECOMMENDATIONS OF THE REAL ESTATE COMMITTEE  
(CHAIRMAN'S REPORT)**

**APPROVAL OF AWARD - STATE-WIDE PROPERTEY MANAGEMENT AND  
MAINTENANCE SERVICES - GP-0257-R02**



STATE OF NEW JERSEY

**SCHOOLS DEVELOPMENT AUTHORITY**32 EAST FRONT STREET  
P.O. BOX 991  
TRENTON, NJ 08625-0991  
609-943-5955**MEMORANDUM**

TO: Members of the Authority

FROM: Sean Murphy  
Director, Procurement

Jacqueline A. Howard  
Director, Property Management

DATE: July 1, 2019

SUBJECT: Approval of Award  
Package No. GP-0257-R02  
State-Wide Property Management and Maintenance Services

**INTRODUCTION**

The NJSDA previously procured State-Wide Property Management and Maintenance Services in 2008, 2011 and 2015. Since the current contract, as extended, will expire on August 31 2019, the Members of the Authority are requested to approve the award of a contract to a firm with relevant experience and qualifications to successfully perform the required property management and maintenance services. The term of agreement for this contract is three years with an option by the NJSDA to extend the agreement for one additional year on such terms as the NJSDA and the Consultant may then agree. The negotiated total compensation for the three-year agreement for property management and maintenance services is \$2,018,000.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, Board approval is required for the award of consultant contracts greater than \$100,000.

**DESCRIPTION**

The Consultant will be required to provide state-wide property management and maintenance services for NJSDA's owned and controlled real property sites located throughout the State of New Jersey. The NJSDA's current inventory of state-wide managed properties includes 13 real property sites consisting of vacant lots as well as occupied and unoccupied commercial and residential spaces. At any time during the three years of the engagement, or any such extended period, the NJSDA may issue a project assignment to perform property management and maintenance services anywhere in the State, and the Consultant shall be responsible for providing all specifically required services with respect to a project assignment until they are completed, even if such completion will occur after the end of the initial or extended engagement period.

Members of the Authority  
 Approval of Award  
 Package No. GP-0257-R02  
 State-Wide Property Management and Maintenance Services  
 July 1, 2019  
 Page 2

## PROCUREMENT PROCESS

On March 11, 2019, NJSDA advertised for State-Wide Property Management and Maintenance Services. Proposals were received from three firms on April 12, 2019. Upon review of the proposals, NJSDA determined that modifications to the Request for Proposals (“RFP”) were required. NJSDA subsequently cancelled the bid process on May 2, 2019, with the anticipation of re-advertising for the requisite services based on the modified RFP.

The modified RFP was advertised beginning on May 3, 2019 on the NJSDA website, the New Jersey State website and in selected newspapers for interested firms to participate in the bidding process. Outreach was also performed via e-mail.

A selection committee consisting of four NJSDA staff members was established.

Responsive proposals were received from three firms by June 4, 2019. The Technical Proposals were evaluated by the Selection Committee. Evaluations were based upon the information provided by the firms in response to the RFP for this project. The Selection Committee members independently evaluated the Technical Proposals based on the following criteria:

- Firm Relevant Experience Providing Property Management and Maintenance Services (Case Studies);
- Qualifications & Relevant Experience of Key Team Members;
- Approach to Providing the Scope of Services; and
- Approach to Budget and Scheduling.

Each Selection Committee member evaluated each Technical Proposal, assigning a raw score for each criterion on a scale of 0 to 10 as follows:

- Outstanding (9–10): depth and quality of response offers significant advantages.
- Superior (7-8): exceeds RFP requirements with no deficiencies.
- Sufficient (5-6): meets RFP requirements with no significant deficiencies.
- Minimal (3-4): meets RFP requirements but contains some significant deficiencies.
- Marginal (1-2): comprehends intent of RFP but contains many significant deficiencies.
- Unsatisfactory (0): requirements not addressed and lack of detail precludes adequate evaluation.

Weighting factors were applied to each of the Selection Committee member’s raw scores for each criterion to arrive at a total weighted score as indicated in Table 1 below:

Members of the Authority  
 Approval of Award  
 Package No. GP-0257-R02  
 State-Wide Property Management and Maintenance Services  
 July 1, 2019  
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**TABLE 1**

<b>Criteria</b>	<b>Weighting Factor (Applied to Raw Score)</b>	<b>Maximum Weighted Points</b>
Firm Relevant Experience Providing Property Management and Maintenance Services (Case Studies)	4.0	40
Qualifications & Relevant Experience of Key Team Members	2.0	20
Approach to Providing the Scope of Services	2.0	20
Approach to Budget and Scheduling	2.0	20
<b>Total Possible Points</b>		<b>100</b>

For each firm's Technical Proposal, the individual criteria scores awarded by a particular Selection Committee member were added together to calculate a Technical Proposal Score for that firm. The maximum Technical Proposal Score is 100. All of the scores awarded by the Selection Committee members to a particular firm's Technical Proposal were added together and averaged to arrive at a Technical Proposal Score for each firm. The responsive firms, their scores and rankings are listed in Table 2 below:

**TABLE 2**

<b>Firm</b>	<b>Technical Proposal Score</b>	<b>Technical Proposal Rank</b>
Bluegrass Hydro-Seeding, LLC, d/b/a Bluegrass Services	90.000	1
R.P. Marzulli Company, Inc.	44.000	2
New Life Construction and Property Management, LLC	37.000	3

Members of the Selection Committee were satisfied that the information contained within the Technical Proposals was sufficient for their evaluations and determined that interviews would not be necessary. Accordingly, the Technical Proposal Rank became the Final Rank.

Fee Proposals for all three firms which had been kept separate and sealed were then opened on June 12, 2019. The fee schedule required that firms provide separate lump sum fees for Property Management Services and Routine Property Maintenance Services. In addition, the NJSDA established Allowances for Occasional Property Maintenance Services (\$200,000) and Other Property Maintenance Services (\$900,000) which were included on the NJSDA Fee Proposal Form. The results of the NJSDA's review of the Fee Proposals are listed in Table 3 below:

Members of the Authority  
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 State-Wide Property Management and Maintenance Services  
 July 1, 2019  
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**TABLE 3**

<b>Firm</b>	<b>Property Management Lump Sum Fee</b>	<b>Routine Property Maintenance Lump Sum Fee</b>	<b>Occasional Property Maintenance Allowance</b>	<b>Other Property Maintenance Allowance</b>	<b>Total Fee</b>
R.P. Marzulli Company	\$265,500	\$647,818	\$200,000	\$900,000	\$2,013,318
Bluegrass Services	\$468,000	\$540,000	\$200,000	\$900,000	\$2,108,000
New Life Construction	\$403,200	\$1,058,040	\$200,000	\$900,000	\$2,561,240

Using the Fee Proposals as a guideline, NJSDA staff negotiated reductions to the lump sum fees proposed by the highest-ranked firm. The negotiated lump sum fees are listed in Table 4 below:

**TABLE 4**

<b>Firm</b>	<b>Property Management Lump Sum Fee</b>	<b>Routine Property Maintenance Lump Sum Fee</b>	<b>Occasional Property Maintenance Allowance</b>	<b>Other Property Maintenance Allowance</b>	<b>Total Fee</b>
Bluegrass Services	\$432,000	\$486,000	\$200,000	\$900,000	\$2,018,000

**RECOMMENDATION**

The Members of the Authority are requested to approve the award of a contract to the highest-ranked firm, Bluegrass Services, for the negotiated total compensation of \$2,018,000 for State-Wide Property Management and Maintenance Services for a three-year term commencing September 2019. The term of the agreement may be extended for one additional year on such terms as the NJSDA and Bluegrass Services may then agree.

Prior to execution of the contract, the contract and related documentation will be reviewed and approved by the NJSDA Division of Chief Counsel.

/s/ Sean Murphy

Sean Murphy, Director, Procurement

/s/ Jacqueline A. Howard

Jacqueline A. Howard, Director, Property Management

Reviewed and Recommended by: Donald Guarriello, Vice President and Chief Financial Officer



**Resolution—8a.**

Approval of Award  
Package No. GP-0257-R02  
State-Wide Property Management and Maintenance Services

**Resolution**

**WHEREAS**, the Operating Authority of the New Jersey Schools Development Authority (SDA or the Authority) requires that the Members of the Authority approve the award of certain contracts for goods and services including consultant contracts greater than \$100,000; and

**WHEREAS**, the SDA previously procured property management and maintenance services in 2008, 2011 and 2015; and

**WHEREAS**, the SDA's current contract for such services shall expire on August 31, 2019; and

**WHEREAS**, such services are required for properties acquired and owned by the SDA, which inventory presently includes thirteen (13) real property sites consisting of vacant lots and occupied and unoccupied commercial and residential spaces; and

**WHEREAS**, as set forth in detail in the memorandum presented to the Board on this date, the SDA employed a competitive selection process to procure property management and maintenance services in accordance with applicable regulations; and

**WHEREAS**, upon completion of the procurement process, management recommends award of the agreement for state-wide property management and maintenance services to the highest-ranked firm, Bluegrass Hydro-Seeding, LLC, d/b/a Bluegrass Services (Bluegrass); and

**WHEREAS**, the negotiated total compensation for the agreement for property management and maintenance services is \$2,018,000; and

**WHEREAS**, the agreement shall have a term of three years commencing September 2019, with an option by SDA to extend the agreement for one additional year on such terms as SDA and Bluegrass may then agree; and

**WHEREAS**, prior to execution of the contract, the contract and related documentation shall be reviewed and approved by the SDA Division of Chief Counsel.

**NOW, THEREFORE, BE IT RESOLVED**, that the Members of the Authority hereby authorize and approve the award of a contract (Package No. GP-0257-R02) to the highest-ranked firm, Bluegrass Hydro-Seeding, LLC, d/b/a Bluegrass Services, for the negotiated total compensation amount of \$2,018,000 for State-Wide Property Management and Maintenance Services for a three-year term commencing September 2019.

**BE IT FURTHER RESOLVED**, that the term of the agreement may be extended for one additional year on such terms as the SDA and Bluegrass Hydro-Seeding, LLC, d/b/a Bluegrass Services may then agree.

**BE IT FURTHER RESOLVED**, that, prior to execution of the contract, the contract and related documentation will be reviewed and approved by the SDA Division 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, Approval of Award, Package No. GP-0257-R02, State-Wide Property  
Management and Maintenance Services, dated July 1, 2019  
Dated: July 1, 2019

**MONTHLY REPORTS**  
**(For Informational Purposes)**

**ACTIVE PROJECTS STATUS REPORT**



**MEMORANDUM**

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director

DATE: July 1, 2019

SUBJECT: Active Project Status Report  
(For Informational Purposes Only)

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The 1<sup>st</sup> section of the report includes an Activities Summary of projects identified for advancement in the Authority's Capital Plans.

The 2<sup>nd</sup> part of the report displays project completion milestones for all other active major capital projects and emergent projects for which a contract for construction has been awarded.



2011 & 2012 Portfolio Projects Activities Summary

as of 6/17/19

2011 Portfolio Projects - sorted by District

1

District	Project	Grade Alignment	FES Capacity	Max. Capacity	Total Estimated Cost (millions)	Design Status	Advancement Status	Projected Construction Advertisement Date*
Bridgeton	Buckshutem ES	K-8	581	645	\$23.3	Kit of Parts/ Design-Build	School occupied Sep. 2016. (Bock)	5/31/13
Bridgeton	Quarter Mile Lane ES	PK-8	731	795	\$39.0	Kit of Parts/ Design-Build	School occupied Sep. 2017. (Bock)	5/31/13
Elizabeth	Frank J. Cicarell Academy (Academic HS)	9-12	1,091	1,284	\$64.1	Existing Design	School occupied Sep. 2016. (Patock)	12/8/11 7/11/12
Jersey City	Patricia M. Noonan ES (ES 3)	PK-5	778	848	\$54.0	Kit of Parts/ Design-Build	School occupied Sep. 2017. (Dobco, Inc.)	6/25/12 2/25/13
Jersey City	Dr. Maya Angelou PS #20	K-5	628	698	\$49.3	Existing Design	School occupied Sep. 2016. (Dobco, Inc.)	4/17/12 3/6/13
Long Branch	Catrambone ES	PK-5	794	867	\$40.0	Existing Design	School occupied Sep. 2014. (Terminal Construction)	12/20/11
New Brunswick	Redshaw ES	PK-5	906	990	\$51.2	Kit of Parts/ Design-Build	School occupied Jan. 2015. (Hall Construction)	5/29/12
Newark	Oliver St. ES	PK-8	848	932	\$73.6	Kit of Parts/ Design-Build	School occupied May 2016. (Epic Management)	6/27/12 11/29/12
Paterson	Dr. Hani Awadallah ES (Marshall St. ES)	K-8	650	722	\$55.2	Existing Design	School occupied Sep. 2016. (Dobco, Inc.)	6/13/12 2/12/13
Paterson	PS 16	PK-8	641	705	\$62.4	Kit of Parts/ Design-Build	School occupied Sep. 2016. (Hall Construction)	3/27/12 8/28/13
West New York	Harry L. Bain PS 6	PK-6	736	814	\$16.8	Design-Bid-Build	School occupied Sep. 2017. (Paul Otto)	2/27/12 12/29/15

\*PLEASE NOTE - Dates in the Past are ACTUAL. Includes Advertisement dates for Early Site Preparation Construction & School Construction where applicable.  
 NOTE # 1 - Estimated Costs, Grade Alignment and Capacity are based upon approved Project Charters where applicable. For projects without an approved charter, Estimated Costs, Grade Alignment and Capacity are based upon Planning Assumptions.  
 Recommendations of DOE/SDA/District Working Groups may impact this information in the future.



**2011 & 2012 Portfolio Projects Activities Summary**

as of 6/17/19

**2012 Portfolio Projects - sorted by District**

1

District	Project	Grade Alignment	FES Capacity	Max. Capacity	Total Estimated Cost (millions)	Design Status	Advancement Status	Projected Construction Advertisement Date*
Gloucester City	Elementary/Middle School	4-8	687	763	\$65.3	Kit of Parts/ Design-Build	School occupied Sep. 2017. (Terminal)	3/4/14
Keansburg	Caruso ES	K-4	758	842	\$50.9	Kit of Parts/ Design-Build	School occupied Sep. 2016. (Hall Construction)	10/20/11 6/27/13
Keansburg	Port Monmouth Road School	PK	318	318	\$25.8	Design-Bid-Build	Revised Planning Charter approved Aug. 2017 Board.	2 QTR 19
New Brunswick	Robeson ES	PK-5	823	893	\$48.5	Kit of Parts/ Design-Build	School occupied Sep. 2018 (Hall Construction)	4/22/15
Newark	Elliot Street ES	PK-8	848	932	\$46.7	Kit of Parts/ Design-Build	School occupied Jan. 2016. (Hall Construction)	12/27/12
Newark	South Street ES	PK-8	597	657	\$69.9	Kit of Parts/ Design-Build	School occupied Sep. 2018. (Bock)	6/28/13 6/29/15
Passaic	Dayton Ave. Campus	PK-8	2,760	3,020	\$240.9	Kit of Parts/ Design-Build	Award for D-B approved Nov. 2017 Board. (Terminal)	6/13/17
Phillipsburg	High School	9-12	1,846	2,172	\$127.5	Existing Design	School occupied Sep. 2016. (Epic Management)	9/27/12
West New York	Memorial HS	9-12	1,859	2,194	\$16.0	Alternative Delivery (acquisition) & Renovation	Acquisition of Existing St. Joseph's HS complete. Renovation work delegated to District via Grant.	n/a

**\*PLEASE NOTE** - Dates in the Past are ACTUAL. Includes Advertisement dates for Early Site Preparation Construction & School Construction where applicable.  
**NOTE # 1** - Estimated Costs, Grade Alignment and Capacity are based upon approved Project Charters where applicable. For projects without an approved charter, Estimated Costs, Grade Alignment and Capacity are based upon Planning Assumptions. Recommendations of DOE/SDA/District Working Groups may impact this information in the future.



2011 & 2012 Portfolio Projects Activities Summary

as of 6/17/19

2012 Portfolio Projects (Educational Priority that require further conversations with District & 2013 Amended Projects) - sorted by District

1								
District	Project	Grade Alignment	FES Capacity	Max. Capacity	Total Estimated Cost (millions)	Design Status	Advancement Status	Projected Construction Advertisement Date*
East Orange	Sheila Y. Oliver Academy (GW Carver ES)	PK-5	470	512	\$41.2	Kit of Parts/ Design-Build	Award for D-B approved Jun. 2017 Board. (Dobco)	4/26/16 1/20/17
Elizabeth	New ES @ Halloran PS #22 ES Site	2-8	860	956	\$55.3	Kit of Parts/ Design-Build	School occupied Sep. 2017. (Torcon)	6/9/14
Garfield	James Madison ES	K-5	275	305	\$29.7	Existing Design	School occupied Sep. 2018. (Brockwell & Carrington)	2/19/14 6/30/15
Harrison	New ES	PK - 1	392	432	\$36.1	Kit of Parts/ Design-Build	Award for D-B approved Nov. 2016 Board. (Brockwell and Carrington)	11/10/15 7/13/16
Irvington	Madison Avenue ES	PK-5	463	504	\$38.6	Kit of Parts/ Design-Build	Award for D-B approved Dec. 2016 Board. (Bock)	11/19/15 8/16/16
Millville	Senior HS Addition/Renovation	HS	2,026	2,384	\$137.5	Design-Build	Award for D-B approved Apr. 2017 Board. (Hall Construction)	9/30/16
Passaic	Sonia Sotomayor ES (New ES @ Leonard Place)	K-5	628	698	\$55.9	Kit of Parts/ Design-Build	Award for D-B approved Dec. 2015 Board. (Dobco, Inc.)	8/13/15
Paterson	New MS @ Union Ave.	6-8	996	1107	\$113.9	Design-Build	Award for D-B approved Sep. 2018 Board. (Epic Management)	3/2/17 4/26/18
Pemberton	Denbo-Crichton ES	PK-5	846	930	\$58.7	Design-Build	Award for D-B approved Jan. 2018 Board. (Bock)	3/1/17 9/13/17
Perth Amboy	High School	HS	2,800	3,304	\$234.4	Design-Build	Advertisement for D-B 3/26/19. Proposals Due July 2019.	3/26/19
Perth Amboy	Rose M. Lopez ES (Seaman Avenue ES)	K-5	724	804	\$56.4	Kit of Parts/ Design-Build	Award for D-B approved Jul. 2016 Board. (Epic Management).	2/3/16
Plainfield	New Woodland ES	K-5	756	839	\$62.0	Kit of Parts/ Design-Build	ESP ROA approved Aug. 2018 Board.	5/23/18 2 QTR 19
Union City	New Grade 7 to 9 School	7-9	756	840	\$64.2	Kit of Parts/ Design-Build	Preliminary Charter approved Mar. 2017 Board.	TBD
Vineland	Lincoln Ave. MS (New MS)	6-8	562	624	\$49.8	Kit of Parts/ Design-Build	School occupied Sep. 2018. (Bock).	9/24/15

\*PLEASE NOTE - Dates in the Past are ACTUAL. Includes Advertisement dates for Early Site Preparation Construction & School Construction where applicable.  
 NOTE # 1 - Estimated Costs, Grade Alignment and Capacity are based upon approved Project Charters where applicable. For projects without an approved charter, Estimated Costs, Grade Alignment and Capacity are based upon Planning Assumptions.  
 Recommendations of DOE/SDA/District Working Groups may impact this information in the future.





**2011 & 2012 Portfolio Projects Activities Summary**

as of 6/17/19

**2012 Portfolio Projects (Facilities Deficiencies) - sorted by District**

1								
District	Project	Grade Alignment	FES Capacity	Max. Capacity	Total Estimated Cost (millions)	Design Status	Advancement Status	Projected Construction Advertisement Date*
Camden	High School	9-12	1,244	1,468	\$132.6	Design-Build	Award for D-B approved Aug. 2018 Board. (Bock)	6/9/17 3/23/18
Hoboken	Demarest ES	ES	TBD	TBD	TBD	Design-Bid-Build	Pre-Design Services ongoing.	TBD
Orange	Cleveland St. ES	PK-6	316	348	\$33.2	Design-Bid-Build	Award for GC approved Mar. 2019 Board. (Brockwell & Carrington)	9/10/18 11/14/18
Orange	High School	9-12	1,440	1,694	\$51.9	Design-Bid-Build	Award for GC approved Mar. 2019 Board. (Terminal)	10/12/18
Trenton	Central HS	10-12	1,850	2,176	\$155.4	Design-Build	Award for D-B approved Mar. 2016 Board. (Terminal)	12/19/14 9/29/15

**\*PLEASE NOTE** - Dates in the Past are ACTUAL. Includes Advertisement dates for Early Site Preparation Construction & School Construction where applicable.

**NOTE # 1** - Estimated Costs, Grade Alignment and Capacity are based upon approved Project Charters where applicable. For projects without an approved charter, Estimated Costs, Grade Alignment and Capacity are based upon Planning Assumptions.  
Recommendations of DOE/SDA/District Working Groups may impact this information in the future.



## Active Project Status Report Status as of 6/1/2019

### Major Capital Projects - With Contract for Building Construction Awarded

#	District	Project Name	Project Scope	Project Status	Substantial Completion	Status Substantial Completion	School Opening	Status of School Opening	Total Estimated Project Cost
1	Camden	New Camden High School	New Construction	Construction	3Q 2021	On-target	Sep-21	On-target	\$ 132,569,255
2	City of Orange	Cleveland Street ES	Addition/Renovation	Constructability Review	2Q 2021	On-target	Sep-21	On-target	\$ 33,243,608
3	City of Orange	Orange High School	Addition/Renovation	Constructability Review	1Q 2022	On-target	Phased	On-target	\$ 51,931,218
4	East Orange	New GW Carver ES	New Construction	Construction	4Q 2019	On-target	Sep-20	On-target	\$ 41,179,670
5	Harrison	New Elementary School	New Construction	Construction	1Q 2020	On-target	Sep-20	On-target	\$ 36,115,640
6	Irvington	New Madison Ave ES	New Construction	Construction	2Q 2019	On-target	Sep-19	On-target	\$ 38,589,795
7	Millville	Millville Senior High School	Addition/Renovation	Construction	3Q 2022	On-target	Phased	On-target	\$ 137,503,832
8	Passaic City	New ES at Leonard Place	New Construction	Construction	2Q 2019	Achieved	Sep-19	On-target	\$ 55,884,039
9	Passaic City	New Dayton Avenue Educational Campus	New Construction	Construction	2Q 2022	On-target	Sep-22	On-target	\$ 240,923,270
10	Paterson	New Union Ave MS	New Construction	Design-Build Design Phase	2Q 2021	On-target	Sep-21	On-target	\$ 113,902,274
11	Perth Amboy	New Seaman Ave ES	New Construction	Construction	2Q 2019	On-target	Sep-19	On-target	\$ 56,435,971
12	Pemberton	New Denbo ES	New Construction	Construction	1Q 2021	On-target	Sep-20	On-target	\$ 58,703,414
13	Trenton	New Central HS	New Construction	Construction	2Q 2019	On-target	Sep-19	On-target	\$ 155,404,000



**Active Project Status Report  
Status as of 6/1/2019**

**Emergent Projects - With Contract for Construction Awarded**

#	District	Project Name	Project Scope	Project Phase	Substantial Completion	Status Substantial Completion	Final Completion	Status of Final Completion	Total Estimated Project Cost
1	Newark	Marin School	HVAC Repairs	GC TO w/ Design	2Q 2019	On-Target	1Q 2019	On-Target	\$ 204,000
2	Newark	Dr. E. Alma Flagg ES	Exterior Doors & Roofing	GC TO w/ Design	3Q 2019	On-Target	3Q 2019	On-Target	\$ 654,000
3	Newark	Hawkins School	Chimney Repairs	GC TO w/ Design	3Q 2019	On-Target	3Q 2019	On-Target	\$ 637,888
4	Newark	Lafayette Street School	Exterior Doors & Roofing	GC TO w/ Design	3Q 2019	On-Target	3Q 2019	On-Target	\$ 658,129
5	Newark	Wilson School Annex	Chimney Repairs	GC TO w/ Design	3Q 2019	On-Target	3Q 2019	On-Target	\$ 211,386
6	Paterson	New Roberto Clemente	HVAC & Corrective Work	GC TO w/ Design	2Q 2019	Achieved	2Q 2019	On-Target	\$ 2,528,884
7	Plainfield	Plainfield High School	Structural Repairs - Stairs	GC TO w/ Design	3Q 2019	On-Target	4Q 2019	On-Target	\$ 1,202,774

**PROJECT CLOSEOUT STATUS REPORT**



STATE OF NEW JERSEY

# SCHOOLS DEVELOPMENT AUTHORITY

32 EAST FRONT STREET  
P.O. BOX 991  
TRENTON, NJ 08625-0991  
609-858-5395

To: Members of the Authority  
From: /s/ Ayisha Cooper, Vendor Services Analyst  
Date: July 1, 2019  
Subject: Project Close-Out Status Report

The attached report provides a status of the following:

- All SDA managed Capital Plan projects which have achieved school occupancy but have not yet been contractually and administratively closed
- All SDA managed Emergent projects which are either (1) currently active, or (2) complete yet have not been contractually and administratively closed
- Projects which have achieved project transfer to the district yet have outstanding open contracts
- A running total of all school facilities projects, health and safety contracts, and suspended design contracts which have been closed

Projects closed since the last report will appear highlighted.



<b>SPECIAL PROJECTS DIVISION</b>					
<b>PROJECT STATUS REPORT - As of June 1, 2019</b>					
<b>Year of Occupancy</b>	<b>DOE #</b>	<b>School</b>	<b>Disposition</b>	<b>Project Transfer Date</b>	<b>Outstanding Issues Preventing Complete Close-out</b>
<b>Bridgeton</b>					
2016	0540-050-13-0ACN	Buckshutem Road Elementary School			
2017	0540-100-13-0ACO	Quarter Mile Lane Elementary School			
<b>Burlington City</b>					
2007	0600-020-01-0957	New High School	Project Transferred	12/29/11	Open contract(s) - Legal matter pending
<b>Camden</b>					
2007	0680-140-01-0939	Octavius V. Catto Community School - Demonstration Project	Project Transferred	01/09/12	Open contract(s) - Pending audit completion
2009	0680-350-01-0938	HB Wilson Elementary School	Project Transferred	04/14/10	Open contract(s)
2009	0680-190-01-0927	Dudley Elementary School	Project Transferred	02/06/12	Open contract(s)
<b>Cumberland</b>					
2009	0997-030-02-0926	Cumberland Regional High School	Project Transferred	06/25/10	Open contract(s) - Legal matter pending
<b>Egg Harbor City</b>					
2010	1300-X01-04-0ADY	New Middle School	Project Transferred	01/01/12	Open contract(s)
<b>Egg Harbor Township</b>					
2011	1310-005-04-0AEB	Egg Harbor Township High School			
<b>Elizabeth</b>					
Legacy	1320-X06-01-0866	#30 Ronald Reagan Academy	Project Transferred	07/09/12	Open contract(s) - Legal matter pending
2013	1320-240-03-0339	Victor Mravlag Elementary School # 21			
2016	1320-x07-01-0867	Frank J. Cicarell Academy (New Academic HS)			
2017	1320-N20-13-0AEG	Halloran Elementary School	Project Transferred	06/12/18	Open contract(s)
<b>Garfield</b>					
2018	1700-205-03-0315	James Madison Elementary School #10			
<b>Gloucester City</b>					
Legacy	1770-160-01-0245	Cold Springs Elementary School	Project Transferred	06/05/09	Open contract(s)
2017	1770-N01-03-0188	Gloucester City Middle School	Project Transferred	04/17/18	Open contract(s)
<b>Jersey City</b>					
Legacy	2390-N01-99-0227	New Elementary School #3 (Frank R. Conwell ES #3)	Project Transferred	12/19/15	Open contract(s) - Legal matter pending
Legacy	2390-N02-99-0228	Jersey City Middle School # 4 (Frank R. Conwell MS #4)	Project Transferred	12/19/15	Open contract(s) - Legal matter pending
2016	2390-190-01-0581	New Public School #20	Project Transferred	08/11/17	Open contract(s) - Legal matter pending
2017	2390-X03-01-0587	Patricia M. Noonan ES (New PS #3)	Project Transferred	12/14/17	Open contract(s) - Legal matter pending
2007	2390-N03-99-0147	Heights Middle School #7			
<b>Keansburg</b>					
2016	2400-E01-02-0116	New Caruso Elementary School	Project Transferred	08/13/18	Open contract(s)
<b>Long Branch</b>					
2008	2770-X03-01-0635	Long Branch High School & Athletic Fields			

<b>SPECIAL PROJECTS DIVISION</b>					
<b>PROJECT STATUS REPORT - As of June 1, 2019</b>					
<b>Year of Occupancy</b>	<b>DOE #</b>	<b>School</b>	<b>Disposition</b>	<b>Project Transfer Date</b>	<b>Outstanding Issues Preventing Complete Close-out</b>
<b>New Brunswick</b>					
2018	3530-123-03-1034	Paul Robeson Community Elementary School	Project Transferred	10/23/18	Open contract(s)
<b>Newark</b>					
Legacy	3570-X01-01-0617	Science Park	Project Transferred	05/03/13	Open contract(s) - Legal matter pending
2008	3570-X03-01-0665	Central High School	Project Transferred	03/28/12	Open contract(s)
2010	3570-X07-01-0693	Speedway Elementary School	Project Transferred	10/21/15	Open contract(s)
2016	3570-590-02-0315	Oliver Street Elementary School	Project Transferred	05/18/17	Open contract(s)
2018	3570-640-02-0311	South Street ES			
<b>Passaic</b>					
2015	3970-X01-01-X760	New Henry Street Elementary School			
<b>Paterson</b>					
Legacy	4010-N02-02-0393	Roberto Clemente Elementary School	Project Transferred	04/12/13	Needed repairs being addressed
2016	4010-N09-04-00HP	New Public School #16	Project Transferred	07/31/17	Open Contract(s)
2016	4010-N01-02-0169	Dr. Hami Awadallah School (New Marshall Street ES)	Project Transferred	03/15/18	Open Contract(s)
2008	4010 -S01-02-0101	International High School			
2008	4010-270-02-0608	#24 Elementary School			
<b>Pemberton</b>					
2011	4050-E01-02-0082	Pemberton Early Childhood Education Center	Project Transferred	02/01/13	Open contract(s)
<b>Phillipsburg</b>					
2016	4100-X01-99-0464	New High School	Project Transferred	06/07/18	Open contract(s)
<b>Vineland</b>					
2018	5390-N02-02-0245	Lincoln Avenue Middle School			
<b>West New York</b>					
2009	5670-065-01-0559	Elementary School #2	Project Transferred	05/14/13	Open contract(s) - Legal matter pending
2012	5670-070-01-0556	West New York #3	Project Transferred	01/29/14	
2017	5670-100-12-0AEE	Harry L. Bain E.S.			
<b>Capital and Demonstration Projects Totals</b>					
<b>Total Capital and Demonstration</b>			<b>151</b>		
<b>Closed Capital and Demonstration Projects</b>			<b>111</b>		
<b>Capital and Demonstration Projects Not Closed</b>			<b>40</b>		
<b>Capital and Demonstration Projects Not Closed, Project Transferred</b>			<b>25</b>		
			<b>Legal Matter</b>	<b>9</b>	
			<b>Pending Audit</b>	<b>1</b>	
			<b>Miscellaneous</b>	<b>15</b>	

<b>SPECIAL PROJECTS DIVISION</b>					
<b>PROJECT STATUS REPORT - As of June 1, 2019</b>					
<b>Year of Occupancy</b>	<b>DOE #</b>	<b>School</b>	<b>Disposition</b>	<b>Project Transfer Date</b>	<b>Outstanding Issues Preventing Complete Close-out</b>
<b>Emergent Projects</b>					
<b>Camden</b>					
	0680-170-12-0ACF	Cramer Elementary School			
<b>Irvington</b>					
	2330-090-12-0ACT	Chancellor Avenue Elementary School	Project Transferred	3/20/2018	Open contract(s)
<b>Paterson</b>					
	4010-N02-12-0ABX	Roberto Clemente ES			
<b>Salem</b>					
	4630-090-17-0AEQ	Salem Middle School	Project Transferred	10/18/18	Open contract(s)
<b>Trenton</b>					
	5210-080-12-0ABZ	Hedgepeth-Williams School	Project Transferred	03/01/18	Open contract(s)
<b>Vineland</b>					
	5390-050-12-0ACK	Vineland High School South			
<b>Emergent Project Totals</b>					
<b>Total Emergent Projects</b>			73		
<b>Emergent Projects Closed</b>			67		
<b>Emergent Projects Not Closed</b>			6		
<b>Emergent Projects Not Closed but Transferred</b>			2		
<b>Health and Safety Contract Totals</b>					
<b>Total Contracts</b>			399		
<b># of Contracts Closed</b>			394		
<b># of Open Contracts</b>			5		
<b>Open Design Contracts</b>					
<b>Total Contracts</b>			109		
<b># of Contracts Closed</b>			98		
<b># of Open Contracts</b>			11		



**PROJECT STATUS REPORT**



**MEMORANDUM**

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director – Program Operations

DATE: July 1, 2019

SUBJECT: Executive Summary – Monthly Project Status Reports

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**MONTHLY PROJECT STATUS REPORT**

**Projects that have Expended 75% or More of Board Approved Contingency:**

No activity during the reporting period

**Projects Greater than 90 Days Behind Schedule:**

No activity during the reporting period

**Revisions to Project Charters:**

No activity during the reporting period



**Projects that have Expended 75% or More of Board Approved Contingency**  
 Reporting Period: Jan. 1, 2008 to May 31, 2019

District	Project	Board Approved Project Charter Contingency	Contingency Expended/Committed	Contingency Remaining <sup>1</sup>	% of Contingency Expended/Committed	Project Completion %	Cause(s)	Current Status
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**In Construction**

NO DATA TO REPORT

**Substantially Complete & Building Occupied**

Please refer to the Project Close-Out Activity Report for status of close-out activities

Camden	Dudley E.S.	\$3,215,000	\$2,615,168	\$599,832	81.3%	99%	1. Installation of IT/AV systems	Project complete and building occupied. Working towards project close-out.
Newark	Speedway Avenue E.S.	\$1,826,000	\$1,754,119	\$71,881	96.1%	99%	1. Removal of unforeseen impacted materials	Project complete and building occupied. Working towards project close-out.
New Brunswick	Paul Robeson Community ES	\$1,599,650	\$2,180,000	\$0	100.0%	99%	Unforeseen structural repairs. On Oct. 4, 2017 Change Order No. 1 for the value of \$2,180,000 was approved by the Member to address unforeseen structural repairs to the existing Robeson ES which served to fully exhaust the project contingency.	Project complete and building occupied. Working towards project close-out.
Paterson	E.S. #24	\$4,616,120	\$4,313,389	\$302,731	93.4%	99%	1. Unforeseen soil remediation and clean fill.	Project complete and building occupied. Working towards project close-out.
West New York	West New York P.S. #2	\$2,708,883	\$2,708,883	\$0	100.0%	99%	1. Unforeseen site foundation issues	Project complete and building occupied. Working towards project close-out.

<sup>1</sup> Does not include expended contingency or contingency funds allocated for change orders, amendment:



**Projects Greater than 90 Days Behind Schedule or with Occupancy Date in Jeopardy**

Reporting Period: May 2019

#	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 Activity During the Reporting Period



### Revisions to Project Charters

Reporting Period: May 2019

#	District	Project	Financial & Schedule Impacts	Additional Funds Approved	Additional Funds as % of Total Project Budget	Operating Authority Approval Requirement	Description of Revision
No Activity During the Reporting Period							

**CONTRACTS EXECUTED REPORT**



**MEMORANDUM**

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director, Program Operations

DATE: July 1, 2019

SUBJECT: Contracts Executed Report and Amendments & Change Orders Report  
(For Informational Purposes Only)

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**Contracts Executed Report**

This report contains the activity of Contracts executed during the period May 1 through May 31, 2019.

**Noteworthy Items during the reporting period:**

- Execution of 1 Design Consultant Task Order Engagement for pre-design services for the Hoboken Demarest Renovation project to Design Resources Group, Architects – \$550,220.
- Execution of 1 General Construction contract for the Orange Cleveland St. ES Addition & Renovation project to Brockwell & Carrington Contractors – \$18,400,000.

**Amendments & Change Orders Report**

This report contains the activity of Amendments and Change Orders executed during the period May 1 through May 31, 2019.

**Noteworthy Items during the reporting period:**

- Execution of 7 Professional Services Amendment totaling a \$7.5k, of the 7 executed amendments none required board approval.
- Execution of 19 Construction Services Change Orders totaling \$1.1M, of the 19 executed change orders one required board approval totaling \$17.5k.

**Report of change orders less than \$10,000 yet requiring Board Approval**

In accordance with the Operating Authority adopted by the Members on December 1, 2010 as amended on March 7, 2012, 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 Activity to Report



### Contracts Executed Report

Reporting Period: 5/1/2019 through: 5/31/2019

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
<b>Part 1. Professional Services</b>										
<b>Design Consultant</b>										
Hoboken	A.J. Demarest E.S.	Reno	Design	HU-0028-A01	Design Resources Group, Architects, AIA		\$550,220	05/14/2019	-	
<b>Design Consultant</b>										
<b>Part 1. Professional Services</b>										
							<b>\$550,220</b>			





### Contracts Executed Report

Reporting Period: 5/1/2019 through: 5/31/2019

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
<b>Part 2. Construction Services</b>										
<b>Contractor</b>										
City Of Orange Township	Cleveland Street E.S.	RenoAdd	Construction	ES-0043-C01	Brockwell & Carrington Contractors, Inc.		\$18,400,000	05/02/2019	13,410,000.00	\$13,410,000
<b>Contractor</b>										
<b>Part 2. Construction Services</b>							<b>\$18,400,000</b>			<b>\$13,410,000</b>



### Contracts Executed Report

Reporting Period: 5/1/2019 through: 5/31/2019

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
<b>Part 4. Other Contracts &amp; Services</b>										
<b>Others</b>										
Irvington Township	Madison Avenue E.S.	RenoAdd	FFE	ES-0027-K01	MRA International, Inc.		\$148,896	05/24/2019	-	
Irvington Township	Madison Avenue E.S.	RenoAdd	FFE	ES-0027-Q09	Community Products LLC dba Community Playthings		\$117,513	05/09/2019	-	
Millville	High School	RenoAdd	FFE	ST-0046-Q01	Brodart Co		\$282,502	05/23/2019	-	
Passaic City	New ES at Leonard Place	New	FFE	NT-0050-Q15	Sico America, Inc.		\$13,205	05/29/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-F06	Smith System Manufacturing		\$187,863	05/08/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-K07	Washington Computer Services		\$247,812	05/15/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-K08	Washington Computer Services		\$111,360	05/15/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-K10	Washington Computer Services		\$60,150	05/15/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-K11	New Era Technology NJ, Inc.		\$48,587	05/23/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-K13	Apple Inc.		\$114,635	05/29/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-K14	SHI International, Inc	MW	\$50,873	05/30/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-Q02	School Specialty, Inc.		\$14,834	05/06/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-Q03	School Specialty, Inc.		\$86,118	05/06/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-Q04	Brodart Co		\$111,600	05/10/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-Q05	Sico America, Inc.		\$37,684	05/14/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-Q06	Krueger International, Inc.		\$186,012	05/15/2019	-	
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-Q07	Brodart Co		\$128,342	05/29/2019	-	



### Contracts Executed Report

Reporting Period: 5/1/2019 through: 5/31/2019

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
Perth Amboy	Seaman Avenue School	New	FFE	ET-0031-Q08	Krueger International, Inc.		\$15,658	05/29/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-F23	Ceramic Shop (The)		\$14,050	05/31/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K40	Washington Computer Services		\$223,575	05/01/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K41	MRA International, Inc.		\$54,284	05/01/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K43	Washington Computer Services		\$36,996	05/09/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K49	Keyboard Consultants		\$110,145	05/21/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K50	Keyboard Consultants		\$110,145	05/21/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K51	Keyboard Consultants		\$110,145	05/21/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K52	Keyboard Consultants		\$110,145	05/21/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K53	Keyboard Consultants		\$58,309	05/21/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-K54	Keyboard Consultants		\$104,461	05/21/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-Q22	Krueger International, Inc.		\$50,812	05/07/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-Q23	Brodart Co		\$16,889	05/15/2019	-	
Trenton	Trenton Central H.S.	Reno	FFE	WT-0022-Q24	Wenger Corporation		\$14,975	05/21/2019	-	

Others

Part 4. Other Contracts & Services

\$2,978,575

Total Contract Award

Total Contracts Awarded

Grand Totals - Professional and Construction Services Combined

\$21,928,795

33

\*\* Contracts less than \$10,000 are not displayed



### Contracts Executed Report

Reporting Period: 5/1/2019 through: 5/31/2019

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
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**Project Types Legend**

HS Health & Safety  
 New New Constuction  
 Add Addition  
 RenoAdd Addition & Renovation  
 Reno Renovation

**Contract Types Legend**

Aquisition 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  
 Title Title Services  
 Utilities Utilities Services

**MWSBE CERTIFICATIONS**

M = Minority Business Enterprise  
 W = Women Business Enterprise  
 S = Small Business Enterprise



### Amendments & Change Orders Report

Reporting Period: 5/1/2019 through: 5/31/2019

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %
<b>Professional Services</b>													
<b>Design Consultant</b>													
Camden City	Bonsall E.S.	EP-0079-A01	11/14/2013	1	Design Collaborative, Architects And Planners	5/6/2019	\$112,620	(\$30,500)	(\$23,180)			\$58,940	-47.66%
City Of Orange Township	Orange H.S.	ES-0042-A01	5/5/2015	6	Kliment Halsband Architects LLP	5/6/2019	\$3,520,022	\$126,215	\$22,015			\$3,668,252	4.21%
City Of Orange Township	Orange H.S.	ES-0042-A01	5/5/2015	7	Kliment Halsband Architects LLP	5/6/2019	\$3,520,022	\$148,230	\$6,805			\$3,675,057	4.40%
City Of Orange Township	Orange H.S.	ES-0042-A01	5/5/2015	8	Kliment Halsband Architects LLP	5/24/2019	\$3,520,022	\$155,035	\$59,070			\$3,734,127	6.08%
City Of Orange Township	Orange H.S.	ES-0042-A01	5/5/2015	9	Kliment Halsband Architects LLP	5/24/2019	\$3,520,022	\$214,105	\$13,621			\$3,747,748	6.47%
Cumberland Regional	Cumberland Regional H.S.	ST-0022-A01	6/30/2004	7	DLR Group Architects & Engineers Inc.	5/8/2019	\$1,419,377	\$374,767	(\$28,006)			\$1,766,138	24.43%
Newark	New Central High School (#x3)	NE-0004-A01	2/21/2002	26	Johnson Jones Architects Planners, Inc.	5/14/2019	\$2,935,000	\$4,182,262	(\$42,868)			\$7,074,394	141.03%
<b>Design Consultant</b>													
<b>Professional Services</b>													
										<b>\$7,457</b>			
<b>Construction Services</b>													
<b>Contractor</b>													
Camden City	Cramer E.S.	EP-0080-C01	6/14/2017	5	T.N. Ward Company	5/14/2019	\$1,349,235	\$1,569,143	(\$83,992)			\$2,834,386	110.07%
City Of Orange Township	Orange H.S.	ES-0042-C01	4/29/2019	1	Terminal Construction Corp.	5/31/2019	\$37,000,000	\$0	\$100,000			\$37,100,000	0.27%
Newark	Luiz Munoz Marin ES/MS	EP-0102-C01	2/21/2018	3	Epic Management, Inc.	5/14/2019	\$143,847	\$13,750	\$17,533	Y	4/3/2019	\$175,130	21.74%
Elizabeth	New ES	EL-0042-B01	12/16/2014	9	Torcon, Inc.	5/14/2019	\$44,456,800	\$352,465	\$18,909			\$44,828,174	0.83%
Elizabeth	New ES	EL-0042-B01	12/16/2014	10	Torcon, Inc.	5/14/2019	\$44,456,800	\$371,374	\$48,167			\$44,876,340	0.94%
Elizabeth	New ES	EL-0042-B01	12/16/2014	11	Torcon, Inc.	5/14/2019	\$44,456,800	\$419,540	\$255,101			\$45,131,441	1.51%
Elizabeth	New ES	EL-0042-B01	12/16/2014	12	Torcon, Inc.	5/14/2019	\$44,456,800	\$674,641	\$13,577			\$45,145,019	1.54%
Elizabeth	New ES	EL-0042-B01	12/16/2014	13	Torcon, Inc.	5/14/2019	\$44,456,800	\$688,219	\$34,913			\$45,179,931	1.62%
Elizabeth	New ES	EL-0042-B01	12/16/2014	14	Torcon, Inc.	5/20/2019	\$44,456,800	\$723,131	\$29,045			\$45,208,976	1.69%
Elizabeth	New ES	EL-0042-B01	12/16/2014	15	Torcon, Inc.	5/20/2019	\$44,456,800	\$752,176	\$77,219			\$45,286,195	1.86%



### Amendments & Change Orders Report

Reporting Period: 5/1/2019 through: 5/31/2019

District	School Name(s)	Contract Number	Contract Execution Date	CO #	Vendor Name	CO Execution Date	Contract Award Amount	Prior CO's (cumulative)	Current CO Amount	Board Approval Required	Board Approval Date	Revised Contract Amount	Cumulative CO %
Elizabeth	New ES	EL-0042-B01	12/16/2014	16	Torcon, Inc.	5/20/2019	\$44,456,800	\$829,395	\$102,468			\$45,388,663	2.09%
Irvington Township	Madison Avenue E.S.	ES-0027-B01	1/19/2017	12	Ernest Bock & Sons, Inc.	5/13/2019	\$26,800,000	(\$15,656)	\$2,146			\$26,786,490	-0.05%
Pemberton Township	Alexander Denbo E.S.	WT-0023-B01	2/14/2018	4	Ernest Bock & Sons, Inc.	5/13/2019	\$43,185,000	\$331,115	\$18,327			\$43,534,442	0.80%
Pemberton Township	Alexander Denbo E.S.	WT-0023-B01	2/14/2018	6	Ernest Bock & Sons, Inc.	5/13/2019	\$43,185,000	\$349,442	(\$2,540)			\$43,531,902	0.80%
Pemberton Township	Alexander Denbo E.S.	WT-0023-B01	2/14/2018	7	Ernest Bock & Sons, Inc.	5/13/2019	\$43,185,000	\$346,902	(\$6,000)			\$43,525,902	0.78%
Perth Amboy	Seaman Avenue School	ET-0031-B01	8/15/2016	9	Epic Management, Inc.	5/22/2019	\$43,570,000	\$151,176	\$20,731			\$43,741,907	0.39%
Perth Amboy	Seaman Avenue School	ET-0031-B01	8/15/2016	8	Epic Management, Inc.	5/23/2019	\$43,570,000	\$171,907	\$182,538			\$43,924,445	0.81%
Trenton	Trenton Central H.S.	WT-0022-B01	4/7/2016	17	Terminal Construction Corp.	5/24/2019	\$115,950,000	\$1,933,018	\$136,718			\$118,019,737	1.78%
Trenton	Trenton Central H.S.	WT-0022-B01	4/7/2016	18	Terminal Construction Corp.	5/24/2019	\$115,950,000	\$2,069,737	\$142,719			\$118,162,455	1.90%

<b>Contractor</b>	
<b>Construction Services</b>	<b>\$1,107,579</b>

	<b>Total Change Order Summary</b>	<b>Total Change Orders</b>
<b>Grand Totals</b>	<b>\$1,115,036</b>	<b>26</b>

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

**CONTRACT TERMINATIONS REPORT** *(no activity)*

**SETTLEMENT CLAIMS** *(no activity)*



**CONTRACTOR AND WORKFORCE COMPLIANCE REPORT**



### MEMORANDUM

TO: Members of the Authority

FROM: Aaron Goss /s/ Aaron Goss  
Director, Business & Workforce Diversity  
Office of the Chief of Staff

DATE: July 1, 2019

SUBJECT: Contractor and Workforce Compliance Monthly Update for April 2019

The Business & Diversity Management 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, vendors 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 total SDA contract dollars awarded through April 30, 2019 was \$5,689,936. The figures below demonstrate compliance with this requirement.

#### **SBE Breakdown**

The total contract dollars awarded to all SBE contractors was \$1,504,858 (including minorities, women and veterans). This represents 26.45% of all SDA contracts.

<b>Type of Business Enterprise</b>	<b>Contract Amount</b>	<b>% of Total SDA Contracts</b>
Small Business Enterprises	\$ -0-	0.00%
Small/ Minority Business Enterprises	\$ -0-	0.00%
Small/Women Business Enterprises	\$ 1,504,858	26.45%
Small/Veteran Owned Business Enterprises	\$ -0-	0.00%
Small/Minority/Women Business Enterprises	\$ -0-	0.00%
<b>TOTAL SBE CONTRACTS</b>	<b>\$ 1,504,858</b>	<b>26.45%</b>

Members of the Authority  
 Contractor and Workforce Compliance Monthly Update  
 July 1, 2019  
 Page 2 of 3

## WORKFORCE COMPLIANCE MONITORING

For the month of April 2019, there was a contractor workforce of 962 on SDA projects. This represents a total of 74,483 contractor workforce hours as follows:

<b>Contractor Workforce Breakdown (All Trades/Districts/Counties)</b>			
<b>Ethnicity</b>	<b>Total Workforce</b>	<b>Total Workforce Hours</b>	<b>Workforce Hours Percentage</b>
Black	84	8,023	10.77%
Hispanic	192	13,360	17.94%
American Indian	2	48	0.06%
Asian	3	112	0.15%
<b>Total Minority Participation</b>	<b>281</b>	<b>21,543</b>	<b>28.92%</b>
Total Non-Minority Participation	681	52,940	71.08%

There was a contractor workforce of 267,373 total workforce hours and 4,023 total female workforce hours on SDA projects for the period of January 1, 2019 through April 30, 2019. The following table highlights the *Local County Contractor Workforce* participation for that period:

<b>Local County Workforce Participation</b>	<b>Workforce Hours</b>	<b>Percentage</b>
*Total Workforce Hours	267,373	100.00%
<b>*Total Local County Workforce Hours</b>	<b>29,262</b>	<b>10.94%</b>
<b>Total Local County Non-Minority Workforce Hours</b>	<b>13,459</b>	<b>5.03%</b>
<b>Total Local County Female Workforce Hours</b>	<b>541</b>	<b>0.20%</b>
<b>Total Local County Minority Workforce Hours</b>	<b>15,803</b>	<b>5.91%</b>
<b>**Local County Workforce Hours by Ethnicity:</b>		
Black	9,870	3.69%
Hispanic	5,933	2.22%
American 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.

Members of the Authority  
 Contractor and Workforce Compliance Monthly Update  
 July 1, 2019  
 Page 3 of 3

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, 2019 through April 30, 2019.

<b>SDA Managed Project</b>	<b>Total Workforce Hours</b>	<b>Minority Workforce Hours &amp; Percentage</b>		<b>Local County Workforce Hours &amp; Percentage</b>	
Camden, HS	5,335	978	<b>19.00%</b>	192	<b>3.60%</b>
East Orange, George W Carver ES	41,621	18,440	<b>44.30%</b>	7,554	<b>18.15%</b>
Harrison, New ES	17,372	4,619	<b>26.59%</b>	0	<b>0.00%</b>
Irvington, Madison Avenue ES	20,362	6,258	<b>30.73%</b>	6,273	<b>30.81%</b>
Millville, HS	21,025	5,028	<b>23.91%</b>	2,340	<b>11.13%</b>
Passaic, Leonard Place ES	13,517	1,586	<b>11.73%</b>	1,662	<b>12.30%</b>
Passaic, Dayton Ave ES	34,597	9,686	<b>28.00%</b>	2,189	<b>6.33%</b>
Pemberton, Denbo-Crichton ES	18,805	3,875	<b>20.61%</b>	374	<b>2.00%</b>
Perth Amboy, Seaman Avenue ES	29,962	4,561	<b>15.22%</b>	3,154	<b>10.53%</b>
Trenton, Central HS	56,965	15,838	<b>27.80%</b>	6,065	<b>10.65%</b>
Emergent Projects	7,796	4,232	<b>54.28%</b>	0	<b>0.00%</b>

Prepared by: Charlotte Brooks

**REGULAR OPERATING DISTRICTS (RODs) ACTIVITY REPORT**



**MEMORANDUM**

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director, Program Operations

DATE: July 1, 2019

SUBJECT: Regular Operating District Grant Activity Report  
(For Informational Purposes Only)

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This report summarizes the Regular Operating District Grant activity from inception to date and for the month of May 2019. Also included is a detailed list of grants executed and grants offered during the reporting period.

**Monthly Update:**

- No grants were offered during the reporting period.
- No grants were executed during the reporting period.
- 20 grants impacting 9 districts were closed out during the reporting period representing \$5.5M in total project costs and state share of \$2.1M.
- Since inception, over \$2.8B has been disbursed to 524 regular operating districts through the grant program.
- Since inception over \$3.3B in funding has been approved by the Department of Education and offered to regular operating districts through the grant program.


**STATE OF NEW JERSEY**  
**SCHOOLS DEVELOPMENT AUTHORITY**  
 Monthly Regular Operating District Grant Report - Summary  
 May 2019

ROD Grant Summary Since Program Inception				
	Offered <sup>1</sup>	Executed	Closed-Out	Active
Districts Impacted	3	524	514	138
Number of Grant Projects	5	5,409	4,894	515
Total Project Cost Estimate	\$ 5,024,267	\$ 8,953,686,808	\$ 8,398,817,825	\$ 554,868,983
Grant Amount	\$ 2,009,708	\$ 3,010,299,371	\$ 2,765,628,625	\$ 244,670,746
Amount Disbursed	N/A	\$ 2,881,242,773	\$ 2,765,628,625	\$ 115,614,147

Total Funding Offered to School Districts via Grant Program	\$ 3,342,209,450
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Total ROD Grant Funding remaining for new Grant Projects	\$ 80,494,476
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1. Includes grants that have been offered to District's but have not yet been executed.

Monthly Activity ROD Grant Summary		
	Executed	Closed-Out
Districts Impacted	-	9
Number of Grant Projects	-	20
Total Project Cost Estimate	\$ -	\$ 5,530,554
Grant Amount	\$ -	\$ 2,125,924
Amount Disbursed	NA	\$ 2,125,924

\* 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.

**NOTIFICATION OF AMENDMENTS TO GOODS AND SERVICES CONTRACTS NOT EXCEEDING \$100,000 OR 10% OF THE CONTRACT VALUE *(no activity)***



**COMMUNICATIONS MONTHLY REPORT**



32 EAST FRONT STREET  
P.O. BOX 991  
TRENTON, NJ 08625-0991  
609-858-5325

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## MEMORANDUM

TO: Members of the Authority  
FROM: /s/ Tony Bianchini, Director of Communications  
DATE: June 17, 2019  
SUBJECT: Monthly Communications Report

### **2019 Schools Opening Communications Plan**

This past month, the Communications Department developed a plan to publicize the upcoming school openings in Irvington, Passaic Perth Amboy and Trenton, emergent projects to be completed this Fall, as well as a longer timeline for publicity of all SDA active projects in our pipeline. The document is under review internally by the Executive Team and will be provided to the Board for their information/review within the next month.

### **Annual and Bi-Annual Reports**

We delivered the Bi-Annual Report to the State Legislature on May 31 and posted it to the SDA website on June 4: <https://www.njsda.gov/NJSDA/Public/AnnualAndOtherReports>. We are awaiting final, audited numbers for the 2018 Annual Report and hope to deliver to the Board for approval at the August meeting.

### **Press Releases/Media**

Since the last monthly communications report, the Communications Department developed and pitched the following press releases to the local/trade news media:

- June 5, 2019 – SDA Receives Temporary Certificate of Occupancy for Sonia Sotomayor School in Passaic
- June 20, 2019 – Camden High School Wing C groundbreaking press release.

The Communications Department is in the process of developing/finalizing the following press releases and plans to release them publicly in June/July

- Denbo-Crichton Brick Signing press release
- Paul Robeson Community School for Arts Receives LEED Gold Certification
- North Main Street School emergent project in Pleasantville
- Forest Hill School emergent project in Camden
- Rose Lopez Temporary Certificate of Occupancy press release
- Madison Avenue Temporary Certificate of Occupancy press release
- Trenton Central High School Temporary Certificate of Occupancy press release
- Union Avenue Notice to Proceed/ Construction Manager Award press release
- Woodland Ave. Elementary Time Capsule event
- Sotomayor Summer School soft opening press release
- Union Avenue Groundbreaking press release

## Communications Report

June 17, 2019

Page 2 of 2

### **SDA Project News Articles**

1. June 6, 2019 – Schools Construction News – Major Revamp and Expansion Slated for New Jersey High School – <http://schoolconstructionnews.com/2019/06/06/major-revamp-and-expansion-slated-for-new-jersey-high-school/>
2. June 6, 2019 – Paterson Press – Paterson's new Union Avenue school construction begins – <https://www.northjersey.com/story/news/paterson-press/2019/06/06/paterson-nj-new-union-avenue-school-construction-starts/1367678001/>
3. July TBD – Engineering News Record – Article on NJ schools construction projects.

### **Website**

The communications department continues to make improvements to the SDA website including:

- Updates to all active project webpages
- Updates to SDA fact sheets.
- Development of new section on 2019 school openings

Over the summer, we will be continuing to develop new and improve existing webpages.

### **Social Media**

SDA continues to grow its social media followers since we launched these accounts in September. We now have nearly 4,000 followers. You can read about SDA news, events, projects and contractors on a variety of Social Media platforms. Please follow us on: Facebook, Twitter, Instagram and Snapchat: @NewJerseySDA; and on LinkedIN: Search New Jersey Schools Development Authority.

#### *Current Statistics (as of July 17)*

- Facebook = 1,952 followers up from 1,918 followers reported at last month's meeting
- Twitter = 350 up from 500
- Instagram = 966 up from 936
- LinkedIN = 508 up from 503

### **Events**

- June 19<sup>th</sup> – Camden High School Wing C Groundbreaking
- July TBD – Denbo-Crichton Brick Signing
- July TBD – Sotomayor Summer School soft opening
- July TBD – Woodland Ave. Elementary Time Capsule
- Summer TBD – Union Avenue Groundbreaking

**MONTHLY FINANCIAL REPORT**

**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Sherman E. Cole, MBA, CPA /s/  
Controller

**DATE:** July 1, 2019

**SUBJECT:** Monthly Financial Report – May 2019

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, 3-1 and 4 of the report is a summary of the Authority’s operating expenditures. Page 5 contains a breakdown of the Authority’s headcount information by department. The basic financial statements follow on pages 6 and 7.

**Fund Reporting Operating Expenses (Year-to-Date Actual vs. Budget)**

For May 2019 year to date, Authority operating expenses, **\$9.0 million**, are **\$730K** lower than budget for the *corresponding period*. The variance is primarily related to lower year to date personnel costs, **\$245K**, the majority of which decrease is attributable to lower payroll and benefits costs due to the Authority having 15 fewer FTEs than budgeted, partially offset by lower than anticipated allocations of payroll and benefits costs to school facilities projects. Additionally, lower than anticipated spending related to facilities & general office expenses **\$130K**, professional & contracted services **\$141K**, information systems **\$87K**, and SDA-owned automobiles, **\$74K**, contributed to the variance.

**Fund Reporting Operating Expenses (Year-to-Date Actual vs. Prior Year Actual)**

For May 2019 year to date, Authority operating expenses, **\$9.0 million**, are **\$837K** higher when compared to the *corresponding prior year*. This variance is attributable to the increase in personnel costs **\$730K**, primarily due to the 2018 restructuring. Additionally, increases related to the fit-out of the Newark space (removal and replacement of HVAC unit, security system, information systems wiring and cabling) **\$61K**, and system maintenance expenses **\$73K**, contributed to the variance.

**School Facilities Project Expenditures (Year-to-Date Actual vs. Forecast)**

For May 2019 year to date, project expenditures, **\$116.8 million**, are **\$11.4 million** lower than the capital spending forecast for the *corresponding period*. This variance is primarily a result of lower than forecasted expenditures for grant activity, **\$17.8M**, design services (net of cost recovery settlement), **\$2.5M**, and school furniture purchases **\$1.8M**. These reductions are partially offset by an increase in construction activity **\$14.3M**.

Members of the Authority  
July 1, 2019  
Page 2

**School Facilities Project Expenditures (Year-to-Date Actual vs. Prior Year Actual)**

For May 2019 year to date, project expenditures, **\$116.8 million**, are lower by **\$17.8 million** when compared to the *corresponding prior year*. The variance is attributable to decreases in grant activity, **\$30.3M**, project insurance costs, **\$4.2M** (April 2018 OCIP IV premium deposit payment), and design services (net of cost recovery settlement), **\$3.1M**. These decreases are partially offset by increases in construction activity, **\$16.3M**, and school furniture purchases, **\$5.1M**.

**Other**

Since program inception, 84% of the funds authorized for the SDA Districts have been disbursed. Additionally, since program inception, 96% of all SDA disbursements relate to school facility projects and 4% relate to operating expense.

The *estimated value* of active school facilities projects is approximately \$1B.

Attachment

**New Jersey Schools Development Authority**  
**Monthly Financial Report**  
**May 2019**  
**(Unaudited)**

## New Jersey Schools Development Authority Overview of Financial Position May 31, 2019

**To:** The Audit Committee

**From:** Sherman E. Cole, Controller

The information contained in this monthly financial report is for the period as of, and for the year-to-date ending, May 31, 2019.

► Overall **Cash and Cash Equivalents** have decreased by \$122.9 million to \$416.9 million, as follows:

■ Receipt of bond and note proceeds (Issued by EDA)	\$ -
■ Investment earnings	4,792,579
■ Miscellaneous revenue	11,129
■ Project costs	(116,845,107)
■ SDA operating expenses	(9,816,780)
■ SDA capital expenditures	(264,812)
■ Deposits (primarily district local shares)	<u>(749,799)</u>
Net Change in Cash	<u>\$ (122,872,790)</u>

► **Prepaid Expenses** total \$480,442 as follows:

- Prepaid insurance of \$266,736.
- Prepaid rents of \$125,218 for the Authority's leased office space in Trenton and Newark.
- Prepaid MIS maintenance service contracts of \$59,136.
- Other prepaids of \$29,352.

► **Capital Assets** total \$728,635 (net of accumulated depreciation of \$6,607,042), consisting of leasehold improvements (SDA offices), and capitalized software, equipment, furniture and fixtures in support of SDA operations. Depreciation on capital assets is generally calculated using the straight-line method over the life of each asset. For the year to date, **Capital Expenditures** are \$169,520 and **Depreciation Expense** is \$75,867.

► **Accrued Liabilities** total \$108.9 million, as follows:

- Accrued project costs of \$24.4 million consisting of unpaid invoices (\$8.1 million) and retainage (\$16.3 million).
- Accrued net pension liability of \$49.8 million (excludes 2018 GASB 68 entries).
- Post-employment benefits obligation of \$28.4 million (excludes 2018 GASB 75 OPEB entries).
- Pollution remediation obligations (PRO) under GASB 49 net to \$1.3 million (PRO liability \$3.0 million, offset by expected cost recoveries of \$1.7 million).
- Estimated liability for loss contingencies totaling \$3.1 million.
- Payroll related liabilities of \$1.6 million.
- Other accrued liabilities of \$0.3 million.

► **Deposits** total \$2.9 million, as follows:

- \$2.8 million is held for local share agreements (pass-through item).

► The Authority's **Net Position** at month end is \$297.1 million.



## New Jersey Schools Development Authority School Facilities Project Expenditures & Funding Allocation May 31, 2019

► **School Facilities Construction Bond / Note Proceeds & Project Expenditures**

- During the current year to date, the SDA has received \$0 million bond and note proceeds. The total amount of proceeds received since program inception is \$11.148 billion.
- Project expenditures for the month and year-to-date periods total \$29.7 million and \$116.8 million, respectively, as follows:

<u>Category</u>	<u>Current Month</u>	<u>Current Year-To-Date</u>	<u>Since Program Inception</u>
Construction	\$ 22,212,039	81,973,854	\$ 4,940,390,311
Design Services	188,778	(1,937,210)	411,734,098
PMF/CM Services	678,383	2,417,828	458,858,615
SDA Project Management	1,075,054	5,668,496	90,894,452
Property Acquisition, Relocation & Enviro	(108,836)	553,984	578,881,504
School Furniture, Fixtures & Equipment	4,458,315	5,683,931	171,914,839
Project Insurance	-	1,603,166	107,817,570
NJ State Inter-Agency Transfers	73,065	243,751	50,209,744
SDA District Grant & Funding Agreements	75,560	1,212,058	873,113,202
Regular Operating District Grant Agreements	1,302,647	18,516,954	2,889,937,038
Real-Time Project Audits	-	-	628,000
Property Management, Maintenance & Utils	28,203	643,326	18,017,626
Outside Legal & Claims Resolution Services	85,421	473,110	10,054,583
Temporary Staffing	96,199	333,410	10,066,334
Other Project Costs	41,769	184,704	60,146,903
Project Credits	-	-	(54,902,944)
<b>Total Project Expenditures</b>	<b>30,206,597</b>	<b>117,571,362</b>	<b>10,617,761,875</b>
Less: Local Share Contributions	(509,196)	(726,255)	(184,242,392)
<b>Project Expenditures (State Share)</b>	<b>\$ 29,697,401</b>	<b>\$ 116,845,107</b>	<b>\$ 10,433,519,483</b>
 2019 Capital Spending Forecast	 \$ 28,444,914	 \$ 128,195,147	

**Allocations Since Program Inception**

► **Program Funding & Expenditures**

	<u>Bonding Caps</u> <sup>1</sup>	<u>Total Funding</u> <sup>2</sup>	<u>Paid to Date</u> <sup>3</sup>
■ SDA Districts	\$ 8,900,000,000	\$ 9,021,760,607	\$ 7,578,386,773
■ Regular Operating Districts	3,450,000,000	3,498,116,241	3,209,615,912
■ Vocational Schools	150,000,000	151,922,788	117,444,171
<b>Total - State Share</b>	<b>\$ 12,500,000,000</b>	<b>\$ 12,671,799,636</b>	<b>\$ 10,905,446,856</b>

► **Percentage of Total Funding Paid to Date**

■ SDA Districts	84.0%
■ Regular Operating Districts	91.8%
■ Vocational Schools	77.3%
<b>Total - State Share</b>	<b>86.1%</b>

1 Of the \$12.5 billion authorized for the school construction program, \$11,147,702,648 principal amount of bond and note proceeds have been received to date.

2 Includes bonding cap amounts and other income and miscellaneous revenue earned to date (i.e., interest income on invested funds and State appropriations).

3 These amounts include the allocation of SDA operating expenses and capital expenditures totaling \$471,927,373.

**New Jersey Schools Development Authority**  
**Fund Reporting Operating Expenses vs Budget**  
**May 31, 2019**

<u>Category</u>	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>Over/</u> <u>(Under)</u>
<b>Personnel Expenses:</b>			
Employee Salaries	\$ 8,178,787	\$ 8,565,990	\$ (387,203)
Employee Benefits	4,658,179	4,983,489	(325,310)
Direct Hire Temporary Employee Costs	15,685	67,280	(51,595)
Total Employee Salaries & Benefits Costs	12,852,651	13,616,759	(764,108)
<b>Less: Employee Salaries &amp; Benefits Costs</b>			
Charged to Projects	5,668,496	6,309,426	(640,930)
Salaries & Benefits Charged to Operating Expense	7,184,155	7,307,333	(123,178)
Temporary Staffing Services	2,003	62,500	(60,497)
Travel & Expense Reimbursements	7,117	18,753	(11,636)
Training & Professional Development	13,454	62,842	(49,388)
Total Personnel Expenses	7,206,729	7,451,428	(244,699)
<b>Non-Personnel Operating Expenses:</b>			
Facilities & General Office Expenses	1,005,950	1,135,865	(129,915)
Information Systems	499,642	586,665	(87,023)
Professional & Other Contracted Services	109,622	250,125	(140,503)
Property & Casualty Insurance	146,336	144,580	1,756
SDA-Owned Automobiles	34,004	107,915	(73,911)
Communications & Outreach	6,490	41,670	(35,180)
Reserve for Unforeseen Events & New Initiatives	-	20,835	(20,835)
<b>Total Authority Operating Expenses</b>	<b>9,008,773</b>	<b>9,739,083</b>	<b>(730,310)</b>

**2019 Annual Operating Budget**

**\$ 19,224,222**

**New Jersey Schools Development Authority  
Capital Expenditures  
May 31, 2019**

	Budget Year	Budget Amount	Capital Expenditures		
			2019	Pre-2019	Total
<b>Description of Capital Item:</b>					
Leasehold Improvements		\$	\$	\$	\$ -
Office Furniture & Equipment			20,669		20,669
Computer Software:					
CM Software System - Estimated SDA Staff Time	2019	450,000	-	-	-
CM Software System - Purchase & Development	2019	1,000,000	-	-	-
CM Software System - Purchase & Development	2018	1,500,000	148,851	162,544	311,395
Total		\$ 2,950,000	\$ 169,520	\$ 162,544	\$ 332,064

**New Jersey Schools Development Authority**  
**Fund Reporting Operating Expenses vs Prior Year**  
**May 31, 2019**

<u>Category</u>	<u>Actual</u> <u>Year-To-Date</u>	<u>2018</u> <u>Year-To-Date</u>	<u>Increase/</u> <u>(Decrease)</u>
<b>Personnel Expenses:</b>			
Employee Salaries	\$ 8,178,787	\$ 7,444,538	\$ 734,249
Employee Benefits	4,658,179	4,448,829	209,350
Direct Hire Temporary Employee Costs	15,685	40,466	(24,781)
Total Employee Salaries & Benefits Costs	12,852,651	11,933,833	918,818
<b>Less: Employee Salaries &amp; Benefits Costs</b>			
Charged to Projects	5,668,496	5,505,040	163,456
Salaries & Benefits Charged to Operating Expense	7,184,155	6,428,793	755,362
Temporary Staffing Services	2,003	28,601	(26,598)
Travel & Expense Reimbursements	7,117	5,618	1,499
Training & Professional Development	13,454	13,707	(253)
Total Personnel Expenses	7,206,729	6,476,719	730,010
<b>Non-Personnel Operating Expenses:</b>			
Facilities & General Office Expenses	1,005,950	1,041,521	(35,571)
Information Systems	499,642	386,673	112,969
Professional & Other Contracted Services	109,622	99,339	10,283
Property & Casualty Insurance	146,336	140,809	5,527
SDA-Owned Automobiles	34,004	26,290	7,714
Communications & Outreach	6,490	75	6,415
Reserve for Unforeseen Events & New Initiatives	-	-	-
<b>Total Authority Operating Expenses</b>	<b>9,008,773</b>	<b>8,171,426</b>	<b>837,347</b>

# New Jersey Schools Development Authority

## Employee Headcount

### May 31, 2019

	<b><u>Current Month End</u></b>
<b>Office of Chief Executive Officer</b>	2
<b>Office of Chief of Staff</b>	7
Human Resources	5
Communications	5
Legislative Affairs	3
Community Engagement	3
Business Compliance & Capacity Building	3
Business and Workforce Diversity	9
<b>Office of Corporate Governance &amp; Legal Affairs</b>	5
Policy	1
Chief Counsel	12
Internal Audits	4
<b>Office of Construction Operations</b>	0
Project Teams	34
<b>Office of Chief Operating Officer</b>	3
Predevelopment & Real Estate	8
Design Studio	15
Safety	6
Planning & Program Operations	8
<b>Office of Administrative Operations</b>	2
Grants Administration	11
Property Management	5
Central Records Management	4
Facilities	7
Information Systems	15
<b>Office of Chief Financial Officer</b>	1
Financial Operations	11
Financial Accounting & Disbursements	13
Procurement	9
Risk Management	9
 <b>Total Full-Time Employees at Month End</b>	 <b><u>220</u></b>
<b>2019 Year-To-Date Operating Budget</b>	<b><u>235</u></b>

# New Jersey Schools Development Authority

## Statement of Net Position

### May 31, 2019

**Excludes GASB 75**

	<u>Current Month End</u>	<u>2018 Year End</u>	<u>Increase/ (Decrease)</u>
<b>ASSETS</b>			
Cash and Cash Equivalents	\$ 416,921,765	\$ 539,794,555	\$ (122,872,790)
Receivables	48,831	29,828	19,003
Prepaid Expenses	480,442	87,623	392,819
Capital Assets (Net of Accumulated Depr.)	728,635	634,982	93,653
Total Assets	418,179,673	540,546,988	(122,367,315)
<b>DEFERRED OUTFLOWS OF RESOURCES</b>			
Deferred Amount for Pensions & OPEB	11,325,752	13,840,493	(2,514,741)
<b>TOTAL ASSETS &amp; DEFERRED OUTFLOWS OF RESOURCES</b>			
	<b>\$ 429,505,425</b>	<b>\$ 554,387,481</b>	<b>\$ (124,882,056)</b>
<b>LIABILITIES</b>			
Accrued Project Costs	\$ 28,845,085	\$ 50,321,484	\$ (21,476,399)
Net Pension Liability	49,778,974	49,778,974	-
Accrued Other Post-Employment Benefits	28,414,191	27,458,691	955,500
Other Accrued Liabilities	1,840,660	4,846,880	(3,006,220)
Deposits	2,866,337	3,616,136	(749,799)
Total Liabilities	111,745,247	136,022,165	(24,276,918)
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Deferred Amount for Pensions & OPEB	20,645,885	20,645,885	-
<b>NET POSITION</b>			
Invested in Capital Assets	728,635	634,982	93,653
Restricted for Schools Construction:			
Special Revenue Fund	296,385,658	397,084,449	(100,698,791)
Net Position	297,114,293	397,719,431	(100,605,138)
<b>TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES &amp; NET POSITION</b>			
	<b>\$ 429,505,425</b>	<b>\$ 554,387,481</b>	<b>\$ (124,882,056)</b>

**New Jersey Schools Development Authority**  
**Statement of Activities**  
**May 31, 2019**

**Excludes GASB 75**

9

	<u>Current</u> <u>Year-To Date</u>	<u>2018</u> <u>Year-To Date</u>	<u>Increase/</u> <u>(Decrease)</u>
<b>REVENUES</b>			
Program Revenues:			
Bond and Note Proceeds (Issued by EDA)	\$ -	\$ -	\$ -
Bidding Fees-Plans & Specs	-	-	-
General Revenues:			
Investment Earnings	4,792,579	2,955,372	1,837,207
Rental Income	11,129	-	11,129
Other Revenue-OPRA	-	30	(30)
Total Revenues	<u>4,803,708</u>	<u>2,955,402</u>	<u>1,848,306</u>
<b>EXPENSES</b>			
Administrative & General Expenses	9,964,273	9,072,480	891,793
Capital Depreciation	75,867	85,697	(9,830)
School Facilities Project Costs	95,368,706	106,219,894	(10,851,188)
Total Expenses	<u>105,408,846</u>	<u>115,378,071</u>	<u>(9,969,225)</u>
<b>CHANGE IN NET POSITION</b>	<b>(100,605,138)</b>	<b>(112,422,669)</b>	<b>11,817,531</b>
Beginning of Period Net Position	<u>397,719,431</u>	<u>392,740,734</u>	<u>4,978,697</u>
<b>NET POSITION END OF PERIOD</b>	<b><u>\$ 297,114,293</u></b>	<b><u>\$ 280,318,065</u></b>	<b><u>\$ 16,796,228</u></b>

**DESIGN CONTRACT DE-OBLIGATIONS REPORT** *(no activity)*



**PUBLIC COMMENT STATEMENT**

**We will now begin the Public Comment Portion of the Meeting consistent with the New Jersey Open Public Meetings Act.**

**We would ask that any member of the public who wishes to address the Board limit their comments to 3 minutes. If there are multiple individuals from the same organization or district who wish to address the Board on the same matter, we would ask that you come up together to offer your remarks.**

**Please keep in mind that public comment is to afford citizens the opportunity to comment on matters pertinent to the Authority's business. Should you seek answers to questions on any topic, please contact the Authority at 609-943-4585 at your convenience.**