

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
BOARD TELECONFERENCE MEETING  
WEDNESDAY, FEBRUARY 2, 2022 AT 9:00 A.M.**

**1. NOTICE OF PUBLIC MEETING**

**2. ROLL CALL**

**3. APPROVAL OF MEETING MINUTES**

- a. Board Open Session Meeting Minutes of January 5, 2022
- b. 2022 Organizational Meeting Minutes of January 5, 2022

**4. AUTHORITY MATTERS**

- a. CEO Report
- b. Chairman's Report

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

- a. Company Name: Terminal Construction Corporation, Inc.
- District: Orange Public School District
- Contract No.: ES-0042-C01
- CM: Anser Advisory, LLC
- Design Consultant: Kliment Halsband Architects
- School Name: Orange High School
- Change Order: 81
- Reason: Insurance Claim Change Order
- Original Contract Value: \$37,000,000.00
- Amount: \$582,964.56
- Contract Status: 90.94% Paid to Date against the Current Contract Value
- Anticipated Occupancy Date: September 2022

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

- a. Adoption of New Rules for Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority, N.J.A.C. 19:35

**7. MONTHLY REPORTS**

- a. *For Informational Purposes*
  - i. Active Projects Report
  - ii. Project Status Reports
  - iii. Contracts Executed Report/Amendments & Change Orders Executed Report
  - iv. Contract Terminations Report (*no activity*)
  - v. Settlement Activities Report (*no activity*)
  - vi. Diversity and Workforce Participation Report
  - vii. Regular Operating District Grant Activity Report
  - viii. Notification of Amendments to Goods and Services Contracts Not Exceeding \$100,000 or 10% of the Contract Value (*no activity*)
  - ix. Communications Report (*no activity*)
  - x. Monthly Financial Report (*no report*)
  - xi. Design Contract De-Obligations Report (*no activity*)

**8. NO EXECUTIVE SESSION**

- a. Litigation/Contract Matter(s) – OPMA Exemption N.J.S.A. 10:4-12b (7)  
CCD Report (*no activity*)

**9. ADJOURNMENT**

**APPROVAL OF MEETING MINUTES**

**JANUARY 5, 2022 OPEN SESSION MINUTES**

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
BOARD OF DIRECTORS TELECONFERENCE MEETING  
WEDNESDAY, JANUARY 5, 2022**

A teleconference meeting of the Board of Directors of the New Jersey Schools Development Authority (SDA or the Authority) was held on Wednesday, January 5, 2022 at 9:15A.M.

Participating by teleconference were:

Robert Nixon, Chairman  
David Moore (Treasury)  
Bernard Piaia (DOE)  
David Nuse (EDA)  
Kevin Luckie (DCA)  
Richard Elbert  
Daniel Gumble  
Lester Lewis-Powder  
Michael Maloney  
Mario Vargas

being all the Members of the Board.

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

The meeting was called to order by Mr. Nixon, the Chairman of the Board. The Chairman asked Ms. Kelly to read the requisite notice of the meeting. Ms. Kelly announced that the meeting notice was sent to the *Trenton Times* and *Star-Ledger* at least 48 hours prior to the meeting. She said that a call-in number was provided on the SDA Website so that members of

the public could participate in the meeting by teleconference. Ms. Kelly then conducted a roll call and indicated that a quorum of the Members of the Board was present.

### ***Approval of Meeting Minutes***

The Chairman presented for consideration and approval the minutes of the Board's December 1, 2021 Open Session meeting. A copy of the meeting minutes and a resolution had been provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Vargas and seconded by Mr. Piaia, the Open Session minutes of the December 1, 2021 SDA Board meeting were approved with the Members' unanimous vote in favor of the resolution attached hereto as ***Resolution 3a***.

### ***Authority Matters***

#### ***CEO Report***

The Chairman asked Mr. Da Silva for the Report of the CEO. Mr. Da Silva began his report with an update on design-build projects in construction. He said that for the Millville High School project, Phase IV footings and foundation work is complete and Phase IV structural steel work has begun. He added that Phase IV is the final phase, which involves construction of an auditorium at the school. He reported that for the Passaic Dayton Avenue Educational Campus project, a temporary certificate of occupancy was granted in November. He advised the Board that the district is partially occupying the school for the remainder of the year, to be followed by full occupancy in the fall of 2022. He added that furniture deliveries should be completed by the end of this month (January). He said that contract close out is ongoing, with an expectation that the school will be delivered roughly 6 months ahead of schedule.

In continuing, Mr. Da Silva reported that steel erection is ongoing for the Perth Amboy High School project. He advised that for the Plainfield Woodland Avenue Elementary School

project, the Department of Community Affairs (DCA) has released Package 2. He added that masonry, cold weather framing and exterior sheathing is ongoing there.

Turning to design-bid-build projects in the construction stage, Mr. Da Silva reported that for the Keansburg Port Monmouth Road School project, interior mechanical, electrical and plumbing rough-in work is underway in the new addition and renovation area of the building.

Next Mr. Da Silva gave an update on projects in the programing/pre-design/in-house design stages. He advised that in response to the procurement, the Authority received 5 qualifying proposals from design-build teams last month for the Union City New Grade 7 to 9 School project. He said that staff can proceed with the issuance of a Request for Qualifications (RFQ) on Friday (January 7) to selected firms identified in the RFQ process.

Turning to non-project related matters, Mr. Da Silva informed the Members that SDA celebrated the ribbon cutting and dedication of the new Joseph A. Taub School in Paterson on Tuesday, December 14. He said that staff joined the Taub Family, school district, state and local officials for the event and tour of the new school.

Mr. Da Silva said that, also in December, SDA celebrated the ceremonial ribbon cutting for the new addition to the Orange HS, along with the district, state and local officials. He added that one of the highlights of the ceremony was an energetic performance by the Orange HS marching band.

Mr. Da Silva said the management was pleased that Chairman Nixon was able to participate in the event in Paterson. He noted that both events provided an opportunity to highlight the great work of the SDA. He congratulated Team Lucarelli and Team Ryan who were involved in these projects.

Next, Mr. Da Silva reported that SDA staff donated dozens of toys last month to the New Jersey Community Development Corporation (NJCDC) in Paterson following the ribbon cutting

event there. He said that the toys would be provided in connection with the NJCDC's annual toy drive which will benefit children and families throughout the Paterson community.

Mr. Da Silva informed the Members that the SDA's Annual Contractor Training Program culminated with a graduation ceremony on December 15. He said the SDA had 18 firms successfully complete the program in 2021. He noted that the program was conducted through online learning sessions again this year, adding that staff is hopeful that the Authority will be able to resume with an in-person program in 2022. He added that he would like to thank the members of SDA staff who facilitated the program, along with those who served as instructors.

Finally, Mr. Da Silva said that last month SDA staff finalized the biannual report for the reporting period of April 1, 2021 through September 30, 2021. He added that the report is currently on the SDA website.

In continuing, Mr. Da Silva discussed the status of the SDA-owned Astor Place property. He said that following the December 1, 2021 Board meeting, SDA's chief counsel again reached out to the Black Interest Team Enterprise's (BITE) attorney on December 15 asking whether BITE remains interested in entering into a licensing arrangement so that the Community Garden can continue. He said that, again, the SDA received no response to its outreach.

Mr. Nixon thanked Mr. Da Silva for acknowledging that he attended the Paterson ribbon cutting. He encouraged the Members to attend SDA events. He said that you can see the excitement from the administrators, teachers, staff and the students at these events. He added that being in these brand new, beautifully constructed, high tech modern schools is a great experience. He said that the end result of the Authority's work brings joy to many people in the State of New Jersey. Mr. Nixon said that you can see staff's pride walking the members of the public and the alumni through those schools, adding that it is clear that SDA's staff puts their heart and soul into every inch of those buildings.



In continuing, Mr. Vargas asked Mr. Da Silva if the Perth Amboy HS project is on track for delivery. Mr. Da Silva replied in the affirmative.

Next, Mr. Nixon asked Mr. Da Silva if the SDA has plotted out into the future with regards to supply chain issues. Mr. Da Silva answered in the affirmative, noting that there were issues with the Perth Amboy project, but that the SDA team worked out those issues with the general contractor and the project is moving forward and on track for delivery. He added that there are some impacts on steel and the raw materials that are used to fabricate concrete, along with electronic parts, fire alarms, doors and hardware that have electric devices. He said that the SDA is trying to stay ahead of it so that the supply chain issues do not impact the projects' schedules. He added that SDA staff will keep the Members informed going forward.

Mr. Maloney noted for the benefit of both the new and seasoned Members of the Board that there are Project Labor Agreements (PLA) on SDA jobs. He said that the motto of union steam fitters is to "deliver on time and under budget". He said that there are sometimes detractors who will point to instances where there are delays in steel deliveries and criticize when that projects do not come in on time or under budget. He stressed that these delays are not due to the unions but to the hold up in the supply chain.

Mr. Vargas asked Mr. Da Silva if the supply chain issues will affect project budgets. Mr. Da Silva said that as it stands right now these issues have not increased the budgets of these projects and the projects have stayed on course.

### ***Audit Committee***

Mr. Nixon, as Audit Committee Chairman, reported that the Audit Committee met on December 20, 2021 at which time management provided the Committee with the November 2021 New Funding Allocation and Capital Plan Update. He said that staff informed the Committee that there was a \$100,000 decrease in the 2011 Capital Plan Emergent Projects

Reserve balance following CEO approval of a release of funds for the Newark Harriet Tubman School emergent water infiltration project. Mr. Nixon said that there were no changes in the remaining SDA District Reserve balances during the reporting period.

He then advised the Board that the reserve balance for the Regular Operating Districts (RODs) increased by \$500,000 during the reporting period due to a reduction in state share for grant projects nearing completion.

Next, Mr. Nixon advised the Board that the Internal Audit Division (IA) provided the Committee with the results of one interim, real-time project audit and one section 15 grant audit. He noted that the audits were conducted to ensure compliance with the statutory requirement that capital portfolio projects with a state share over \$10 million be reviewed to assess whether state funds were expended in accordance with contractual terms, SDA practices and state regulations. He said that IA also provided the Committee with a report on the current status of open audit recommendations and suggestions for improvement from the various project and operational audits. He reported that 9 recommendations and 3 suggestions for improvement have been closed since the last report.

Next, Mr. Nixon discussed the November 2021 Monthly Financial Report. He advised the Members that the Authority's operating expenses (Actual vs. Budget) for the year-to-date period total \$12.7 million, down \$2.5 million as compared to the budget for the corresponding period. He explained that this decrease is mainly attributable to lower salary and benefit expenditures than budgeted, partially offset by lower than projected payroll allocations to project expenditures. He said that, in addition, expenditures are for general office expenses, information systems and contracted services. He reported that the current employee headcount, as compared to the budget, is down 22 FTEs.

Mr. Nixon then reported that school facilities project expenditures (Actual vs. Forecast) for the year-to-date period total \$240.1 million, approximately \$55.8 million lower as compared to the capital spending forecast for the corresponding period. He advised the Members that this variance is the result of lower than forecasted expenditures for grant activity, construction activity, design services, project insurance and payroll expense allocations, offset by an increase in school furniture purchases. Mr. Nixon said that project expenditures (Actual vs. Prior Year Actual), at approximately \$240.1 million, are lower by approximately \$26.8 million when compared to the capital spending forecast for the corresponding period. He advised the Members that this variance is the result of lower than forecasted expenditures in grant activity, project insurance and payroll expense allocations, offset by an increase in school furniture purchases.

Mr. Nixon said that, since program inception, 91.5% of the funds authorized for the SDA districts have been disbursed. Additionally, he noted that 96% of all SDA disbursements relate to school facilities projects, while 4% relate to operating expenses. He advised that the estimated value of active school facilities capital projects, along with emergent and regular operating district grant projects, is approximately \$1.1 billion.

### ***School Review Committee***

The Chairman asked Mr. Luckie to provide the report of the School Review Committee. Mr. Luckie reported that the School Review Committee met on December 20, 2021 at which time two items were discussed that require Board consideration. Mr. Luckie said that the Committee is recommending Board approval of Amendment No. 20 for Kliment Halsband Architects (KHA) for the Orange High School project (Project or High School). He advised that Orange High School is a 145,300 square-foot facility educating 804 students in grades 10 to 12.

He said that the scope of work underway at the High School includes a two-story addition of approximately 50,000 square feet, an enclosed connecting bridge between the High School and the adjacent Orange Preparatory Academy (OPA), and selective renovations to the existing High School building to address facilities conditions deficiencies. Mr. Luckie advised that an allowance has also been included to address limited facilities conditions deficiencies in the OPA. He explained that in January 2018 KHA was issued a notice-to-proceed (NTP) with the construction document phase of the Project.

In continuing, Mr. Luckie reminded the Members that in March 2019, the Members of the Authority approved the award of a contract in the amount of \$37 million to Terminal Construction (Terminal) for construction services for the Project and also approved the Project's final charter. He added that in April 2019 Terminal was issued a limited NTP with a constructability review to identify any potential conflicts in the project documents and, once completed, the corresponding costs to address them. He said that the constructability review phase was conducted and completed and in December 2019 the Members of the Authority approved Change Order No. 2 to Terminal and issued Terminal a NTP with construction on January 29, 2020.

Mr. Luckie explained that during the course of construction of the Project, various unforeseen hidden conditions were encountered that differed from what was identified on the as-built plans of the existing school that had been provided to KHA for use during design. He reported that, upon review, it was determined that these variances in existing conditions were not foreseeable by KHA and that the construction work necessary to address them was not accounted for in the project scope which was the basis of KHA's original fee. He said that, to date, these unforeseen conditions have resulted in multiple construction change orders with a combined value of approximately \$1.3 million. He added that amendments to KHA's agreement with the

SDA have been approved for the related design services; however, an additional amendment is now necessary to compensate KHA for the related construction phase services.

In continuing, Mr. Luckie said that KHA has provided the Authority with an accounting of additional construction phase hours expended to date in relation to these conditions and also with a projection of the additional hours necessary to complete these services. He noted that the documentation has been reviewed, negotiated, and accepted by SDA staff toward recommending Amendment No. 20. He explained that Amendment No. 20, in the fixed, lump sum amount of \$174,580.00 is necessary to compensate KHA and maintain the Project schedule. He noted that funding for the amendment is available within the final project charter budget approved by the Members in March 2019. He advised that the necessary reviews have been completed and all reviewing SDA staff members have determined that Amendment No. 20 is justified and that the amount is reasonable and appropriate.

Mr. Luckie emphasized that the SDA has encountered this issue with almost every building we renovate. He added that these are old buildings and, from a construction perspective, as-builts are not always reliable.

Mr. Elbert asked if anything is being done at this time to make sure that as-built drawings for current projects are kept up to date. Mr. Ryan said that the SDA's standard practice is that the contractor does redlines in the job trailers. He added that there are regularly scheduled reviews of those redlines with the construction manager in the field to make sure that they are keeping them current and accurate. He added that at the end of a project, the general contractor owes the SDA the architect record which the SDA then provides to the architectural engineering firm. He added that those redlines generate an actual as built. Mr. Luckie added that this is the standard practice applicable to any project in which the DCA is involved.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Mr. Vargas, and seconded by Mr. Piaia, Amendment No. 20 for Kliment Halsband Architects was approved with the Board's unanimous vote in favor of *Resolution 6a*.

Next, Mr. Luckie said that management is seeking approval of Change Order (CO) No. 4 for Epic Management for the New Plainfield ES project (Project or the School). He reported that the new 120,000 square-foot, three story School in the Plainfield School District, is designed to educate approximately 756 students in grades Kindergarten through Five. He said that on March 11, 2020 Epic Management, Inc. (Epic) was issued a NTP with the design portion of a design-build engagement to deliver the new School. He advised that geotechnical investigation data provided in the Project's Design-Build Information Package identified the presence of unsuitable fill in two soil borings and in one test pit advanced in the proposed construction area. He advised that the design-builder subsequently identified a larger volume of unsuitable fill during its own geotechnical investigation which was performed to meet building code requirements for the final building design. Mr. Luckie explained that after multiple unsuccessful attempts to improve the soil conditions in order to meet compaction requirements, it was determined necessary to replace the soil with clean structural fill. He said that to avoid a negative impact on the Project schedule, Epic proceeded with removal and replacement of the unsuitable soils, with SDA monitoring the work and verifying all soil quantities removed, disposed of and imported. He added that Epic and SDA negotiated a unit price-based proposal to value the various activities of work.

Mr. Luckie said that following review of actual quantities and work performed, \$842,075 is the total value of CO No. 4 which covers the cost to dispose of unsuitable soils and furnish clean structurally suitable fill to be used under the building's foundation. He emphasized that the SDA project team performed a detailed review to confirm that the scope and costs represented by

CO No. 4 do not include costs that were included in Epic's bid. He reported that all documents supporting this change order were reviewed by SDA staff and all reviewing staff members have determined that the items it includes are justified and that the amount is reasonable and appropriate.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Vargas, and seconded by Mr. Piaia, Change Order No. 4 for Epic Management, Inc. was approved with the Board's unanimous vote in favor of ***Resolution 6b.***

Next, Mr. Luckie informed the Members that management also discussed three informational matters with the Committee. He said that these involved a proposed change order and proposed amendments for the Orange Cleveland Street ES project; and a release of funds from the program reserve, task order award and a final charter for the Newark Cleveland ES emergent project.

The Chairman said that before continuing with the meeting and concluding the Board's business today, he wanted to follow up on Mr. Da Silva's earlier remarks regarding the Jersey City Community Garden issue that has been before the Board previously. He said that he wanted to offer some comments on the matter, particularly for the members of the public who may be joining the meeting today with an interest in the Garden and for the benefit of the Board.

Mr. Nixon said that eight (8) months ago, SDA's chief counsel reached out to the Jersey City School District and provided a License Agreement and Sub-License Agreement that would allow the Black Interest Team Enterprise (BITE) to operate a Community Garden on the Astor Place property owned by the SDA.

He said that since that time (in May 2021), SDA has reached out to BITE's attorney numerous times and forwarded the Licensing Agreements again in an effort to move the

Community Garden forward. He said that, despite this outreach from May to January, the SDA still has not received a response.

The Chairman said that, as Mr. Da Silva mentioned earlier, just three weeks ago, following the December Board meeting, SDA expressed its support for the Community Garden as it had many times prior but that no response has been forthcoming from BITE's representatives.

Mr. Nixon said that he recognizes that there may be individuals from the BITE organization and the community on the line today to support the Community Garden effort. He said that SDA has been very open to receiving comments on the matter. In fact, he noted that over the past ten (10) months, the Board has received hours of extensive public comments regarding the Community Garden at seven (7) different Board meetings during the months of March, April, May, June, July, October and December from some 60 speakers. He strongly emphasized that there is no difference of opinion—both BITE and the SDA support establishment of the Garden.

Mr. Nixon said that he wished to stress again –as both he and Mr. Da Silva have stated at all of the previous Board meetings where the Community Garden was discussed—the SDA cannot and will not authorize continued operation of the Community Garden unless it is done legally with the proper Licensing Agreements in place. This, he said, cannot be achieved through public comments.

The Chairman stressed to the BITE representatives that the way to accomplish continuation of the Community Garden is to have their attorney respond to SDA's attorney. He said BITE's response to the letter SDA sent three weeks ago must be received in order to move forward. He stressed that the ball is completely in BITE's court to make that happen.



In continuing, the Chairman said that, as has already been explained, SDA is unable to sell or give the property to BITE. Nonetheless, he said that the CEO has been supportive of continuing the Garden and has visited the site with members of the Board to this end. He reiterated that the way to get this done is through the legal process and not through public comment. Mr. Nixon said that, for this reason, he is not going to entertain further public comment on the Community Garden today. He said, however, that he has directed Ms. Kelly to make sure that BITE's continued support of the Community Garden is recorded in today's meeting record.

The Chairman concluded his remarks by again respectfully requesting that BITE's representatives follow up by ensuring that their legal representatives respond to the most recent letter sent by SDA's attorney and assured them that they will receive a prompt response from SDA's attorney in return. He emphasized that SDA cannot give away or sell the land and cannot authorize activities on the land without the proper Licensing Agreements in place.

Mr. Nixon said that that the ongoing virtual nature of SDA's Board meetings and the inability to actually see those supporting the Community Garden has been difficult but he again urged that BITE's representatives take the steps necessary to ensure that their attorneys follow up and respond to the multiple letters they have received from SDA.

In conclusion, the Chairman said that as there is no indication that there are individuals on the line who wish to address the Board on other matters, he would now offer a motion to adjourn the meeting.

### ***Adjournment***

There being no further business to come before the Board, upon motion by the Chairman and with unanimous consent, the meeting was adjourned.

**Certification:** The foregoing represents a true and complete summary of the actions taken by the Board of the New Jersey Schools Development Authority at its January 5, 2022 meeting.

/s/ Jane F. Kelly  
Assistant Secretary

***Resolution—3a.***

**Approval of Minutes**

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

**WHEREAS**, pursuant to Section 3(k) of P.L. 2007, Chapter 137, the minutes of the January 5, 2022 Board meeting of the New Jersey Schools Development Authority, for the Open Session were duly forwarded to the Office of the Governor following the meeting.

**NOW, THEREFORE, BE IT RESOLVED**, that the minutes of the New Jersey Schools Development Authority's January 5, 2022 Open Session meeting is hereby approved.

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

Dated: February 2, 2022

**2022 ORGANIZATIONAL MEETING MINUTES OF JANUARY 5, 2022**

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY  
2022 ORGANIZATIONAL BOARD OF DIRECTORS TELECONFERENCE MEETING  
WEDNESDAY, JANUARY 5, 2022**

The Annual Organizational meeting of the Board of Directors of the New Jersey Schools Development Authority (SDA or the Authority) was held by teleconference on Wednesday, January 5, 2022 at 9:00 a.m.

Participating were:

Robert Nixon, Chairman  
David Nuse (EDA)  
Kevin Luckie (DCA)  
Bernard Piaia (DOE)  
David Moore (Treasury)  
Richard Elbert  
Daniel Gumble  
Michael Maloney  
Lester Lewis-Powder  
Mario Vargas

being all the Members of the Board.

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

The Chairman of the Board, Mr. Nixon, called the meeting to order. He wished everyone a happy new year and thanked the Board Members and staff for their hard work and dedication to the mission of the SDA throughout the year.

Next, Mr. Nixon welcomed the Members, SDA staff and the public to the SDA's 2022 Annual Organizational meeting. He advised that Loren Lemelle had reached out to him in December 2021 and

advised him that she would be stepping down from the Board. He noted that Ms. Lemelle, appointed by former Governor Christie in June of 2011, was a Member of the Board for 10½ years following her retirement from Johnson & Johnson where she had served in an executive role. He said that Ms. Lemelle served on the Authority's Audit Committee and as SDA's Financial Expert beginning in 2014. He said that the SDA is grateful for Ms. Lemelle's service and for her leadership. He wished her well.

Mr. Nixon then noted that Michael Kanef, who served as Treasurer Muoio's designee to the SDA Board for the past 4 years was recently promoted to Assistant State Treasurer and, due to this change, has had to step back from the SDA Board. He noted that, like Ms. Lemelle, Mr. Kanef's time on the Board included membership on the Audit Committee. He commended Mr. Kanef's intellect, leadership and knowledge of state budget and state government financing which has been instrumental in protecting the interests of the Authority. He said that he has spoken with Mr. Kanef since his appointment and wished him well.

The Chairman then reported that David Moore, Treasury's Deputy Director of Public Finance, would now be serving as Treasurer Muoio's SDA Board designee. He said that Mr. Moore is very familiar with the Authority and the Board as he has served as Treasury's backup designee for the past 12 years. He noted that Mr. Moore has spent 16 years with Treasury's Office of Public Finance preceded by time spent with a New Jersey law firm that handles bond financing for the State, including funding for the SDA. He noted that Mr. Moore has been involved in the school facilities bond program, which funds this organization, since 2002. Mr. Nixon welcomed Mr. Moore to the Board, adding that he was looking forward to his lending his expertise to the Audit Committee.

The Chairman then asked Ms. Kelly to read the requisite notice of the meeting. Ms. Kelly announced that the meeting notice had been sent to the *Trenton Times* and *Star-Ledger* at least 48 hours prior to the meeting. She said that a call-in number was provided on the SDA Website so that members of the public could participate in the meeting by teleconference. Ms. Kelly then conducted a roll call and indicated that all Members of the Board were participating in the meeting.

Mr. Nixon then presented the matters on the agenda for Board consideration. Referencing the Organizational Meeting materials that staff provided to the Board in advance of the meeting, Mr. Nixon announced that the first matter requiring Board approval is the election of Authority Officers for 2022. He then identified the individuals put forward for Board consideration and the positions in which they would serve: Vice Chairperson—Mario Vargas; Treasurer—Elizabeth Muoio, State Treasurer; Secretary—Michael Maloney; Chief Executive Officer—Manuel Da Silva; Assistant Treasurer—Donald Guarriello; and Assistant Secretary—Jane F. Kelly. As was noted in the materials provided to the Board, the position of Assistant Secretary, a staff position, also is responsible for all Authority corporate governance and compliance responsibilities.

Mr. Nixon requested a motion to elect as the officers of the Authority those individuals whose names he had just announced. Upon a motion by Mr. Luckie and seconded by Mr. Elbert, the Board approved the slate of SDA Officers proposed for 2022 with its unanimous vote in favor of **Resolution 3a**.

Mr. Nixon then announced those Board Members that he is appointing to serve as Committee Chairs and Members for 2022. The individuals appointed by the Chairman to serve as Chairs and Members of the Authority's Audit, Real Estate and School Review Committees respectively are as follows:

Audit Committee

1. **Robert Nixon, Chairperson** (Public Member)
2. State Treasurer (or designee, as permitted by Section 2.7 of the By-Laws)
3. Mario Vargas (Public Member)

Real Estate Committee

1. **Mario Vargas, Chairperson** (Public Member)
2. Commissioner of the New Jersey Department of Community Affairs (or designee, as permitted by Section 2.7 of the By-Laws)
3. Richard Elbert (Public Member)
4. Lester Lewis-Powder (Public Member)

School Review Committee

1. **Kevin Luckie** (New Jersey Department of Community Affairs designee, as permitted by Section 2.7 of the By-Laws)

2. Chief Executive Officer of the New Jersey Economic Development Authority (or designee as permitted by Section 2.7 of the By-Laws)
3. Commissioner of the New Jersey Department of Education (or designee, as permitted by Section 2.7 of the By-Laws)
4. Daniel Gumble (Public Member)
5. Michael Maloney (Public Member)
6. Mario Vargas (Public Member)

The Chairman then reminded the Board that the Audit Committee Charter requires that at least one member of the Audit Committee be designated by the Board to serve as the Committee's financial expert. He said that his recommendation for Audit Committee financial expert is David Moore, Treasury Designee. Mr. Nixon then requested a motion to approve the nomination of Mr. Moore to serve as the Audit Committee's financial expert in 2022. Upon motion duly made by Mr. Vargas and seconded by Mr. Piaia, the Board approved the nomination of David Moore to serve as the Audit Committee's financial expert upon its unanimous vote in favor of **Resolution 3bi**.

Mr. Nixon next stated that a proposed 2022 Board meeting schedule, to be operative until the Authority's next Annual Organizational meeting, was included in the meeting materials as **Exhibit E**. Mr. Nixon requested a motion to adopt the Board meeting schedule as proposed. Upon motion duly made by Mr. Vargas and seconded by Mr. Piaia, the Members approved the Board meeting schedule for 2022 as presented with its unanimous vote in favor of **Resolution 3c**.

#### **PUBLIC COMMENT**

The Chairman then opened the Public Comments portion of the meeting for comments relating only to Organizational matters. There were no public comments.

#### **ADJOURNMENT**

There being no further business to come before the Board, upon motion by the Chairman and with unanimous consent, the Authority's 2022 Annual Organizational Teleconference meeting was adjourned.



**Certification:** The foregoing represents a true and complete summary of the actions taken by the Board of the New Jersey Schools Development Authority at its 2022 Annual Organizational meeting held January 5, 2022.

/s/ Jane F. Kelly  
Assistant Secretary

***Resolution—3b.***

**Approval of Minutes**

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

**WHEREAS**, pursuant to Section 3(k) of P.L. 2007, Chapter 137, the minutes of the January 5, 2022 Organizational Meeting of the New Jersey Schools Development Authority were duly forwarded to the Office of the Governor following the meeting.

**NOW, THEREFORE, BE IT RESOLVED**, that the minutes of the New Jersey Schools Development Authority's January 5, 2022 Organizational meeting is hereby approved.

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

Dated: February 2, 2022

## **AUTHORITY MATTERS**

## **CEO REPORT**

## **CHAIRMAN'S REPORT**

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

**Change Order No. 81 -Terminal Construction Corporation, Inc. - Orange Public School District -  
Orange High School**

**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Bob Ryan  
Program Director, Construction Operations

**DATE:** February 2, 2022

**SUBJECT:** Change Order No. 81 – Insurance Claim  
Reestablishment of General Contractor’s Contract Value

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COMPANY NAME: Terminal Construction Corporation, Inc.  
DISTRICT: Orange Public School District  
CONTRACT NO.: ES-0042-C01  
CM: Anser Advisory, LLC  
DESIGN CONSULTANT: Kliment Halsband Architects, LLP  
SCHOOL NAME: Orange High School  
CHANGE ORDER NO.: 81  
REASON: Insurance Claim Change Order  
ORIGINAL CONTRACT VALUE: \$37,000,000.00  
AMOUNT: \$582,964.56  
CONTRACT STATUS: 90.94% Paid to Date against the Current Contract Value  
ANTICIPATED OCCUPANCY DATE: September 2022

**INTRODUCTION**

I am writing to recommend approval by the Members of the Authority of two related actions for the Orange High School (OHS) Addition and Renovation Project in the Orange Public School District (District):

1. Change Order (CO) No. 81 in the amount of \$582,964.56 relating to an insurance claim to repair damaged casework, floor finishes, ceilings, walls and electrical devices caused by a ruptured heating pipe at the Orange High School Addition and Renovation Project in the Orange Public School District.
2. Reestablishment of the construction contract value for the purpose of the application of ongoing Operating Authority requirements. The reestablished value for this purpose shall be the revised contract value inclusive of CO No. 81 and all previously approved Change Orders to date for an adjusted contract value of \$40,780,873.98.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, a change order that singularly exceeds \$500,000.00 or singularly or in the aggregate is greater than 10% of the contract value requires approval by the Members of the Authority. CO No. 81 singularly exceeds \$500,000.00 and is greater than 10% of the contract value when aggregated with all other approved change orders on the contract.



## PREFACE

On January 31, 2021, a frozen water pipe in an existing area of the Orange High School ruptured causing substantial damage to already refurbished rooms completed as part of NJSDA's renovation work at the existing high school. NJSDA's OCIP insurance carrier has since inspected the damage and determined the event is covered under the Builder's Risk policy. On the day of the incident, NJSDA staff directed TCC to immediately address the ruptured pipe in order to maintain the operation of the school's heating system and mitigate damages. This work was completed and NJSDA staff approved CO No. 75 to TCC in the amount of \$2,179.55. Proposed CO No. 81, in the amount of \$582,964.56, represents the insurance carrier's estimated cost, less the \$25,000.00 insurance deductible, to remediate damaged casework, flooring finishes, ceilings, walls and electrical devices. Although the costs associated with CO No. 81 will be reimbursed by the insurance carrier, the change order still requires Board approval in accordance with the Operating Authority.

As per the terms of the general construction services contract, TCC is required to absorb the \$25,000.00 insurance deductible, however TCC is asserting that it is not responsible for the damages and plans to dispute the \$25,000.00 deductible. In the event the cost of the repair work exceeds the current estimate of \$607,964.56 the insurance carrier may review and approve supplemental loss payments to NJSDA for which TCC would be entitled to a corresponding change order of equal amount. To the extent there may be supplemental losses, these costs are expected to be significantly below the value requiring further Board approval of the corresponding change order assuming the Board approves the proposed reestablishment of the construction contract value for the purpose of the application of ongoing Operating Authority requirements.

## BACKGROUND

Orange High School, built in 1974, is a 145,294 square-foot facility educating 804 students in grades 10 to 12. The Project scope includes a two-story addition of approximately 50,000 square feet, an enclosed connecting bridge between Orange High School and the adjacent Orange Preparatory Academy (OPA), and selective renovations to the existing High School building to address facilities conditions deficiencies. Additionally, an allowance has been included to address limited facilities conditions deficiencies in the Orange Preparatory Academy.

On March 6, 2019 the Members approved the award to Terminal Construction Corporation, Inc. (TCC) for Construction Services and the Final Project Charter for the Orange High School Addition and Renovation Project. On April 29, 2019, the NJSDA issued a Notice to Proceed (NTP) for the performance by TCC of a Constructability Review, with the scope to be performed within a contractually-established allowance of \$200,000. On May 24, 2019, the NJSDA approved an increase of \$100,000 to that allowance, recognizing the significant effort associated with the services, most particularly related to assessments associated with HVAC work required in the existing facility and the installation of an elevator shaft for the connecting bridge at the Orange Preparatory Academy. As part of the Constructability Review scope of work, TCC was to verify the following: Constructability of the Work, Coordination of the Work, Elimination of Conflicts in the Work, and Completeness of the Work as detailed in the Contract Documents.

Consistent with the Contract requirements, TCC submitted a proposed change order at the conclusion of the Constructability Review to remedy identified Constructability Review deficiencies and waived its rights to further change orders resulting from deficiencies in the documents that could or should have been identified during the Constructability Review. After a series of negotiations, CO No. 2 was approved by the NJSDA in December 2019 in the net total amount of \$1,011,157.00. On January 29, 2020, TCC was issued a NTP for Construction Services.

The Project Team is reviewing the Project Charter and expect a revision will be required in the future to address increased project costs that are anticipated.

REASON FOR CHANGE

On January 31, 2021, a unit ventilator pipe in the existing high school’s heating system froze and ruptured. The ruptured heating pipe caused substantial damage to newly refurbished rooms completed as part of the NJSDA’s renovation work of the existing high school. The event caused hot water/steam to be spewed onto the school’s physics laboratory spaces, including room numbers 241, 241A, and 241B, causing irreparable damage to casework, floor finishes, ceilings, walls and electrical devices. The impacted rooms essentially must be completely gutted and refurbished with new casework and room finishes from floor to ceiling.

The extent of the damage was documented in a report prepared by TCC at the request of NJSDA’s Builder’s Risk insurance carrier. The property damage claim has since been reviewed by NJSDA’s Builder’s Risk insurance carrier and the damages have been valued at \$607,964.56. Proposed CO No. 81 in the amount of \$582,964.56 represents the total value of the loss claim, less the \$25,000.00 insurance deductible, to address the property damaged within the spaces. As discussed above, TCC is required to absorb the \$25,000.00 insurance deductible, which TCC is disputing.

In the event the cost of the repair work exceeds the insurance carrier’s estimate of \$607,964.56 the insurance carrier may review and approve supplemental loss payments to NJSDA for which TCC would be entitled to a corresponding change order of equal amount. To the extent there may be supplemental losses, these costs are expected to be significantly below the value requiring further Board approval of the corresponding change order assuming the Board approves the proposed reestablishment of the construction contract value for the purpose of the application of ongoing Operating Authority requirements.

SUMMARY OF CHANGE

The value of CO No. 81, in the amount \$582,964.56, represents the total lump sum fee for TCC and all of its sub-consultants and sub-contractors to address the property damaged within the school’s physics laboratory spaces including room numbers 241, 241A, and 241B.

All documents supporting CO No. 81 have been reviewed by the associated NJSDA Project Team members inclusive of Financial Operations as well as the Program Director and Deputy Program Director for adherence to current NJSDA policy and procedures. All reviewing NJSDA staff members, including Financial Operations, have determined that the items in CO No. 81 are justified and the amount is reasonable and appropriate.

CALCULATIONS

a. Original Contract Amount	\$ 37,000,000.00
b. Change Orders to date (excluding proposed change order)	\$ 3,197,909.42
c. Proposed Change Order Amount	\$ 582,964.56
d. Total Change Orders to Date including this Change Order (Total of Line (b.) and Line (c.))	\$ 3,780,873.98
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	10.22%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$ 40,780,873.98

REASON FOR REESTABLISHMENT OF CONTRACT VALUE

During the course of construction of the Project, various unforeseen hidden conditions were encountered, conditions different from what had been identified on the as built plans of the existing school provided to the architect of record for use during design. These unforeseen conditions resulted in numerous change orders issued to TCC.

It is believed that the value inclusive of this work, as well as prior executed Change Orders inclusive of the Constructability Review Change Order, represents the true value of the work necessary to implement the addition and renovation project. Therefore, we recommend that the adjusted value inclusive of CO No. 81 and all approved Change Orders to date is the appropriate baseline for the on-going application of Operating Authority requirements.

If approved, NJSDA management will again seek Board approval should future Change Orders individually exceed \$500,000.00, or singularly or in the aggregate exceed 10% of the reestablished Contract amount of \$40,780,873.98, as set forth above.

RECOMMENDATION

The Members of the Authority are requested to approve:

1. CO No. 81 in the amount of \$582,964.56 relating to an insurance claim to repair damaged casework, floor finishes, ceilings, walls and electrical devices caused by a ruptured heating pipe at the Orange High School Addition and Renovation Project in the Orange Public School District; and
2. Reestablishment of the construction Contract value for this existing engagement for the purpose of the application of ongoing Operating Authority requirements. The reestablished value for this purpose shall be the contract value inclusive of CO No. 81 and all approved Change Orders to date for an adjusted Contract value of \$40,780,873.98.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, a change order that singularly exceeds \$500,000.00 or singularly or in the aggregate is greater than 10% of the contract value requires approval by the Members of the Authority. CO No. 81 singularly exceeds \$500,000.00 and is greater than 10% of the contract value when aggregated with all other approved change orders on the contract.

Recommended by:

/s/ Bob Ryan  
Bob Ryan, Program Director, Construction Operations

Reviewed and Recommended by:	Manuel Da Silva, Chief Executive Officer
Reviewed and Recommended by:	Gregory Voronov, Managing Director, Planning and Program Operations
Reviewed and Recommended by:	Nicole Burnet, Deputy Director, Construction Operations
Reviewed and Recommended by:	Karon Simmonds, Director Risk Management
Prepared and Recommended by:	Jorge L. Alfonso, Program Officer, Construction Operations

***Resolution-5a.***

Change Order No. 81, Terminal Construction Company, Inc., Orange High School,  
Orange School District, Insurance Claim Change Order

Company Name:	Terminal Construction Corporation, Inc.
District:	Orange Public School District
Contract No.:	ES-0042-C01
CM:	Anser Advisory, LLC
Design Consultant:	Kliment Halsband Architects
School Name:	Orange High School
Change Order:	81
Reason:	Insurance Claim Change Order
Original Contract Value:	\$37,000,000.00
Amount:	\$582,964.56
Contract Status:	90.94% Paid to Date against the Current Contract Value
Anticipated Occupancy Date:	September 2022

**Resolution**

**WHEREAS**, the Operating Authority of the New Jersey Schools Development Authority (SDA or the Authority) provides that a change order (CO) that singularly exceeds \$500,000 or singularly or in the aggregate is greater than 10% of the contract value requires approval by the Members of the Authority; and

**WHEREAS**, the Orange High School (OHS), built in 1974, is a 145,294 square-foot facility educating 804 students in grades 10 to 12; and

**WHEREAS**, the scope of work underway at OHS includes a two-story addition of approximately 50,000 square feet, an enclosed connecting bridge between OHS and the adjacent Orange Preparatory Academy (OPA), and selective renovations to the existing OHS building to address facilities conditions deficiencies (the Project); and

**WHEREAS**, an allowance also has been included to address limited facilities conditions deficiencies in the OPA; and

**WHEREAS**, on March 6, 2019, the Members of the Authority approved the award of a contract in the amount of \$37 million to Terminal Construction Corporation (Terminal) for construction services for the Project and also approved the Project's final charter; and

**WHEREAS**, on April 29, 2019, the SDA issued a notice-to-proceed (NTP) with the performance by Terminal of a constructability review, with a scope to be performed within a contractually-established allowance of \$200,000 and, on May 24, 2019, the SDA approved an increase of \$100,000 to that allowance for reasons set forth in the memorandum presented to the Board; and

**WHEREAS**, consistent with contractual requirements, Terminal submitted a proposed change order at the conclusion of the constructability review to remedy identified constructability review deficiencies and waived its rights to further change orders resulting from deficiencies in the documents that could or should have been identified during the constructability review; and

**WHEREAS**, after a series of negotiations, CO No. 2 was approved by the SDA in December 2019 in the net total amount of \$1,011,157.00 and, on January 29, 2020, Terminal was issued a NTP with construction services; and

**WHEREAS**, on January 31, 2021, a unit ventilator rupture affecting the existing high school's heating system caused substantial damage to newly refurbished rooms completed as part of the SDA's renovation work of the existing OHS; and

**WHEREAS**, the total estimated repair cost of damages for this event as determined by SDA insurance carrier is \$607,964.56; and

**WHEREAS**, while the SDA Owner Controlled Insurance Program insurance carrier has determined that this damage is a covered event with its value to be reimbursed by the insurance carrier, CO No. 81 remains subject to Board approval; and

**WHEREAS**, CO No. 81 in the amount of \$582,964.56 and presented to the Board for approval on this date represents the remaining cost, minus the \$25,000 deductible, to address the substantial damage so caused; and

**WHEREAS**, all documents supporting CO No. 81 have been reviewed by the associated SDA project team members inclusive of financial operations, as well as the program director and deputy program director for adherence to current SDA policy and procedures and all reviewing SDA staff members have determined that CO No. 81 is justified and the amount is reasonable and appropriate; and

**WHEREAS**, CO No. 81 exceeds \$500,000 and, in the aggregate, is greater than 10% of the contract value, thus necessitating Board approval; and

**WHEREAS**, management has determined that the adjusted contract value, inclusive of CO No. 81 and all approved COs to date and totaling \$40,780,873.98 is the appropriate baseline for the on-going application of Operating Authority requirements to the Project and recommends the Members' approval of the same; and

**WHEREAS**, the reason for the change, summary of the change and reason for the reestablishment of the contract value are set forth in detail 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 Change Order No. 81 in the amount of \$582,964.56 to address the rehabilitation of the space described in the memorandum presented to the Board as part of the at the Orange High School Addition and Renovation Project in the Orange Public School District.

**BE IT FURTHER RESOLVED**, that the Members of the Authority approve the reestablishment of the construction contract value for this existing engagement for the purpose of application of ongoing Operating Authority requirements, with the reestablished value for this purpose equaling the contract value inclusive of Change Order No. 81 and all approved Change Orders to date for an adjusted contract value of \$40,780,873.98.

**BE IT FURTHER RESOLVED**, that management will again seek Board approval should future Change Orders individually exceed \$500,000.00, or singularly or in the aggregate exceed 10% of the reestablished contract amount of \$40,780,873.98 as set forth above.

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

Attached: Memorandum, Change Order No.81, (ES-0042-C01), Orange High School, Orange Public School District, Insurance Claim Change Order, dated February 2, 2022

Dated: February 2, 2022

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

**Adoption of New Rules for Disposition of Surplus Real and Personal Property of the New Jersey  
Schools Development Authority, N.J.A.C. 19:35**





STATE OF NEW JERSEY

# SCHOOLS DEVELOPMENT AUTHORITY

## 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:** February 2, 2022

**RE:** Adoption of New Rules for Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority, N.J.A.C. 19:35

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On June 2, 2021 the Members of the New Jersey Schools Development Authority (“Authority” or “SDA”) approved for proposal and publication a Notice of Proposal for Disposition of Surplus Real and Personal Property of The New Jersey Schools Development Authority, N.J.A.C. 19:35.

Management of the Authority now seeks the Members’ approval to formally adopt the Rules in the form previously presented at the June 2, 2021 meeting of the Board, and as subsequently published in the New Jersey Register. The proposed Notice of Adoption for the Rules is attached hereto, along with a copy of the proposed Rules as published in the New Jersey Register.

### **Prior Regulatory History**

Chapter 35 was proposed for adoption as new rules, and published in the August 16, 2021 edition of the New Jersey Register at 53 N.J.R. 1358(a). The proposed new rules were published subject to a 60-day public comment period ending October 15, but no comments were received during that period. Accordingly, the form of the Rules has not changed from the original proposal as published in the Register.

### **Background:**

The Rules establish requirements and procedures for the disposition of real property and personal property owned by the SDA if such property is deemed surplus as no longer needed for school facility projects or SDA operations. These new rules are intended to replace the SDA’s prior surplus property disposition rules that expired in 2014, while improving and expanding upon the previous rules. The new rules provide various methodologies for disposition of surplus property, including a sealed bid process, internet auction, an offer to purchase process and, in certain limited circumstances, direct negotiated sale at fair market value. The rules provide that property shall be disposed of at fair market value, except in limited circumstances upon the approval of the SDA

Board. The rules also provide requirements and guidelines for the temporary use of SDA property not currently needed for school construction (whether deemed surplus or not) to allow such property to be used for various public or charitable purposes. This allows SDA to lease such property to governmental and non-governmental entities to defray the carrying costs of property not currently needed for school construction, or to permit uses of such property that serve public or charitable purposes.

The new Rules for disposition of surplus property differ from SDA's prior regulations in various ways, the most significant of which are as follows:

1. The regulations now separately address real property versus personal property, with separate procedures for each.
2. The definition of fair market value (FMV) is expanded beyond the typical appraiser analysis of the property; the definition explicitly incorporates the SDA analysis of additional factors (e.g. environmental factors).
3. Under the old regulations, the SDA Chief Executive Officer, or his/her designee, was responsible for all declarations of surplus property, whether personal or real property. Under the new regulations, the SDA Board must approve all surplus declarations of real property, and any surplus declarations of personal property with an estimated market value in excess of \$500,000.
4. For dispositions of real property, the sealed-bid process has been supplemented with an offer-to-purchase process. The offer-to-purchase process allows for post-offer negotiation as to terms, and verification of a purchaser's finances, as well as greater outreach to potential purchasers to increase competition.
5. Unadvertised, non-bid dispositions of real and personal property are permitted under certain limited circumstances.

### **Summary of New Rules**

Subchapter 1 of the proposed new rules provides definitions of terms used in the rules, including a definition of fair market value that incorporates information regarding the environmental condition of real property.

Under Subchapter 1 of the proposed rules, proposed dispositions of surplus property will be evaluated in terms of the transaction's effect on the tax exempt status of the New Jersey Economic Development Authority bonds that financed SDA's original acquisition of said property, and a proposed disposition of surplus property will not be authorized or enforceable if the disposition would result in the loss of the tax exempt status of the interest paid on such bonds.

Subchapter 2 provides the standards and procedures for declaring real property and personal property surplus to the needs of the school construction program and SDA operations.

Subchapter 3 enumerates the various methods permitted by these rules for disposition of surplus property: through a sealed bid process, an offer to purchase process or an internet auction, as well as through unadvertised direct negotiation in certain circumstances when a waiver of advertisement is appropriate.

This subchapter provides that the SDA shall choose the method of disposition to maximize the return realized by the disposition, and provides further that where the determination of surplus is required to be made by the SDA Board, the Board shall also approve the method of disposition. The subchapter also identifies the circumstances in which a waiver of advertising is permitted for personal property, such as when the value of the property does not exceed the state bid threshold, or when the property is to be sold to a governmental entity for a valid public purpose at a price equivalent to the estimated market price or as otherwise approved by the SDA Board.

Similarly, this subchapter identifies the circumstances in which a waiver of advertising is permitted for the disposition of real property, such as when the value of the real property is less than \$100,000; the cost of remediation activities required to render the property marketable are equal to or greater than the appraised value; the property is an undersized lot being sold to an adjacent landowner who has no connection to SDA or its employees; the property is being sold for fair market value to be used for an educational purpose; the disposition is to a public property for a valid public purpose that does not impair the tax-exempt status of the bonds referenced in Subchapter 1, and the transaction is for fair market value or a sale price less than fair market value if approved by the SDA Board after considering additional analysis and valuations affecting fair market value; or the disposition is in response to an unsolicited offer to purchase property for not less than fair market value as evidenced by an independent appraisal, and SDA has determined that it would not benefit from a subsequent advertisement or public bidding.

Subchapter 4 of the proposed new rules provides the requirements and procedures for a disposition of personal property under the sealed bid, and internet auction methods, including advertisement requirements, and procedures for submission of bids and required deposits, and cancellation or award procedures. The Subchapter further provides that if personal property is not successfully disposed of after being advertised for either of those disposition methods, it may be disposed of through direct negotiated sale for the highest possible price, upon such terms and conditions as are approved by the SDA Board.

Subchapter 5 provides the requirements and procedures for a disposition of real property under the offers to purchase, sealed bid and internet auction methods, including advertisement requirements, procedures for submission of bids and required deposits, evaluation of offers and negotiation with offerors and cancellation or award procedures. The Subchapter further provides that if a parcel of real property is not successfully disposed of after being advertised for either of those disposition methods, it may be disposed of through direct negotiated sale for the highest possible price, upon such terms and conditions as are approved by the SDA Board.

Subchapter 6 provides the requirements and procedures for temporary use of SDA-owned real property when such property is not currently needed for a school facilities project or for use in SDA operations. The Subchapter provides that such temporary use must be memorialized in a

written lease, license or use and occupancy agreement, subject to insurance obligations, duration limitations and termination rights, and standard use terms for preventing damage to or diminution of the value of the property. The Subchapter provides that use agreements entered into with non-governmental or non-public entities require the payment of fair market rent, and shall be subject to review by SDA's bond counsel, except where the use agreement is entered into with an owner or tenant of property that SDA is seeking to acquire, to all allow continued occupancy of the property during the property acquisition process. The Rules do not require fair market consideration in the case of lease or use agreements with public entities or non-profit entities proposing use of the property for valid public or charitable purposes, but they require clear identification and official entity approval of the public purpose intended to be served by the entity's proposed use of the SDA-owned property.

Subchapter 6 also requires that SDA prepare a semiannual report to the Board identifying all temporary use agreements, and any extensions or renewals of such agreements.

### **Requested Board Action**

The Members of the Authority are requested to approve the adoption of the new Rules, as well as the issuance of the attached Notice of Adoption, and the filing of the Notice with the Office of Administrative Law.

/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

**OTHER AGENCIES**

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

**Disposition of Surplus Real And Personal Property of The New Jersey Schools**

**Development Authority**

**Adopted New Rules: 19:35**

Proposed: August 16, 2021 at 53 N.J.R. 1358(a)

Adopted: [DATE] by the New Jersey Schools Development Authority,

Manuel M. DaSilva, Chief Executive Officer

Filed: [DATE] as R. 2022 d.\_\_\_\_, **without change**.

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

Effective Date: [PUBLICATION DATE], 2022.

Expiration Date: [PUBLICATION DATE], 2029.

**Summary of Public Comment and Agency Response:**

**No comments were received.**

**Federal Standards Statement**

A Federal standards analysis is not required because the adopted new rules provide the procedures for the SDA to dispose of surplus property, and there are no Federal standards or requirements applicable to the SDA's disposition of surplus property.

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

TEXT

**OTHER AGENCIES**

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY**

**Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority**

**Proposed New Rules: N.J.A.C. 19:35**

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

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

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

Proposal Number: PRN 2021-068.

Submit written comments by October 15, 2021, to:

Cecelia Haney, Administrative Practice Officer

New Jersey Schools Development Authority

PO Box 991

Trenton, NJ 08625-0991

[chaney@njsda.gov](mailto:chaney@njsda.gov)

The agency proposal follows:

**Summary**

The New Jersey Schools Development Authority (“SDA” or “Authority”), an independent State authority charged with the construction and funding of school facilities projects pursuant to

a school construction program authorized by the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended by P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), proposes to adopt new rules governing the process for determining when real property or personal property owned by the Authority is deemed surplus, and providing standards and procedures for disposition of such surplus property. The new rules are intended to replace former surplus property disposition rules that expired in 2014. The new rules are proposed at N.J.A.C. 19:35.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### **N.J.A.C. 19:35-1.1 Applicability**

Proposed new N.J.A.C. 19:35-1.1 sets forth the applicability of the rules to any real or personal property owned by the SDA that may be considered surplus property, and further provides that a proposed disposition of surplus property will not be authorized or enforceable if the disposition would result in the loss of the tax exempt status of the interest paid on bonds sold to finance the SDA's original acquisition of such property.

### **N.J.A.C. 19:35-1.2 Purpose and Scope**

Proposed new N.J.A.C. 19:35-1.2 sets forth the purpose of the chapter, which is to establish and prescribe uniform rules and procedures for the disposition of surplus real and personal property, and indicates that proceeds from the disposition of surplus real and personal property shall be used to fund school facilities projects generally, with the exception that the proceeds from



the disposition of surplus real property acquired under circumstances described at N.J.S.A. 18A:7G-45 will be used to fund school facilities in the same school district where the surplus real property is located.

### **N.J.A.C. 19:35-1.3 Definitions**

This section sets forth the meaning of certain words and phrases used throughout the chapter.

## **SUBCHAPTER 2. IDENTIFICATION OF SURPLUS PROPERTY**

### **N.J.A.C. 19:35-2.1 Determination of Property as Surplus Property**

This section establishes that whenever property of the SDA is determined to be surplus, any temporary use, sale, or other disposition of such property must be performed consistent with this chapter. This section also provides that SDA can permit a temporary use of surplus property without SDA Board approval.

### **N.J.A.C. 19:35-2.2 Personal Property as Surplus Property**

This section provides standards for determining whether personal property is surplus.

### **N.J.A.C. 19:35-2.3 Real Property as Surplus Property**

This section provides standards for determining whether real property is surplus.

### **N.J.A.C. 19:35-2.4 Requirements for Designating Property as Surplus Property**

This section provides standards and procedures for making, memorializing, and securing Chief Executive Officer or Board approval of determinations that real or personal property is surplus property.

### SUBCHAPTER 3. DISPOSITION OF SURPLUS PROPERTY; DISPOSITIONS EXEMPT FROM ADVERTISING REQUIREMENTS

#### **N.J.A.C. 19:35-3.1 Manner and Requirements of Surplus Property Disposition**

This section provides that surplus property may be disposed through a publicly advertised competitive sale through a solicitation of sealed bids, a solicitation of offers to purchase, or an internet auction, or may be disposed of through direct negotiated sale without public advertisement when the conditions set forth at N.J.A.C. 19:35-3.2 or 3.3 are met. This section specifies that all surplus property shall be sold in “as is, where is, with all faults” condition. Finally, this section provides that the method of disposal shall be selected by the SDA to maximize the return realized by the disposition, and if the determination of surplus is required to be approved by the Board, then the selection of the method to dispose of the surplus property is also subject to Board approval.

#### **N.J.A.C. 19:35-3.2 Waiver of Public Advertisement for Sale of Surplus Personal Property**

This section provides for the waiver of public advertisement and disposition of surplus personal property for its estimated market value under certain defined circumstances: the property in question has an estimated market value less than the State bid advertising threshold amount

referenced at N.J.S.A. 52:34-7.b; or the disposition constitutes an unusual transaction that would not benefit from public bidding, such as a disposition in response to an unsolicited offer to purchase, provided that the purchase price to be paid is not less than the estimated market value established by book value or other appropriate valuation and the SDA determines that it would not benefit from a subsequent advertisement of public bidding; or the advertising and bidding would impair or be detrimental to the disposition; or the disposition is to a governmental entity for a valid public purpose and is for the estimated market value of a sale price approved by the SDA Board taking into account such estimated market value; or the disposition is for a temporary classroom unit, and the SDA has determined, based on a feasibility analysis, that disposition is more advantageous than relocation and reuse of the temporary classroom unit.

### **N.J.A.C. 19:35-3.3 Waiver of Public Advertisement for Sale of Surplus Real Property**

This section provides for the waiver of public advertisement and disposition of surplus personal property for its estimated market value under certain defined circumstances: the disposition is for real property or any interest therein having a value less than \$100,000; or the property is unique and the disposition requires an unusual contract or represents an unusual transaction that would not benefit from public advertising or public bidding; or the costs of environmental remediation activities or other activities required by governing authorities to render the property marketable are greater than, or equal to, the appraised value of the subject property; or the property is an undersized lot and is being offered to an adjacent owner for fair market value; provided the adjacent landowner has no connection to, or affiliation with, the SDA or any of its employees; or the disposition of the surplus property or interest therein is to a public party or non-public party

for fair market value, provided that such surplus property is used for an educational purpose; or the disposition of such surplus property is to a public party for a valid public purpose that does not result in the loss of the tax-exempt status of interest earned on the bonds referenced at N.J.A.C. 19:35-1.1, and is for fair market value or a sale price that is less than fair market value if approved by the SDA Board after taking into consideration additional analyses and valuations that affect fair market value; or the disposition is to a public or non-public party submitting an unsolicited offer to purchase, provided such offer is for not less than fair market value as evidenced by an independent appraisal prepared by a professional licensed appraiser and the SDA has determined that it would not benefit from subsequent advertising or public bidding.

#### SUBCHAPTER 4. DISPOSITION OF SURPLUS PERSONAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS

##### **N.J.A.C. 19:35-4.1 Methods of Disposition of Surplus Personal Property**

This section provides that surplus personal property may be disposed of through a publicly advertised competitive sale through a solicitation of sealed bids, or an internet auction, and further provides that surplus personal property may also be disposed of pursuant to N.J.A.C. 19:35-4.16 through direct negotiated sale, without public advertisement, if certain required conditions are met. This section further provides that if no bids are submitted in response to a solicitation for sealed bids, or in response to an advertised internet auction, or in the event personal property cannot be disposed of through direct negotiation, then the surplus personal property may be disposed of through the Department of the Treasury, Surplus Property Unit, or in the most economically

feasible manner. Finally, this section provides that nothing in this chapter shall prohibit or prevent the SDA from using, or availing itself of, any disposition method as may be otherwise permitted by law or rule.

#### **N.J.A.C. 19:35-4.2 Sealed Bid Process for Surplus Personal Property; Advertisement Requirements**

This section provides the advertisement requirements for disposition of surplus personal property by sealed bid method.

#### **N.J.A.C. 19:35-4.3 Sealed Bid Process for Surplus Personal Property; Outreach in Addition to Advertisement**

This section provides that the SDA may, in addition to advertisement of a Notice of Solicitation of Sealed Bids, conduct other outreach efforts to identify and contact potential bidders to increase the number of sealed bids submitted.

#### **N.J.A.C. 19:35-4.4 Sealed Bid Process for Surplus Personal Property; Amendments to a Notice of Solicitation of Sealed Bids**

This section provides that notice of any changes to pertinent information in a Notice of Solicitation of Sealed Bids must be advertised on the SDA website at least seven days in advance of the opening

of bids, unless an alternate notice procedure is established in the Notice of Solicitation of Sealed Bids.

#### **N.J.A.C. 19:35-4.5 Sealed Bid Process for Surplus Personal Property; Submission of Bids**

This section provides the procedures for the submission of sealed bids for surplus personal property, including time limitations and prohibitions on submissions of bids by telephone, facsimile, or other electronic means.

#### **N.J.A.C. 19:35-4.6 Sealed Bid Process for Surplus Personal Property; Withdrawal of Bids**

This section provides procedures for the withdrawal of sealed bids before the time of bid opening.

#### **N.J.A.C. 19:35-4.7 Sealed Bid Process for Surplus Personal Property; Opening and Validity of Sealed Bids**

This section provides the procedure for the opening of sealed bids, and specifies that bid amounts shall remain valid for a period of 120 days, unless otherwise indicated in the Notice of Solicitation of Sealed Bids.

**N.J.A.C. 19:35-4.8 Sealed Bid Process for Surplus Personal Property: Award to Highest Responsible Bidder**

This section provides that absent cancellation of the solicitation, the award of a disposition of surplus personal property shall go to the highest bidder meeting all of the terms and conditions of the Notice of Solicitation of Sealed Bids.

**N.J.A.C. 19:35-4.9 Sealed Bid Process for Surplus Personal Property: Cancellation**

This section provides the justifications and procedures for cancellation of a solicitation for sealed bids, and the options for subsequent disposition of the property.

**N.J.A.C. 19:35-4.10 Sealed Bid Process for Surplus Personal Property: Withdrawal of Items**

This section provides the justifications and procedures for withdrawal of one or more items from a solicitation for sealed bids, the options for subsequent disposition of the withdrawn items, and the treatment of remaining items not withdrawn from the solicitation.

**N.J.A.C. 19:35-4.11 Sealed Bid Process for Surplus Personal Property: Bid Deposit**

This section provides for a bid deposit requirement and defines the various forms that may be specified for a bid deposit.

#### **N.J.A.C. 19:35-4.12 Sealed Bid Process for Surplus Personal Property: Notice of Award**

This section provides that a notice of award shall be issued to the successful bidder, and shall be in writing and given in the manner and within the time specified in the request for proposal (RFP). This section further specifies that the notice of award shall specify the time and manner for payment of the balance of the bid price and for taking possession of the surplus personal property and shall be deemed to result in a binding contract without any further action. Finally, this section provides that all unsuccessful bidders will receive a copy of the notice of award as addressed to the winning bidder.

#### **N.J.A.C. 19:35-4.13 Sealed Bid Process for Surplus Personal Property: Payment of Balance of Bid Price**

This section provides that the winning bidder must pay the balance of the bid price, and then must take possession of the surplus real property in the manner and time set forth in the notice of award. This section further specifies various methods of payment that are acceptable if the manner of payment is not specified.

#### **N.J.A.C. 19:35-4.14 Sealed Bid Process for Surplus Personal Property: Failure to Pay Balance of Bid Price**

This section provides that a failure by the successful bidder to pay the balance of the bid price within the time set forth in the notice of award shall result in a forfeiture of the bid deposit to the



SDA. This section also provides that surplus personal property shall be considered abandoned if paid for, but not picked up or taken possession of in the manner and within the time specified in the notice of award. This section further provides that in the event that property is abandoned, the SDA shall retain all payments made, and ownership of the property shall default to the SDA. The SDA may then accept the bid of the next highest qualified bidder or may again offer the surplus personal property for disposition.

#### **N.J.A.C. 19:35-4.15 Internet Auction Process for Surplus Personal Property**

This section provides that the disposition of surplus personal property may be conducted through an internet auction, which shall be preceded by a published advertisement containing: a clear statement that the disposition will take place over the internet; the internet address of the website where the auction can be found; the date and time for the internet auction; a description of the surplus personal property to be sold; and a clear statement of all terms and conditions material to the disposition. This section provides that the website identified in the advertisement shall set forth all requirements for bidding, the terms and conditions of the disposition, and the procedures for the transfer of the surplus personal property to be sold. This section further provides that surplus personal property that is the subject of an internet auction shall be awarded to the highest bidder meeting the terms and conditions material to the disposition.

This section also provides optional procedures in the event that SDA determines there is insufficient participation in an internet auction of surplus personal property, including a right to remove the property from the internet auction and terminate the disposition with respect thereto, and the right to determine whether any items of property withdrawn from an internet auction shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this

subchapter. Further, this section provides that the withdrawal of any item or items from the disposition by internet auction shall not affect the disposition of the remaining items to be sold.

#### **19:35-4.16 Negotiated Sale of Surplus Personal Property**

This section provides that surplus personal property that, after being the subject of a Solicitation for Sealed Bids in accordance with N.J.A.C. 19:35-4.2 through 4.14, or an internet auction in accordance with N.J.A.C. 19:35-4.15, does not result in a consummated disposition, may be disposed of through a direct negotiated sale to a public or a non-public party, for the highest possible price, upon terms and conditions acceptable to the SDA.

#### **19:35-4.17 Transfer of Ownership of Surplus Personal Property**

This section provides that transfer of ownership and title of surplus personal property offered for disposition is effective upon payment of the full purchase price, and delivery of the item(s) to the purchaser.

### **SUBCHAPTER 5. DISPOSITION OF REAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS**

#### **N.J.A.C. 19:35-5.1 Methods of Disposition of Surplus Real Property**

This section provides that surplus real property may be disposed of through a publicly advertised competitive sale through a solicitation of offers to purchase, a solicitation of sealed bids, or an internet auction, and further provides that surplus real property may also be disposed of through

direct negotiated sale without public advertisement, if certain required conditions are met pursuant to N.J.A.C. 19:35-5.33. This section further provides that nothing in this chapter shall prohibit or prevent the SDA from using or availing itself of any disposition method as may be otherwise permitted by law or rule.

### **N.J.A.C. 19:35-5.2 Offers to Purchase Process for Surplus Real Property; Advertisement Requirements**

This section provides the advertisement requirements for disposition of surplus real property by the offer to purchase method.

### **N.J.A.C. 19:35-5.3 Offers to Purchase Process for Surplus Real Property: Outreach in Addition to Advertisement**

This section provides that the SDA may, in addition to advertisement of a Notice of Solicitation of Offers to Purchase, conduct other outreach efforts to identify and contact potential bidders to increase the number of offers to purchase submitted.

### **N.J.A.C. 19:35-5.4 Offers to Purchase Process for Surplus Real Property: Amendment of Solicitation of Offers to Purchase**

This section provides that notice of any changes to pertinent information in a Notice of Solicitation of Offers to Purchase must be advertised on the SDA website at least seven days in advance of the

scheduled date for receipt of offers to purchase, unless an alternate notice procedure is established in the Notice of Solicitation of Offers to Purchase.

**N.J.A.C. 19:35-5.5 Offers to Purchase Process for Surplus Real Property: Submission of Offers to Purchase; Untimely Submissions**

This section provides the procedures for the submission of offers to purchase for surplus real property, including time limitations and prohibitions on submissions of offers by telephone, facsimile, or other electronic means. The section also provides for the rejection of offers to purchase received after the deadline for submission of offers to purchase.

**N.J.A.C. 19:35-5.6 Offers to Purchase Process for Surplus Real Property: Required Deposit**

This section provides that offers to purchase must be accompanied by a deposit in an amount specified by the SDA, and in the form set forth in the Notice of Solicitation of Offers to Purchase, or by certified check, bank or cashier's check, or executed money order made payable to the SDA.

**N.J.A.C. 19:35-5.7 Offers to Purchase Process for Surplus Real Property: Withdrawal of Offers to Purchase**

This section permits the withdrawal of offers to purchase prior to the expiration of the period for submission of offers to purchase.

**N.J.A.C. 19:35-5.8 Offers to Purchase Process for Surplus Real Property: Review and Verification of Offers to Purchase**

This section provides for the review and verification of offers to purchase in accordance with the best interests of the school construction program, price, and other factors considered. This section also permits the SDA to seek additional information to supplement an offer of purchase in order to verify the accuracy, validity, and responsiveness of the offer. The section states that such additional information may only be used to clarify, not modify, the offer to purchase.

**N.J.A.C. 19:35-5.9 Offers to Purchase Process for Surplus Real Property: Evaluation of Offers to Purchase**

This section provides that the SDA shall evaluate each offer to purchase and shall identify the offer, or offers, determined to be responsive to all material elements set forth in the Notice of Solicitation of Offers to Purchase, and shall select from the responsive offers a winning offer based on an evaluation of price and “other factors.” This section further provides an illustrative list of potential “other factors” to be considered in addition to price, including, but not limited to: the amount and kind of proposed consideration; the purchase terms, including any due diligence period and payment for such due diligence period; the terms subject to negotiation; the proofs of the offeror’s financial capacity to meet the terms of purchase; and/or any other factors identified in the Notice of Solicitation of Offers to Purchase. Finally, this section provides that if more than one parcel of surplus real property is included in the Notice of Solicitation of Offers to Purchase, the

SDA may require separate offers for each tract or parcel advertised, may evaluate each offer separately, and may accept a separate offer to purchase for each tract or parcel advertised.

**N.J.A.C. 19:35-5.10 Offers to Purchase Process for Surplus Real Property: Negotiation with Offeror(s)**

This section provides that SDA staff may negotiate the terms of the disposition of surplus property with one or more offerors that have submitted advantageous offers that are in the best interest of the school construction program, price, and other factors considered. This section further provides that the SDA may negotiate with one or more offerors, and that negotiation with one offeror will not preclude the SDA from negotiating with other offerors, unless the SDA has entered into an exclusive negotiation period with an offeror in accordance with N.J.A.C. 19:35-5.11.

**N.J.A.C. 19:35-5.11 Offers to Purchase Process for Surplus Real Property: Exclusive Negotiating Period Within the Offer to Purchase Process**

This section provides that the SDA may, in its sole discretion, enter into an “Exclusive Negotiation Agreement,” upon the request of an offeror, pursuant to which the SDA and the chosen offeror each agree to negotiate the terms of the disposition of surplus real property exclusively with the other, and refrain from negotiating with any other parties for the duration of the exclusive negotiation period. The SDA’s ability to enter into such an agreement is subject to certain enumerated conditions, including requiring the offeror to make an additional deposit for such period and imposing a 30-day limit on the exclusive negotiation period. The SDA may extend the

exclusive negotiation period for one additional period of up to 30 days, if determined to be in the best interests of the school construction program. At the conclusion of exclusive negotiations, SDA staff shall submit a recommendation to the Board as to whether to accept any resulting negotiated offer to purchase, which shall detail the basis for the recommendation and shall identify the material terms of other offers received that would be rejected by virtue of the acceptance of the exclusively negotiated offer.

**N.J.A.C. 19:35-5.12 Offers to Purchase Process for Surplus Real Property: Review, Recommendation, and Acceptance by the SDA of an Offer to Purchase**

This section provides that in the absence of acceptance of an exclusively negotiated offer, the SDA shall evaluate the offers received in accordance with the best interests of the school construction program, price and other factors considered, in accordance with N.J.A.C. 19:35-5.9.

**N.J.A.C. 19:35-5.13 Offers to Purchase Process for Surplus Real Property: Withdrawal of Tracts or Parcels**

This section provides that one or more tracts or parcels of land may be withdrawn from the solicitation of offers to purchase, if deemed by the SDA to be in the best interests of the school construction program. The section further provides that upon withdrawal of one or more tracts or parcels, the SDA shall determine whether to re-offer or otherwise dispose of such parcels in a manner consistent with this chapter.

**N.J.A.C. 19:35-5.14 Offers to Purchase Process for Surplus Real Property: Cancellation of Solicitation and Disposition; Withdrawal of Tracts or Parcels**

This section provides the justifications and procedures for cancellation of a solicitation for offers to purchase, and the options for subsequent disposition of the property.

**N.J.A.C. 19:35-5.15 Offers to Purchase Process for Surplus Real Property: Notice of Award and Purchase Agreement**

This section provides the process for issuance of a notice of award accepting the offer of the successful offeror, and the delivery of a purchase agreement for execution by the successful offeror, memorializing the negotiated agreement for purchase of the surplus real property. The section further provides that the notice of award shall be simultaneously provided to all unsuccessful offerors.



**N.J.A.C. 19:35-5.16 Offers to Purchase Process for Surplus Real Property: Application of Deposits**

This section provides that deposits furnished by the successful offer shall be applied to the purchase price of the surplus property at issue, while deposits submitted by unsuccessful offerors shall be returned promptly.

**N.J.A.C. 19:35-5.17 Offers to Purchase Process for Surplus Real Property: Transfer of Title and Balance of Purchase Price**

This section provides procedures for the transfer of title and payment of the balance of the purchase price. The section further provides the SDA with the ability to cancel the transaction and retain any monies on deposit in the event the successful offeror fails to pay the balance of the purchase price or fails to abide by any other material term of the purchase agreement.

**N.J.A.C. 19:35-5.18 Offers to Purchase Process for Surplus Real Property: Cancellation of Purchase Agreement**

This section provides that, in the event of cancellation of the purchase agreement, the SDA may, with the approval of the SDA Chief Executive Officer, or his or her designee, accept the offer of the next highest qualified offeror, or readvertise the surplus real property for disposition in accordance with any of the methods set forth at N.J.A.C. 19:35-5.1.

**N.J.A.C. 19:35-5.19 Sealed Bid Process for Surplus Real Property: Advertisement**

This section provides that disposition of surplus property through a sealed bid process shall be initiated by the issuance of a Notice of Sealed Bids and this section further provides the advertising requirements for disposition of property through the sealed bid method.

**N.J.A.C. 19:35-5.20 Sealed Bid Process for Surplus Real Property: Outreach in Addition to Advertisement**

This section provides that in addition to advertising activities, the SDA may conduct outreach efforts to identify and directly contact potential bidders for purposes of increasing the number of sealed bids received in response to an advertised “Notice of Solicitation of Sealed Bids.”

**N.J.A.C. 19:35-5.21 Sealed Bid Process for Surplus Real Property: Amendments to a Notice of Solicitation of Sealed Bids**

This section provides the procedures for amendment to a Notice of Solicitation of Sealed Bids, including the requirement that any material modification be advertised on the SDA website at least seven days prior to the time for the opening of bids, unless an alternative procedure is established in the Solicitation of Sealed Bids.

**N.J.A.C. 19:35-5.22 Sealed Bid Process for Surplus Real Property: Submission of Bids;  
Close of Bidding and Untimely Bids**

This section provides the procedures for the submission of sealed bids for surplus real property, including time limitations and prohibitions on submissions of bids by telephone, facsimile, or other electronic means. The section also provides for the rejection of bids received after the deadline for submission of bids.

**N.J.A.C. 19:35-5.23 Sealed Bid Process for Surplus Real Property: Withdrawal of Bids**

This section provides procedures for the withdrawal of sealed bids before the time of bid opening.

**N.J.A.C. 19:35-5.24 Sealed Bid Process for Surplus Real Property: Opening of Sealed Bids**

This section provides the procedure for the opening of sealed bids.

**N.J.A.C. 19:35-5.25 Sealed Bid Process for Surplus Real Property: Validity of Sealed Bids**

This section specifies that bid amounts shall remain valid for a period of 120 days, unless otherwise indicated in the Notice of Solicitation of Sealed Bids.

**N.J.A.C. 19:35-5.26 Sealed Bid Process for Surplus Real Property: Award to Highest Responsible Bidder**

This section provides that absent cancellation of the solicitation, the award of a disposition of surplus real property shall go to the highest bidder meeting all of the terms and conditions of the Notice of Solicitation.

**N.J.A.C. 19:35-5.27 Sealed Bid Process for Surplus Real Property: Cancellation of Solicitation and Disposition; Rejection of Bids**

This section provides the justifications and procedures for cancellation of a solicitation for sealed bids and the options for subsequent disposition of the property.

**N.J.A.C. 19:35-5.28 Sealed Bid Process for Surplus Real Property: Withdrawal of Items from Solicitation and Disposition**

This section provides the justifications and procedures for withdrawal of one or more items from a solicitation for sealed bids, the options for subsequent disposition of the withdrawn items, and the treatment of remaining items not withdrawn from the solicitation.

### **N.J.A.C. 19:35-5.29 Sealed Bid Process for Surplus Real Property: Bid Deposit**

This section provides for a bid deposit requirement and defines the various forms that may be specified for a bid deposit.

### **N.J.A.C. 19:35-5.30 Sealed Bid Process for Surplus Real Property: Notice of Award**

This section provides that a notice of award shall be issued to the successful bidder and shall be in writing and given in the manner, and within the time specified, in the request for proposals (RFP). This section further specifies that the notice of award shall specify the time and manner for payment of the balance of the bid price and for taking possession of the surplus personal property and shall be deemed to result in a binding contract without any further action. Finally, this section provides that all unsuccessful bidders will receive a copy of the notice of award, as addressed to the winning bidder.

### **N.J.A.C. 19:35-5.31 Sealed Bid Process for Surplus Real Property: Payment of Balance of Bid Price**

This section provides that the winning bidder must pay the balance of the bid price at closing of title. This section further specifies various methods of payment that are acceptable if the manner of payment is not specified. Finally, this section provides for forfeiture of the bid deposit and provides options for alternate disposal of the property if the bidder fails to pay the balance of the bid price, or to return an executed purchase agreement; or to close title, or any other failure to comply with the requirements in the notice of award.

### **N.J.A.C. 19:35-5.32 Disposition of Surplus Real Property by Internet Auction**

This section provides the procedures for disposition of surplus real property by the internet auction method. The section includes advertisement requirements, provides an option to accept separate bids for each tract or parcel when multiple tracts or parcels are included in an internet auction, provides that property subject to an internet auction shall be awarded to the highest bidder meeting the terms and conditions of the disposition, and provides that in the event of insufficient interest in a particular tract or parcel of property up for internet auction, the SDA may determine to withdraw the tract or parcel from auction, and may thereafter determine whether to readvertise the property for disposition or otherwise dispose of the property in accordance with this subchapter.

### **N.J.A.C. 19:35-5.33 Disposition of Surplus Real Property through Direct Negotiated Sale**

This section provides that surplus real property that is not exempt from an advertised disposition may be disposed of for its fair market value through a direct negotiated sale or a brokered sale if the advertisement of the property for offer, bid, or auction did not elicit any viable offers or bids after being the subject of a solicitation of offers to purchase, a solicitation of sealed bids, or a disposition through internet auction.

### **N.J.A.C. 19:35-5.34 Disposition for Less than Fair Market Value**

This section provides that if real property has been advertised as the subject of solicitation of offers to purchase, a solicitation of sealed bids, an internet auction, or a negotiated direct sale for fair market value, and despite such advertised disposition process, the SDA is unable to consummate

or reach agreement with respect to the disposition of such property, then the SDA may dispose of the surplus property in any lawful manner for less than the originally estimated fair market value, provided that any proposed consideration below the originally estimated fair market value must be approved by the SDA Board based on the written analysis and recommendation of appropriate SDA staff.

#### **N.J.A.C. 19:35-5.35 Effective Date of Disposition**

This section provides that, unless expressly otherwise provided, the transfer of title to surplus real property is effective following the payment of the full amount of the proposed consideration to the SDA and the delivery of a deed from the SDA to the purchaser.

### SUBCHAPTER 6. TEMPORARY USE AND/OR OCCUPANCY OF SDA-OWNED REAL PROPERTY

#### **N.J.A.C. 19:35-6.1 Temporary Use and/or Occupancy of SDA-Owned Real Property**

This section provides procedures and conditions for the SDA to authorize the temporary use or occupancy of SDA property that is not currently needed for a school facility project or otherwise needed in the business operations of the SDA. Subsection (a) provides authority for entering into temporary use and occupancy arrangements. Subsection (b) provides that such arrangements must be memorialized in a written agreement, such as a lease or occupancy agreement, and specifies certain provisions that must be included in such an agreement, including a limitation on the duration of the agreement to not more than three years, if approved by the SDA Chief Executive Officer, with longer durations requiring SDA Board approval, a right of termination by the SDA

upon notice, a prohibition against damage to the property or environmental harm, a prohibition on improvements to the property without written approval of the SDA, and a right to demand holdover charges in the event a user or occupant does not surrender the property on the date specified for termination of the lease or use agreement.

Subsection (c) provides that if the proposed user is a private party or non-public entity, the use agreement shall: require that the proposed use or occupancy of SDA-owned property must be cleared and approved by SDA's bond counsel, except for a post-closing lease or use and occupancy agreement to a seller or a seller's tenants in connection with an acquisition of real property by the SDA; provide for compensation equivalent to the fair market rental value of the property; prohibit the user from subletting the property or assigning its use rights to another without express written consent from the SDA; require the user to pay all costs associated with use of the property, provide indemnification to the SDA for all injury, losses, and damages relating to the use of the property; insure the property during the use period; and provide a security deposit in an amount determined by the SDA.

Subsection (d) provides that if the user is a public entity or non-public non-profit party, and the proposed use will serve a valid charitable purpose or public purpose, then fair market rental consideration is not a requirement, but the use agreement shall document and provide official approval of the proposed charitable purpose or public purpose or governmental function or program that is supported by the proposed use, provide for consideration that recognizes the value of the public benefit of the proposed use as a component of consideration, pay all costs associated with the use of the property, prohibit assignment or subletting of use rights, insure the property, and provide indemnification to the SDA from all injury, losses, and damages relating to the use of the property.



Subsection (e) provides for the SDA Board to receive semiannual reports regarding all current temporary use and occupancy authorizations, allowing for the Board's oversight of the SDA's temporary use of properties, whether or not such uses are subject to Board authorization.

### **Social Impact**

The proposed new rules provide procedures for the SDA to declare its personal property and real property as surplus and provide methodologies for the SDA to dispose of its surplus property in a manner that best serves the needs of the school construction program. The proposed new rules will have a positive social impact by establishing a procedure for the SDA to dispose of its surplus property, so that proceeds from the disposition of the property can be reinvested in the schools construction program, ultimately benefiting the school children and families of New Jersey.

### **Economic Impact**

The proposed new rules will permit the SDA to liquidate property that is no longer necessary for school facility construction or the operational needs of the SDA, with the proceeds of the disposition of surplus property to be returned to the school construction program for use in other school facility projects. Accordingly, the proposed new rules will ultimately provide a social and economic benefit to the children, families, and school personnel in SDA districts by increasing available funding for SDA projects. Further, the disposition of the SDA's surplus property in SDA districts, which are generally located in municipalities with New Jersey Opportunity Zones, will make such property available for use and development, providing an opportunity for long-term capital investment in these low-income communities and an economic benefit to the residents of these areas.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rules provide the procedures for the SDA to dispose of surplus property, and there are no Federal standards or requirements applicable to the SDA's disposition of surplus property.

### **Jobs Impact**

The proposed new rules will facilitate the transfer of SDA-owned property that will not be utilized for school construction from the SDA to parties that will likely develop the properties for commercial, residential, or other purposes. Accordingly, the transfers of property facilitated by the proposed new rules are very likely to create opportunities for new construction in SDA districts, which are generally located in municipalities with New Jersey Opportunity Zones. These development opportunities will potentially lead to an increase in jobs in the construction trades and construction-related fields in those municipalities. The number of jobs that would be created as the result of implementation of the proposed new rules is currently unknown.

### **Agriculture Industry Impact**

The proposed new rules will have no impact on the agriculture industry as the processes for disposition of surplus real and personal property of the SDA will not require the acquisition of real property.

### **Regulatory Flexibility Analysis**

The proposed new rules do not impose reporting or recordkeeping requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that a small business seeks to acquire the SDA's surplus property, pursuant to a sealed bid, internet auction, offer to purchase process, or other disposition methodology, small businesses will be subject to the same requirements and obligations as other bidders or potential offerors, in order to ensure fairness in the disposition process, which are discussed in the Summary above.

### **Housing Affordability Impact Analysis**

The proposed new rules permit the SDA to declare real or personal property as surplus to the SDA's needs for school facilities projects or other operational activities, and further provide various methodologies for disposition of such surplus property. Thus, the proposed new rules will not evoke a change in the average costs of housing in the State of New Jersey and have nothing to do with the affordability of housing.

### **Smart Growth Development Impact Analysis**

The proposed new rules provide procedures for the SDA to dispose of surplus real property that the SDA had previously acquired, but which is no longer needed for school facilities projects. The proposed new rules do not address residential housing, and do not govern the availability of affordable housing. The proposed new rules will facilitate the transfer of property from the SDA to parties that will likely develop the properties for commercial, residential, or other purposes. Accordingly, because SDA's surplus property would be located in SDA Districts, which generally are located in municipalities within New Jersey Opportunity Zones, Planning Areas 1 or 2, or

designated centers under the State Development and Redevelopment Plan, the transfers of property facilitated by the proposed new rules are very likely to create opportunities for new construction in those areas.

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

As the proposed new rules govern the process by which the SDA can dispose of surplus real and personal property, the proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

## CHAPTER 35

### DISPOSITION OF SURPLUS REAL AND PERSONAL PROPERTY OF THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 19:35-1.1 Applicability

This chapter applies to any real or personal property owned by the New Jersey Schools Development Authority (SDA) that may be considered for determination as surplus property. Upon determination that such property is surplus, this chapter governs the SDA's sale, lease, grant of easement, license, or other use or disposition of such surplus property. A proposed disposition of

surplus property in accordance with this chapter will not be authorized or enforceable if the disposition would result in the loss of the tax-exempt status, pursuant to the United States Internal Revenue Code of 1986, 26 U.S.C. §§ 1 et seq., and all Federal Department of the Treasury regulations, revenue procedures, and revenue rulings issued pursuant thereto, of the bonds issued by the New Jersey Economic Development Authority pursuant to section 25 of P.L. 2007, c. 137 (N.J.S.A. 18A:7G-14), the proceeds of which financed SDA's original acquisition of said property.

#### 19:35-1.2 Purpose and scope

The purpose of this chapter is to establish and prescribe uniform rules and procedures for the disposition of surplus real or personal property. Proceeds from the disposition of surplus real or personal property shall be used to fund school facilities projects, except that proceeds from the disposition of surplus real property acquired under circumstances described at N.J.S.A. 18A:7G-45 will be used to fund school facilities projects in the school district in which the disposed surplus real property is located. No surplus real or personal property disposition shall be made by the SDA, except in accordance with this chapter.

#### 19:35-1.3 Definitions

The following words and items, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended by P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., which mandates a program for establishing efficiency standards for educational facilities at the elementary, middle,

and secondary school levels and which further mandates that the State fund the cost to repair and renovate existing school facilities and to construct new school facilities determined to be necessary in order to meet the established school facilities efficiency standards in school districts determined to be SDA Districts under the program.

“Bidder” means a party submitting a bid for the purchase of surplus real or personal property in response to an advertised Notice of Solicitation for Sealed Bids.

“Bidding period” means the time set forth in the advertisement of a Notice of Solicitation for Sealed Bids for the disposition of surplus personal or real property during which a prospective bidder may submit a bid.

“Board” or “SDA Board” means the governing body of the SDA, consisting of the appointed members of the SDA, as set forth at N.J.S.A. 52:18A-237.

“Charitable purpose” means an effort designed to benefit, ameliorate, or uplift mankind mentally, morally, or physically, and includes the relief of the poor, the distressed, or the underprivileged, the advancement of education or science, the promotion of health, lessening neighborhood tensions, combating community deterioration, or any other purpose the achievement of which is beneficial to the community.

“Chief Executive Officer” or “CEO” means the executive director employed by the SDA Board as set forth at N.J.S.A. 52:18A-237.

“Compensation” means consideration that may take the form of money, exchanged property, contractual commitments, acts of forbearance, and/or such other conditions as are deemed by the SDA to be of value to the school construction program.

“Contract” means the entire and integrated agreement between a public or non-public party and the SDA, in such form as is required by the transaction for the disposition of the surplus real or personal property.

“Department” means the New Jersey Department of Education.

“Direct negotiated sale” means an arms-length transaction between the SDA and a person or entity with no connection to or affiliation with the SDA or any of its employees, for the sale and transfer of real property for fair market value, or personal property for estimated market value, without competitive bidding or advertisement, except that a direct negotiated sale may include the sale and transfer of real property that is advertised or marketed through a broker engaged by the SDA.

“Disposition” means the sale, lease, grant of easement, license, or other transfer of the SDA’s legal rights in and/or to any real or personal property.

“Estimated market value” means the value of personal property established by its book value or other valuation methodology appropriate to the type of personal property being valued.

“Fair market value” means that amount of compensation a disposition of SDA real property would command in a competitive market between a willing seller and buyer under the same terms and conditions of the transaction, as determined by one or more independent appraisals prepared by a professional licensed appraiser(s), and any additional SDA analyses or valuations that take into account relevant factors, such as existing environmental conditions or concerns.

“Firm” means any association, company, contractor, corporation, joint stock company, limited liability company, partnership, sole proprietorship, or other business entity, including its successors, assignees, lessees, receivers, or trustees.

“Lease” means a contract granting the right to use or occupy SDA-owned real property during a specified period in exchange for a specified consideration.

“Non-public party” means a private individual, corporation, or other legal entity that is not a public entity, and that is eligible to enter into an agreement or otherwise contract with the SDA in connection with its disposition of real or personal property.

“Notice of Solicitation of Offers to Purchase” means the document comprising the notice to the public of a potential disposition of surplus property through an offer to purchase process.

“Offer to purchase” means a written document that memorializes the terms and conditions that a party agrees to, notably the amount of compensation that such party is willing to pay, in order to acquire specific property. An offer to purchase may be submitted in response to a Notice of



Solicitation of Offers to Purchase or may be submitted by a willing offeror independent of any solicitation.

“Offer to purchase process” means a method of property disposition that advertises particular property as available for sale through the solicitation of competitive offers and any potential subsequent negotiation with one or more responding offerors during a negotiating period that remains open until a date specified in the advertisement.

“Offeror” means a party submitting either an offer to purchase in response to a Notice of Solicitation of Offers to Purchase or an unsolicited offer to purchase.

“Operating authority” means the SDA’s policy, approved by the Board, and found on the SDA’s website at [www.njsda.gov](http://www.njsda.gov), which designates individuals holding designated titles within the SDA as being authorized, either generally or in specific transactions, to approve contracts and/or to execute documents legally binding on the SDA, and/or to sign checks and disbursements on behalf of the SDA, at varying levels of authority based upon the value of such transactions.

“Personal property” means furnishings, equipment, computers, automobiles, movable machines and equipment, and any other tangible or intangible property owned by the SDA, with the exception of real property.

“Property” means real property and personal property, either individually, or in combination, as the context indicates.

“Public party” means the State, or any political subdivision of the State, or any agency or subsidiary thereof, or any entity charged with the exercise of governmental functions.

“Public purpose” means an endeavor that is related to a function of government and is consistent with the constraints of the bonds referenced at N.J.A.C. 19:35-1.1.

“Purchase agreement” means the entire and integrated agreement between a purchasing party and the SDA, in such form as is required by the transaction for the disposition of surplus real property.

“Real property” means any land in which title is held by the SDA, or in which the SDA has a legal interest, whether improved or unimproved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment.

“School construction program” means the program for the construction of school facilities projects and related activities mandated by the Act and undertaken by the SDA.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or capital maintenance of all, or any, part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and if applicable, temporary facilities procured or constructed to facilitate construction of a permanent school facility. A school

facilities project shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs, and administrative costs and expenses incurred in connection with the project.

“SDA” means the New Jersey Schools Development Authority, an entity formed pursuant to P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), as successor to the New Jersey Schools Construction Corporation. The SDA is statutorily charged with undertaking and funding school facilities projects for the school construction program, pursuant to the Act.

“Sealed bid process” means a method of property disposition that advertises particular property as available for sale pursuant to the solicitation of competitive sealed bids received by a specified bid due date and opened on a specified opening date.

“Surplus personal property” means personal property that, pursuant to N.J.A.C. 19:35-2.2, has been determined not to be necessary, on a temporary or permanent basis, for the undertaking or management of a school facilities project and not used or useful in the business operations of the SDA.

“Surplus real property” means real property that, pursuant to N.J.A.C. 19:35-2.3, has been determined not to be necessary, on a temporary or permanent basis, for the undertaking or

management of a school facilities project and not used or useful in the administrative operations of the SDA.

“Use and/or occupancy agreement” means an agreement between the SDA and a public or non-public party that provides for the short-term use and/or occupancy of all or any part of surplus real property, but that does not serve to transfer ownership from the SDA to such party.

## SUBCHAPTER 2. IDENTIFICATION OF SURPLUS PROPERTY

### 19:35-2.1 Determination of property as surplus property

Whenever, in accordance with N.J.A.C. 19:35-2.2 or 2.3, the SDA determines that any SDA-owned real or personal property is surplus property in accordance with this subchapter, any temporary use, sale, or other disposition of such real or personal property shall be performed consistent with this chapter and implemented in accordance with processes and procedures established by the SDA from time to time. The SDA can, without Board approval, permit temporary use of SDA property without a determination that the property is surplus.

### 19:35-2.2 Personal property as surplus property

(a) In the case of personal property, a determination that an item, or items, of personal property is surplus shall be based upon whether such person property is:

1. Necessary for the undertaking or management of a school facilities project; and/or
2. Used or useful in the administrative operations of the SDA.

### 19:35-2.3 Real property as surplus property

(a) In the case of real property, the determination that a tract or parcel of SDA-owned real property is surplus shall be based upon whether such real property:

1. Has been determined not to be necessary for the undertaking or management of a school facilities project; and

2. Is used or useful in the administrative operations of the SDA.

#### 19:35-2.4 Requirements for declaring property as surplus property

(a) All declarations that real or personal property is surplus property shall be based upon a written recommendation prepared by appropriate SDA staff, which shall set forth the factual information that supports a determination pursuant to N.J.A.C. 19:35-2.2 or 2.3, as applicable.

(b) All recommendations that real property be declared surplus shall be submitted to the Board for approval of the declaration.

(c) Recommendations that personal property be declared surplus shall be submitted to the Chief Executive Officer, or his or her designee, for approval of the declaration, when the estimated value of the personal property does not exceed \$500,000.

(d) Recommendations that personal property be declared surplus shall be submitted to the Board for approval of the declaration, when the estimated value of the personal property exceeds \$500,000.

### SUBCHAPTER 3. DISPOSITION OF SURPLUS PROPERTY; DISPOSITIONS EXEMPT FROM ADVERTISING REQUIREMENTS

#### 19:35-3.1 Manner and requirements of surplus property disposition

(a) Whenever, consistent with this chapter, it is determined that disposition of surplus personal or real property would be advantageous to the school construction program, the SDA may dispose of

such surplus real and/or personal property through a competitive sale to the public through public advertisement upon the terms and conditions established in this chapter, in any one of the following manners:

1. Through the solicitation of sealed bids;
2. Through the solicitation of offers for purchase; or
3. Through internet auction.

(b) The SDA may dispose of surplus real and/or personal property by direct negotiated sale without public advertisement, under the conditions permitting waiver of public advertisement as set forth at N.J.A.C. 19:35-3.2 and 3.3.

(c) All surplus real and/or personal property shall be disposed of in “as is, where is, with all faults” condition.

(d) The method used to dispose of surplus real and/or personal property shall be selected by the SDA to maximize the return realized by the disposition, in accordance with the best interests of the school construction program.

(e) If the declaration of the property as surplus was subject to Board approval, the method selected to dispose of the surplus property must also be approved by the Board.

#### 19:35-3.2 Waiver of public advertisement for sale of surplus personal property

(a) In disposing of surplus personal property, the SDA, in its sole discretion, may waive the advertising requirements at N.J.A.C. 19:35-3.1 and, more particularly, set forth at N.J.A.C. 19:35-4.1 and may dispose of surplus personal property for its estimated market value through a direct negotiated sale if a determination is made that any of the following circumstances exist:

1. The surplus personal property to be sold has an estimated market value less than the State bid advertising threshold then in effect pursuant to N.J.S.A. 52:34-7.b;

2. The proposed disposition of surplus personal property constitutes an unusual transaction that would not benefit from public advertising or public bidding, such as a disposition in response to an unsolicited offer to purchase, provided that the purchase price to be paid is not less than the estimated market value thereof as established by its book value or other appropriate valuation methodology and the SDA, in its determination, would not benefit from a subsequent advertising or public bidding;

3. The disposition of such surplus personal property is to a governmental entity for a valid public purpose and is for the estimated market value or the sale price approved by the SDA Board taking into consideration such estimated market value; or

4. The disposition is of a temporary classroom unit or units acquired by the SDA to provide temporary facilities pending the completion of a school facilities project, and the SDA has determined, based on a feasibility analysis, that disposition of the unit(s) is more advantageous to the SDA than the relocation and reuse thereof.

#### 19:35-3.3 Waiver of public advertisement for sale of surplus real property

(a) In connection with the disposition of surplus real property, the SDA, in its sole discretion, may waive the advertising requirement set forth at N.J.A.C. 19:35-3.1 and more particularly described at N.J.A.C. 19:35-4.1, and may dispose of surplus real property for fair market value through a direct negotiated sale as defined at N.J.A.C. 19:35-1.2, if a determination is made that any of the following circumstances exist:

1. The disposition is of surplus real property, or any interest therein, having a fair market value not in excess of \$100,000;
2. The subject surplus real property is unique and the disposition thereof requires an unusual contract or represents an unusual transaction that would not benefit from public advertising or public bidding;
3. The costs of environmental remediation activities or other activities required by governing authorities to effectively remediate the surplus real property, or activities required to render the surplus real property marketable are greater than or equal to the appraised value of the surplus real property;
4. The surplus real property to be sold is an undersized lot and is being offered to an adjacent owner for fair market value, provided that the adjacent landowner has no connection to, or affiliation with, the SDA or any of its employees;
5. The disposition of the surplus real property, or any interest therein, is to a public party or non-public party, for fair market value, provided that such surplus real property is used for an educational purpose;
6. The disposition of such surplus real property is to a public party for a valid public purpose that does not result in the loss of the tax exempt status of the bonds set forth at N.J.A.C. 19:35-1.1, and is for fair market value, or is for a sale price that is less than fair market value if approved by the SDA Board after taking into consideration additional analyses and valuations that affect fair market value; or
7. The disposition of such surplus real property is to a public or non-public party having no connection to, or affiliation with, the SDA or its employees, that has submitted an unsolicited offer to purchase, provided such offer is for not less than fair market value as evidenced by an



independent appraisal prepared by a professional licensed appraiser and the SDA has determined that it would not benefit from a subsequent advertising or public bidding.

#### SUBCHAPTER 4. DISPOSITION OF SURPLUS PERSONAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS

##### 19:35-4.1 Methods of disposition of surplus personal property

(a) Whenever, consistent with this chapter, it is determined that the disposition of items of personal property that have been determined to be surplus personal property in accordance with N.J.A.C. 19:35-2.2 is in the best interests of the school construction program and such surplus personal property does not qualify as exempt from the advertising requirements pursuant to N.J.A.C. 19:35-3.2, the SDA may sell such surplus personal property through a competitive sale to the public after public advertisement through one of the following methods:

1. The solicitation of sealed bids process described at N.J.A.C. 19:35-4.2 through 4.14; or
2. The internet auction process set forth at N.J.A.C. 19:35-4.15.

(b) Surplus personal property may also be disposed of under the direct negotiated sale process set forth at N.J.A.C. 19:35-4.16, if the conditions for such direct negotiated sale have been met.

(c) The disposition of surplus personal property shall be in accordance with the terms and conditions established in this chapter.

(d) If no bids are submitted in response to a Solicitation for Sealed Bids, pursuant to N.J.A.C. 19:35-4.2 through 4.14, or in response to an advertised internet auction pursuant to N.J.A.C. 19:35-4.15, or in the event the surplus personal property cannot be disposed of through direct negotiation

pursuant to N.J.A.C. 19:35-4.16, then the surplus personal property may be disposed of through the Department of the Treasury, Surplus Property Unit, or in the most economically feasible manner.

(e) Nothing in this chapter shall prohibit or prevent the SDA from using, or availing itself of, any disposition method as may be otherwise permitted by law or rule.

#### 19:35-4.2 Sealed bid process for surplus personal property: advertisement requirements

(a) The disposition of surplus personal property may be conducted through a sealed bid process initiated by issuance of a Notice of Solicitation of Sealed Bids.

1. Disposition by sealed bid process shall require publication of an advertisement of the issuance of a Notice of Solicitation of Sealed Bids in each of the following outlets:

i. On the SDA website;

ii. On the New Jersey State business portal;

iii. In the “Public/Legal Notice” section of a daily newspaper with Statewide circulation; and

iv. In the “Public/Legal Notice” section of a daily newspaper published or circulated in the county in which such personal property is located.

2. Advertisements on the SDA website and on the New Jersey State business portal shall be maintained through the date for submission of sealed bids. The required newspaper advertisements shall be published at least twice, one week apart.

(b) The advertisement for the Notice of Solicitation of Sealed Bids shall contain, at a minimum, the following information:

1. A description of the surplus personal property, including sufficient information to identify the property adequately. If more than one item of surplus personal property is included in a Notice of Solicitation of Sealed Bids, each item shall be separately identified;
2. The place(s) where the item(s) of surplus personal property is located;
3. A time frame during which the surplus personal property may be inspected, if applicable;
4. Notice of the physical and/or online address where bidders may obtain relevant forms and applicable terms and conditions of transfer;
5. Notice of the material terms of the sale. Notice shall be sufficient if set forth directly or contained in related sample documents, made available for review, or set forth on the SDA website;
6. A statement, if applicable, advising prospective bidders as to SDA's reservation of a right to seek best and final sealed bids from one or more bidders that timely submitted a responsive bid for the surplus personal property that is the subject of the solicitation;
7. A statement that the SDA may cancel the solicitation and/or reject any or all bids at any time before, or after, the opening of the bids;
8. A statement of the place and final date and time for submitting sealed bids, which shall not be less than 10 days after publication of the second advertisement;
9. A statement of the date, time, and place of the opening of the bids; and
10. A statement that the surplus personal property shall be sold in an "as is, where is, with all faults" condition.

19:35-4.3 Sealed bid process for surplus personal property: outreach in addition to advertisement

At any time prior to the end of the bidding period, the SDA may conduct other outreach efforts to identify potential bidders and may contact potential bidders directly for purposes of increasing the number of sealed bids received in response to an advertised Notice of Solicitation of Sealed Bids.

19:35-4.4 Sealed bid process for surplus personal property: amendments to a Notice of Solicitation of Sealed Bids

In the event that the amendment of any pertinent information supplied to prospective bidders in connection with a Notice of Solicitation of Sealed Bids becomes necessary, including a postponement of the time for receipt or the opening of bids, notice of the change(s) shall be advertised on the SDA website, at least seven days prior to the scheduled opening of the bids, unless an alternate procedure is established in the Notice of Solicitation of Sealed Bids.

19:35-4.5 Sealed bid process for surplus personal property: submission of bids

(a) Bids in response to a Notice of Solicitation of Sealed Bids shall be submitted during the time and at the place specified in the Notice of Solicitation of Sealed Bids, as the same may be amended.

(b) If more than one item of surplus personal property is included in the Notice of Solicitation of Sealed Bids, the requirements for submitting a bid for one, some, or all items shall be set forth in the Notice of Solicitation of Sealed Bids.

(c) The bidding period shall close at the time and date specified in the advertisement for the Notice of Solicitation of Sealed Bids. Any bids received after the bidding period has ended shall be rejected.

(d) Unless otherwise specified in the advertisement or the Notice of Solicitation of Sealed Bids, bids shall not be submitted by telephone, facsimile, or other electronic means.

19:35-4.6 Sealed bid process for surplus personal property: withdrawal of bids

(a) Bidders may withdraw bids, or withdraw and resubmit bids, at any time prior to the closing of the bidding period.

(b) Bids may be withdrawn only on written request received prior to the time and date for submission of bids and signed by the bidder or a duly authorized representative of the bidder upon presentation of appropriate identification.

19:35-4.7 Sealed bid process for surplus personal property: opening and validity of sealed bids

(a) An SDA representative shall publicly open and publicly read the bids on the date specified in the Notice of Solicitation of Sealed Bids.

(b) Unless the Notice of Solicitation of Sealed Bids states otherwise, amounts included in a sealed bid shall remain valid and binding for a period of 120 days.

19:35-4.8 Sealed bid process for surplus personal property: award to highest responsible bidder

Absent cancellation of the solicitation of sealed bids in accordance with N.J.A.C. 19:35-4.9, the award of a disposition of surplus personal property publicly bid shall go to the highest bidder meeting all of the terms and conditions set forth in the advertised Notice of Solicitation of Sealed Bids.

19:35-4.9 Sealed bid process for surplus personal property: cancellation

(a) In the event that no bids are received, or only one bid is received on item(s) of surplus personal property offered for disposition, or if the SDA determines that insufficient competition results from the advertised Notice of Solicitation of Sealed Bids and any outreach efforts, or for any other reason in the best interests of the school construction program, the SDA reserves the right to determine, on a case-by-case basis, whether:

1. The disposition should, nevertheless, be consummated; or
2. The disposition should be cancelled, with rejection of all bids.

(b) If the disposition is cancelled, the SDA reserves the right to determine, on a case-by-case basis, whether:

1. The surplus personal property should be re-offered for disposition; or
2. Otherwise disposed of in a manner that is consistent with this chapter.

19:35-4.10 Sealed bid process for surplus personal property: withdrawal of items

(a) With respect to a solicitation of sealed bids pertaining to more than one item of surplus personal property, when the SDA deems it to be in the best interests of the school construction program, at any time prior to the disposition thereof, one or more items of surplus personal property may be withdrawn from the solicitation of sealed bids.

(b) When one or more items of surplus personal property are withdrawn from a solicitation of sealed bids, the SDA shall determine whether such items of surplus personal property shall be re-offered for disposition or otherwise disposed of in a manner that is consistent with this subchapter.

(c) The withdrawal of any item or items of surplus personal property from a Notice of Solicitation of Sealed Bids pursuant to (a) above shall not affect the disposition of the remaining items of surplus personal property included within the Notice of Solicitation of Sealed Bids.

#### 19:35-4.11 Sealed bid process for surplus personal property: bid deposit

(a) Sealed bids submitted in response to a Notice of Solicitation of Sealed Bids shall be accompanied by a bid deposit, if required under the terms of the Notice of Solicitation of Sealed Bids.

(b) When a bid deposit is required, it shall be submitted in the form set forth in the Notice of Solicitation of Sealed Bids, or, if not specified therein, by certified check, bank or cashier's check, or executed money order payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure to comply with a bid deposit requirement shall result in rejection of the bid.

#### 19:35-4.12 Sealed bid process for surplus personal property: Notice of Award

(a) The successful bidder shall be given a "Notice of Award" advising of the SDA's acceptance of its bid with respect to the purchase of the surplus personal property.

(b) The Notice of Award shall be given in the manner and within the time for acceptance of the bid as may be specified in the terms and conditions detailed in the Notice of Solicitation of Sealed Bids.

(c) The Notice of Award shall be in writing and shall specify the time and manner for payment of the balance of the bid price and for taking possession of the surplus personal property.

(d) A written Notice of Award shall be deemed to result in a binding contract without any further action by either party.

(e) A copy of the Notice of Award addressed to the winning bidder shall be provided to all unsuccessful bidders.

19:35-4.13 Sealed bid process for surplus personal property: payment of balance of bid price

(a) Following the issuance of a Notice of Award, the successful bidder shall:

1. Pay the balance of the bid price in the manner, and within the time, as set forth in the Notice of Award; and
2. Take possession of the surplus personal property within the time, and in the manner, as set forth in the Notice of Award.

(b) If the manner of payment is not specified, payment shall be by certified check, bank check, cashier's check, or money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

19:35-4.14 Sealed bid process for surplus personal property: failure to pay balance of bid price

(a) Failure by the successful bidder to pay the balance of the bid price within the time set forth in the Notice of Award shall result in a forfeiture of the bid deposit to the SDA. Surplus personal property paid for, but not picked up or taken possession of in the manner and within the time specified in the Notice of Award, shall be considered abandoned, in which event:

1. The SDA shall retain all payments made;
2. The ownership of the property shall remain with the SDA; and



3. The SDA may then accept the bid of the next highest qualified bidder or again offer the surplus personal property for disposition.

19:35-4.15 Internet auction process for surplus personal property

(a) The disposition of surplus personal property may be conducted through an internet auction.

(b) Disposition by internet auction shall require the publication of an advertisement in the “Public/Legal Notice” section of a daily newspaper with Statewide circulation, which advertisement must contain:

1. A clear statement that the disposition will take place over the internet;
2. The internet address of the website where the auction can be found;
3. The date and time for the internet auction;
4. A description of the surplus personal property to be sold; and
5. A clear statement of all terms and conditions material to the disposition.

(c) The website identified in the advertisement shall set forth all requirements for bidding, the terms and conditions of the disposition, and the procedures for the transfer of the surplus personal property to be sold.

(d) Surplus personal property that is the subject of an internet auction shall be awarded to the highest bidder meeting the terms and conditions material to the disposition.

(e) In the event SDA determines, on a case-by-case basis, that there is insufficient participation in the internet auction with respect to any item or items of surplus personal property being offered for disposition, at any time prior to the disposition of such item or items, the SDA reserves the right to remove the same from the internet auction and terminate the disposition with respect thereto.

(f) The SDA shall determine whether any item or items of surplus personal property withdrawn from an internet auction pursuant to (e) above shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

(g) Where more than one item of surplus personal property is the subject of an internet auction, the withdrawal of any item or items from the disposition by internet auction shall not affect the disposition of the remaining items to be sold.

#### 19:35-4.16 Direct negotiated sale of surplus personal property

Surplus personal property that does not otherwise qualify as exempt from the advertising requirements at N.J.A.C. 19:35-3.2, and which does not result in a consummated disposition after being the subject of a Solicitation for Sealed Bids in accordance with N.J.A.C. 19:35-4.2 through 19:35-4.14, or an internet auction in accordance with N.J.A.C. 19:35-4.15, may be disposed of through a direct negotiated sale to a public or a non-public party, for the highest possible price, upon terms and conditions acceptable to the SDA.

#### 19:35-4.17 Transfer of ownership of surplus personal property

Transfer of ownership/title to SDA surplus personal property is effective upon delivery of the item(s) of surplus personal property to the purchaser and payment by the purchaser of the full amount of the purchase price to SDA.

## SUBCHAPTER 5. DISPOSITION OF SURPLUS REAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS

### 19:35-5.1 Methods of Disposition of Surplus Real Property

(a) Whenever, consistent with this chapter, it is determined that the disposition of tract(s) or parcel(s) of real property that has been determined to be surplus real property pursuant to N.J.A.C. 19:35-2.3, and that does not qualify as exempt from the advertising requirements pursuant to N.J.A.C. 19:35-3.3, would be advantageous to the school construction program, the Board shall set an approved minimum disposition price for such surplus property. The determination of an approved minimum disposition price may occur at the time of declaration of such real property as surplus pursuant to N.J.A.C. 19:35-2.3, or thereafter at the time the SDA initiates the disposition. The SDA may sell such surplus real property after public advertisement through one of the following methods:

1. Through the process of solicitation of offers to purchase as described at N.J.A.C. 19:35-5.2 through 5.18;
2. Through the process of solicitation of sealed bids as described at N.J.A.C. 19:35-5.19 through 5.31; or
3. Through the internet auction process as described at N.J.A.C. 19:35-5.32.

(b) Surplus real property may also be disposed of through the disposition by the direct negotiated sale process described at N.J.A.C. 19:35-5.33, if the conditions for such direct negotiated sale have been met.

(c) The disposition of surplus real property shall be in accordance with the terms and conditions established in this subchapter.

(d) Nothing in this chapter shall prohibit or prevent the SDA from using or availing itself of any method to dispose of surplus real property as may be otherwise permitted by law or rule.

#### 19:35-5.2 Offer to purchase process for surplus real property: advertisement requirements

(a) The disposition of surplus real property through the solicitation of offers to purchase shall be conducted by placing an advertisement of a Notice of Solicitation of Offers to Purchase for the sale of surplus real property in or on the following:

1. The SDA website;
2. The New Jersey State business portal;
3. The Public/Legal Notice section of a daily newspaper with Statewide circulation; and
4. The Public/Legal Notice section of a daily newspaper published or circulated in the county in

which the surplus real property is located.

(b) Advertisements on the SDA website and on the State business portal shall be maintained until the period for submission of offers to purchase has ended. Required newspaper advertisements shall be published at least twice, one week apart.

(c) The advertisement for a Notice of Solicitation of Offers to Purchase shall, at a minimum, contain the following information:

1. A description of the surplus real property, including the county and municipality in which the same is located, the street address, the municipal tax block and lot numbers assigned, a metes and bounds description (if available), and a general description of any improvements constructed thereon;

2. Where more than one tract or parcel of surplus real property is included in a Notice of Solicitation of Offers to Purchase, each tract or parcel shall be separately identified and, for

purposes of this chapter, such Notice of Solicitation of Offers to Purchase shall apply separately for each tract or parcel;

3. A date or time frame in which the surplus real property may be inspected;

4. Notice of the physical and/or online address where an offeror may obtain relevant forms and applicable terms and conditions of the sale;

5. Notice of the material terms of the sale. Such notice shall identify those material terms of the sale that are to be proposed by offerors and shall also identify the material terms of sale that are not subject to offer or negotiation. Notice shall be sufficient, if set forth directly or contained in related sample documents, made available for review or set forth on the SDA website;

6. A statement that the SDA may cancel the solicitation and/or reject any or all offers to purchase;

7. A statement of the place and final date for submitting offers to purchase, which shall not be less than 30 days after publication of the second advertisement;

8. A statement that the surplus real property shall be conveyed in “as is/where is, with all faults” condition and that a prospective offeror shall be responsible for conducting its own due diligence in connection with the submission of an offer to purchase;

9. A statement, if applicable, advising prospective offerors as to the SDA’s reservation of a right to seek “best and final” offers from one or more offerors who timely submitted a responsive offer for the surplus real property that is the subject of the solicitation; and

10. A notice that the SDA reserves the right to negotiate with one, all, or fewer than all, of the offerors that have submitted offers to purchase advantageous to the SDA.

19:35-5.3 Offer to purchase process for surplus real property: outreach in addition to advertisement

At any time prior to the end of the period for submission of an offer to purchase, the SDA may conduct other outreach efforts to identify potential offerors and may contact potential offerors directly for purposes of increasing the number of offers received in response to an advertised Notice of Solicitation of Offers to Purchase.

19:35-5.4 Offer to purchase process for surplus real property: amendment of solicitation of offers to purchase

In the event that an amendment becomes necessary, with respect to any pertinent information supplied to prospective offerors in connection with a solicitation of offers to purchase, including a postponement of the time for submitting an offer to purchase, notice of the change(s) shall be advertised on the SDA website, at least seven days prior to the scheduled date for receipt of offers, unless an alternate procedure is established in the Notice of Solicitation of Offers to Purchase.

19:35-5.5 Offer to purchase process for surplus real property: submission of offers to purchase; untimely submissions

(a) Any offers to purchase in response to a Notice of Solicitation of Offers to Purchase shall be submitted during the time, and at the place, specified in the Notice of Solicitation of Offers to Purchase, as the same may be amended.

(b) If more than one tract or parcel of surplus real property is included in the Notice of Solicitation of Offers to Purchase, the requirements for submitting an offer to purchase for one, some, or all parcels shall be set forth in the Notice of Solicitation.

(c) Unless otherwise specified in the advertisement or the Notice of Solicitation of Offers to Purchase, an offer to purchase shall not be submitted by telephone, facsimile, or other electronic means.

(d) An offer to purchase received after the close of the period for submitting an offer as specified in the Notice of Solicitation of Offers to Purchase shall be rejected, except in extraordinary circumstances, such as weather emergencies that prevent travel and/or result in the closure of State offices.

#### 19:35-5.6 Offer to purchase process for surplus real property: required deposit

(a) Offers to purchase shall be accompanied by a deposit in the amount determined by the SDA in its sole discretion and set forth in the Notice of Solicitation of Offers to Purchase.

(b) The deposit shall be submitted in the form set forth in the Notice of Solicitation of Offers to Purchase, or, if not specified therein, by certified check, bank or cashier's check, or executed money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure to comply with the deposit requirement shall result in the rejection of the offer as unresponsive.

19:35-5.7 Offer to purchase process for surplus real property: withdrawal of offers to purchase

(a) An offeror may withdraw a submitted offer to purchase, or withdraw and resubmit an offer to purchase, at any time during the period that an offer to purchase may be submitted.

(b) Offers may be withdrawn only upon a written request, received prior to the expiration of the period within which offers are accepted; provided such request is signed by the offeror, or a duly authorized representative of the offeror upon presentation of appropriate identification.

19:35-5.8 Offer to purchase process for surplus real property: review and verification of offers to purchase

(a) Following the close of the offer period, the SDA shall review each submitted offer to purchase received in response to a solicitation of offers to purchase in accordance with the best interests of the school construction program, price, and other factors, as described at N.J.A.C. 19:35-5.9(b).

(b) The SDA, in its sole discretion, may seek additional information to supplement an offer to purchase, for purposes of verifying the accuracy and responsiveness of the offer to purchase, and to determine whether the offeror and/or the proposed offer is bona fide.

1. The SDA may request such additional information directly from the offeror, obtain the same from the public records, or obtain the same from others familiar with the offeror.

2. Such additional information may clarify, but not modify, an offer to purchase.

3. Such additional investigation may include, but shall not be limited to, contacting the offeror's surety companies, financial institutions, and review of business or personal financial records, reports, or statements.



19:35-5.9 Offer to purchase process for surplus real property: evaluation of offers to purchase

(a) The SDA shall evaluate each offer to purchase received in accordance with this subchapter and shall identify the offer(s) determined to be responsive to all material elements set forth in the advertised Notice of Solicitation of Offers to Purchase. The SDA shall select the winning offer based on an evaluation of price and other factors.

(b) Other factors that may be considered in connection with an evaluation pursuant to this section may include, but are not limited to:

1. The proposed consideration, inclusive of both monetary and non-monetary components, if applicable, for identified surplus real property. If the proposed consideration varies from the fair market value of the surplus real property established by an independent, professional licensed appraiser, the SDA may, but shall not be obligated to, evaluate the proposed consideration taking into account supported adjustments made for any valuation considerations identified by the SDA, including environmental concerns, that are not captured in the appraisal valuation;

2. The purchase terms, including any required due diligence period and payment for such period;

3. The material terms of the purchase proposed by the offeror with respect to terms and conditions that are subject to negotiation;

4. The proofs made available that demonstrate the offeror's financial capacity to meet the proposed terms of purchase; and

5. Any other factors identified by the SDA in a specific Notice of Solicitation of Offers to Purchase.

(c) If more than one tract or parcel of surplus real property is included in the Notice of Solicitation of Offers to Purchase, the SDA may require separate offers for each individual tract or parcel, may

evaluate the offers received for each tract or parcel separately, and may accept a separate offer to purchase for each tract or parcel separately.

19:35-5.10 Offer to purchase process for surplus real property: negotiation with offeror(s)

(a) The SDA staff may negotiate terms of the disposition of surplus real property with one or more offerors that have submitted advantageous offers that are in the best interest of the school construction program, price and other factors considered, in accordance with the evaluation criteria set forth at N.J.A.C. 19:35-5.9(b).

(b) The SDA staff shall have the right to engage in exclusive negotiations with one offeror, or to negotiate with all offerors, or to negotiate with some, but not all, offerors responding to the solicitation for offers to purchase. The SDA's selection of one or more firms to engage in negotiations shall be based on an evaluation of the offers submitted, price and other factors considered.

(c) Negotiating with one offeror will not preclude the SDA from negotiating with other offerors, unless the SDA has entered into an exclusive negotiating period with an offeror in accordance with N.J.A.C. 19:35-5.11.

19:35-5.11 Offer to purchase process for surplus real property: exclusive negotiating period within the offer to purchase process

(a) Upon the request of an offeror, the SDA staff may, in its sole discretion, agree not to negotiate with any other offeror with respect to the surplus real property that is the subject of the solicitation of offers to purchase, and enter into an exclusive negotiation agreement.

(b) Under an exclusive negotiation agreement, the SDA and such offeror each agree to negotiate the terms of the disposition of the surplus real property exclusively with the other.

(c) The right of the SDA to enter into an exclusive negotiation agreement is subject to the following conditions:

1. The time for submitting offers to purchase has expired;
2. Notice of such election to enter into an exclusive negotiation period with an offeror must be given to all parties submitting an offer;
3. The SDA has made a determination that there is a reasonable likelihood that the exclusive negotiating period will lead to an offer to purchase that will be acceptable to the SDA and in the best interests of the school construction program;
4. Subject to extensions as indicated at (d) below, a duration is set for the exclusive negotiating period that shall not exceed 30 days;
5. The offeror shall make an additional deposit of 10 percent of the purchase price; and
6. The offeror agrees in writing to negotiate exclusively with the SDA during the exclusive negotiating period and to terminate negotiations and discussions with other parties that seek to sell or lease competing property.

(d) The SDA may extend an exclusive negotiating period for one additional period of up to 30 days upon such terms and conditions as it determines to be in the best interest of the school construction program, price, and other factors considered.

(e) Upon the conclusion of negotiations under an exclusive negotiation agreement, SDA staff shall submit a recommendation to the Board, as to whether or not to accept the resultant negotiated offer to purchase. Such recommendation shall detail the basis upon which the recommendation was determined to be in the best interest of the SDA and the school construction program and shall

identify the material terms of the competing offers that will be rejected by the issuance of a Notice of Award.

19:35-5.12 Offer to purchase process for surplus real property: review, recommendation, and acceptance by the SDA of an offer to purchase

Absent an acceptance of an offer under an exclusive negotiation agreement pursuant to N.J.A.C. 19:35-5.2(j), the SDA shall evaluate the offers received in response to a solicitation of offers to purchase in accordance with the best interests of the school construction program, price, and other factors (in accordance with N.J.A.C. 19:35-5.9) considered.

19:35-5.13 Offer to purchase process for surplus real property: withdrawal of tracts or parcels

(a) If the SDA deems it to be in the best interests of the school construction program, one or more tracts or parcels of surplus real property may be withdrawn from the solicitation of offers to purchase.

(b) When one or more tracts or parcels of surplus real property are withdrawn from a solicitation of offers to purchase, the SDA shall determine whether to re-offer or otherwise dispose of the property in a manner that is consistent with this chapter.

19:35-5.14 Offer to purchase process for surplus real property: cancellation of solicitation and disposition; withdrawal of tracts or parcels

(a) The SDA may, on a case-by-case basis, cancel a solicitation and reject all offers received upon the occurrence of any of the following grounds for cancellation:

1. No offers to purchase are received or only one offer to purchase is received in response to a Notice of Solicitation of Offers to Purchase;

2. The offer prices submitted are unfavorable in the current market;

3. The SDA determines that insufficient competition results from the advertisement and any outreach efforts; or

4. For any other reason in the best interests of the school construction program.

(b) In the event of the occurrence of such grounds for cancellation, the SDA reserves the right to determine, on a case-by-case basis, whether the disposition:

1. Shall nevertheless be consummated; or

2. Should be terminated, with rejection of all offers submitted.

(c) If the disposition is terminated, the SDA reserves the right to determine, on a case-by-case basis, whether:

1. The surplus real property should be re-offered for disposition; or

2. Otherwise disposed of in a manner that is consistent with this chapter.

19:35-5.15 Offer to purchase process for surplus real property: Notice of Award and purchase agreement

(a) The successful offeror shall be given a Notice of Award advising of the SDA's acceptance of its offer and award of a purchase agreement with respect to the purchase of the surplus real property.

(b) A Notice of Award shall be given in the manner, and within any time for acceptance of the offer, as may be specified in and in accordance with the terms and conditions detailed in the solicitation of offers to purchase.

(c) The Notice of Award shall be delivered together with the purchase agreement form, setting forth the negotiated agreement between the parties, for execution by the offeror.

(d) In the event that a signed purchase agreement was delivered together with the submitted offer, and the SDA does not object to any of the terms of the signed purchase agreement, the Notice of Award shall be delivered together with a fully executed counterpart of the purchase agreement.

(e) A copy of the Notice of Award shall be simultaneously provided to all unsuccessful offerors.

19:35-5.16 Offer to purchase process for surplus real property: application of deposits

(a) Any deposits furnished by the successful offeror shall be retained and applied toward the purchase price at closing of title.

(b) All deposits of unsuccessful offerors shall be returned promptly.

19:35-5.17 Offer to purchase process for surplus real property: transfer of title and balance of purchase price

(a) Title to the surplus real property shall be transferred at the time and place, and in the manner, set forth in the executed purchase agreement for closing of title.

(b) At the closing of title, the successful offeror shall pay the balance of the purchase price. Such payment shall be made in the manner specified in the purchase agreement or, if not specified therein, by certified check, bank or cashier's check, executed money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure of the successful offeror to pay the balance of the proposed consideration or to take title to the surplus real property, or the failure to abide by any other material term or condition of the

purchase agreement shall entitle the SDA to cancel the sale and retain all money on deposit in addition to the right to exercise any other remedy available to the SDA under the purchase agreement.

#### 19:35-5.18 Offer to purchase process for surplus real property: cancellation of purchase agreement

Upon any cancellation of the purchase agreement, with the approval of the SDA Chief Executive Officer, or his or her designee, the SDA may, in its discretion, accept the offer of the next highest qualified offeror, or re-advertise the surplus real property for disposition in accordance with any of the methods set forth at N.J.A.C. 19:35-5.1.

#### 19:35-5.19 Sealed bid process for surplus real property: advertisement

(a) The disposition of surplus real property may be conducted through a sealed bid process initiated by issuance of a Notice of Solicitation of Sealed Bids.

(b) The disposition of surplus real property through a solicitation of sealed bids shall be conducted by placing an advertisement of a Notice of Solicitation of Sealed Bids in the following outlets:

1. On the SDA website;
2. On the New Jersey State business portal;
3. In the Public/Legal Notice section of a daily newspaper with Statewide circulation; and
4. In the Public/Legal Notice section of a daily newspaper published or circulated in the county

in which the surplus real property is located.

(c) Advertisements on the SDA website and on the New Jersey State business portal shall be maintained through the date for submission of sealed bids.

(d) Required newspaper advertisements shall be published at least twice, one week apart.

(e) The advertisement for the solicitation of sealed bids shall contain the following information:

1. A description of the surplus real property, including its location (listing street address, if any, municipality and county, or any other descriptors sufficient to define the location of the surplus real property), a description of any improvements thereon, a metes and bounds description, if available, and the municipal tax block and lot designations of the parcels comprising the surplus real property being disposed of;

2. The time frame during which the surplus real property may be inspected;

3. Notice of the physical and/or online address where bidders may obtain relevant forms and applicable terms and conditions of transfer;

4. Notice of the material terms of the sale. Notice shall be sufficient if set forth directly in the advertisement, or on the SDA website, or contained in identified documents made available for review on the SDA website;

5. A statement, if applicable, advising prospective bidders as to the SDA's reservation of a right to seek best and final sealed bids from one or more bidders that timely submitted a responsive bid for the surplus real property that is the subject of the solicitation;

6. A statement that the SDA may cancel the solicitation and/or reject any or all bids at any time before or after the opening of the bids;

7. A statement of the place and final date and time for submitting sealed bids, which shall not be less than 10 days after publication of the second advertisement;

8. A statement of the date, time, and place of the opening of the bids; and

9. A statement that the surplus real property shall be conveyed in "as is/where is, with all faults" condition and that a prospective bidder shall be responsible for conducting its own due diligence in connection with the submission of a bid.



19:35-5.20 Sealed bid process for surplus real property: outreach in addition to advertisement

At any time prior to the end of the bidding period, the SDA may conduct other outreach efforts to identify potential bidders and may contact potential bidders directly for purposes of increasing the number of sealed bids received in response to an advertised Notice of Solicitation of Sealed Bids.

19:35-5.21 Sealed bids process for surplus real property: amendments to a Notice of Solicitation of Sealed Bids

In the event that the amendment of any pertinent information supplied to prospective bidders in connection with a solicitation of sealed bids becomes necessary, including a postponement of the time for receipt or the opening of bids, notice of the change(s) shall be advertised on the SDA website at least seven days prior to the scheduled opening of the bids, unless an alternative procedure is established in the solicitation of sealed bids.

19:35-5.22 Sealed bids process for surplus real property: submission of bids; close of bidding and untimely bids

(a) Bids in response to a Notice of Solicitation of Sealed Bids, as the same may be amended, shall be submitted during the time and at the place specified in the Notice of Solicitation of Sealed Bids.

(b) If more than item of surplus real property is included in the Notice of Solicitation of Sealed Bids, the requirements for submitting a bid for one, some, or all items shall be set forth in the Notice of Solicitation of Sealed Bids.

(c) The bidding period shall close at the time and date specified in the advertisement for the Notice of Solicitation of Sealed Bids, as the same may be amended. Any bids received after the bidding period has ended shall be rejected.

(d) Unless otherwise specified in the advertisement or the Notice of Solicitation of Sealed Bids, bids shall not be submitted by telephone, facsimile, or other electronic means.

#### 19:35-5.23 Sealed bid process for surplus real property: withdrawal of bids

Bidders may withdraw bids, or withdraw and resubmit bids, at any time prior to the closing of the bidding period. Bids may be withdrawn only upon a written request, received prior to the time and date for submission of bids, provided such request is signed by the bidder, or a duly authorized representative of the bidder, upon presentation of appropriate identification.

#### 19:35-5.24 Sealed bid process for surplus real property: opening of sealed bids

An SDA representative shall publicly open and publicly read the bids on the date specified in the Notice of Solicitation of Sealed Bids, as the same may be amended.

#### 19:35-5.25 Sealed bid process for surplus real property: validity of sealed bids

Unless the Notice of Solicitation of Sealed Bids states otherwise, amounts included in a sealed bid shall remain valid and binding for a period of 120 days.

#### 19:35-5.26 Sealed bid process for surplus real property: award to highest responsible bidder

Absent a cancellation of a solicitation of sealed bids, or a rejection of all bids in accordance with N.J.A.C. 19:35-5.27, the award of a disposition of surplus real property shall go to the highest

bidder meeting all of the terms and conditions set forth in the advertised Notice of Solicitation of Sealed Bids.

19:35-5.27 Sealed bid process for surplus real property: cancellation of solicitation and disposition; rejection of bids

(a) In the event that no bids or only one bid is received in response to a solicitation of sealed bids with respect to surplus real property offered for disposition, or if the SDA determines that insufficient competition results from the advertised Notice of Solicitation of Sealed Bids and any outreach efforts, or for any other reason in the best interests of the school construction program, the SDA reserves the right to determine, on a case-by-case basis, whether the disposition should:

1. Nevertheless be consummated; or
2. Be terminated, with rejection of all bids submitted.

(b) If the disposition of property under this chapter is terminated, the SDA reserves the right to determine, on a case-by-case basis, whether the surplus real property should be:

1. Re-offered for disposition; or
2. Otherwise disposed of in a manner that is consistent with this chapter.

19:35-5.28 Sealed bids process for surplus real property: withdrawal of items from solicitation and disposition

(a) With respect to a solicitation of sealed bids pertaining to more than one tract or parcel of surplus real property, when the SDA deems it to be in the best interests of the school construction program, at any time prior to the conveyance thereof, one or more tracts or parcels of surplus real property may be withdrawn from the solicitation of sealed bids.

(b) When one or more tracts or parcels of surplus real property are withdrawn from a solicitation of sealed bids, the SDA shall determine whether such parcels or tracts of surplus real property shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

(c) The withdrawal of a parcel or tract of surplus real property from a Notice of Solicitation of Sealed Bids pursuant to (a) above shall not affect the disposition of the remaining parcels or tracts of surplus real property included within the Notice of Solicitation of Sealed Bids.

#### 19:35-5.29 Sealed bid process for surplus real property: bid deposit

(a) Sealed bids submitted in response to a Notice of Solicitation of Sealed Bids shall be accompanied by a bid deposit if required under the terms of the Notice of Solicitation of Sealed Bids.

(b) When required, a bid deposit pursuant to this section shall be submitted in the form set forth in the Notice of Solicitation of Sealed Bids, or, if not specified therein, by certified check, bank or cashier's check, or executed money order payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure to comply with bid deposit requirements shall result in rejection of the bid.

#### 19:35-5.30 Sealed bid process for surplus real property: Notice of Award

(a) No later than the time for acceptance of a sealed bid as may be specified in the Notice of Solicitation of Sealed Bids, the successful bidder shall be issued a Notice of Award.

(b) The Notice of Award shall be in writing and shall be delivered together with a purchase agreement to be signed and returned to the SDA in accordance with the terms of the Notice of

Award or, in the event a signed purchase agreement was submitted with the required bid submission documents, a fully executed purchase agreement will be delivered with the Notice of Award.

19:35-5.31 Sealed bid process for surplus real property: payment of balance of bid price

(a) Following the issuance of a Notice of Award and delivery of a fully executed purchase agreement, the successful bidder shall pay the balance of the bid price at closing of title in accordance with the terms and conditions set forth in the purchase agreement.

(b) If the manner of payment is not specified in the purchase agreement, payment shall be by certified check, bank check, cashier's check, or executed money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure by the successful bidder to pay the balance of the bid price, return an executed purchase agreement, close title in accordance with the terms and conditions contained in the purchase agreement, or to otherwise fail to comply with requirements contained in the Notice of Award shall result in a forfeiture of the bid deposit to the SDA.

(d) In the event of a failure to close title, with the approval of the SDA Chief Executive Officer, or his or her designee, the SDA may, in its discretion, accept the bid of the next highest qualified bidder or again offer the surplus real property for disposition.

19:35-5.32 Disposition of surplus real property by internet auction

(a) The disposition of surplus real property may be conducted through an internet auction.

(b) Disposition by internet auction shall require the publication of an advertisement in the Public/Legal Notice section of a daily newspaper with Statewide circulation, and in a daily newspaper published or circulated in the county in which the property is located.

(c) Required newspaper advertisements shall be published at least twice, one week apart.

(d) The advertisement, at a minimum, must contain:

1. A clear statement that the disposition will take place over the internet;
2. The internet address of the website where the auction can be found;
3. The date and time for the internet auction;
4. A description of the surplus real property, including the county and municipality in which the same is located, the street address, the municipal tax block and lot numbers assigned, a metes and bounds description, if available, and a general description of any improvements constructed thereon; and
5. A clear statement of all terms and conditions material to the disposition.

(e) The website at the internet address provided in the advertisement shall set forth all requirements for bidding, the terms and conditions of the disposition, and the procedures for the transfer of the surplus real property to be sold.

(f) Where more than one tract or parcel of surplus real property is the subject of an internet auction, the SDA may require separate bids for each individual tract or parcel, may evaluate the bids received for each tract or parcel separately, and may accept a separate bid for each tract or parcel.

(g) Surplus real property that is the subject of an internet auction shall be awarded to the highest bidder meeting the terms and conditions material to the disposition.

(h) In the event that the SDA determines that there is insufficient participation with respect to all, or any, tract or parcel of surplus real property that is the subject of disposition by internet auction

pursuant to this subchapter, the SDA reserves the right to remove such tract or parcel from the auction and terminate the disposition with respect thereto.

1. The SDA shall determine whether any item or items of surplus real property so withdrawn from the internet auction shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

2. Where more than one item of surplus real property is the subject of an internet auction, the withdrawal of any item or items from the disposition by internet auction shall not affect the disposition of the remaining tract(s) or parcel(s) to be sold.

#### 19:35-5.33 Disposition of surplus real property through direct negotiated sale

(a) Surplus real property that does not otherwise qualify as exempt from the advertising requirements pursuant to N.J.A.C. 19:35-5.2 may be disposed of for its fair market value through a direct negotiated sale, if the advertisement of the property for offer, bid, or auction did not elicit any viable offers or bids after being the subject of any of the following:

1. A solicitation of offers to purchase pursuant to N.J.A.C. 19:35-5.2;
2. A solicitation of sealed bids pursuant to N.J.A.C. 19:35-5.19; or
3. A disposition through internet auction pursuant to N.J.A.C. 19:35-5.32.

#### 19:35-5.34 Disposition for less than fair market value

(a) If the SDA shall fail to reach agreement with respect to the disposition of surplus real property, despite advertising a disposition through:

1. A solicitation of offers to purchase pursuant to N.J.A.C. 19:35-5.2;
2. A solicitation of sealed bids pursuant to N.J.A.C. 19:35-5.19;

3. A disposition through internet auction pursuant to N.J.A.C. 19:35-5.32; or
4. A direct negotiated sale for fair market value pursuant to N.J.A.C. 19:35-5.33, then SDA may dispose of the surplus property in any lawful manner for less than the originally estimated fair market value, provided that any proposed consideration below the originally estimated fair market value must be approved by the SDA Board based on the written analysis and recommendation of appropriate SDA staff.

#### 19:35-5.35 Effective date of disposition

Unless expressly otherwise provided, in every instance, transfer of title to surplus real property is effective following the delivery of the full amount of the proposed consideration to the SDA and the delivery of a deed from the SDA to the purchaser.

### SUBCHAPTER 6. TEMPORARY USE AND/OR OCCUPANCY OF SDA-OWNED REAL PROPERTY

#### 19:35-6.1 Temporary use and/or occupancy of SDA-owned real property

(a) The SDA may, in its sole and absolute discretion, authorize the temporary use and/or occupancy of all or any part of SDA-owned real property, whether or not the same is deemed to be surplus real property, for the period of time during which such real property will not be needed for a school facilities project, or is not used, or otherwise useful, in the business operations of the SDA.

(b) Authorization pursuant to this section shall be memorialized in a written agreement including, but not limited to, a lease, license, and/or use and occupancy agreement, executed by the SDA's Chief Executive Officer, or his or her designee, that incorporates the terms and conditions of the



proposed use as determined by the SDA, and that, in every instance, shall contain the following general conditions:

1. The duration shall not extend beyond the point in time when the real property will become necessary for the implementation of a school facilities project(s) or otherwise necessary for the SDA's execution of its responsibilities under the Act;

2. The duration shall not exceed a total term of three years, inclusive of the initial term and any optional extension(s), unless approved by the SDA Board. Any extension or renewal of a temporary lease, license, or use and occupancy agreement originally authorized by the SDA's Chief Executive Officer must be approved by the SDA Board if the resulting renewal or extension will result in a total term exceeding three years;

3. Any agreement for a duration of more than 30 days, with the exception of a post-closing lease or use and occupancy agreement to a seller or a seller's tenants in connection with an acquisition of real property by the SDA, shall specify that the SDA has the unilateral and absolute right to terminate the agreement for any reason upon such notice, as the SDA deems appropriate.

4. The user(s) shall not alter the real property in any manner that, in the sole judgment of the SDA, might negatively impact the amount of proceeds realized by the SDA in any subsequent disposition of the real property and/or result in additional costs to the SDA (including, without limitation, additional demolition costs and/or trash disposal costs) with respect to the property's fitness or suitability for subsequent use of the real property for school facilities purposes;

5. The use or user shall not impact environmental conditions at the property;

6. The user must accept the real property in "as is, where is, with all faults" condition. No alterations or improvements of any kind are permitted, unless upon the prior written consent of the SDA in each instance; and

7. Holdover charges, in an amount to be determined by the SDA, shall be due and payable in the event the user fails to surrender the real property on the date that the right of such temporary use of the property expires.

(c) If the use agreement is with a non-public and/or private party, and is for a use that is not a public purpose or a charitable purpose, in addition to the general condition requirements of (a) above, the agreement shall, at a minimum:

1. Require that the proposed use or occupancy of an SDA-owned property must be cleared and approved by the SDA's bond counsel, engaged to provide legal advice to the SDA regarding the bonds authorized pursuant to Section 25 of P.L. 2007, c. 137 (N.J.S.A. 18A:7G-14) to fund the activities of the SDA, and the tax treatment of the interest on such bonds, to ensure that the proposed use or occupancy will not have an adverse effect upon the tax-exempt status of the bonds, as set forth at N.J.A.C. 19:35-1.1, with the exception of a post-closing lease or use and occupancy agreement to a seller or a seller's tenants in connection with an acquisition of real property by the SDA, which shall not require prior bond counsel approval if the lease or use and occupancy term is for less than six months;

2. Require payment of consideration in an amount that is not less than the fair market rental value of such use, as determined by the SDA pursuant to an independent appraisal or in-house valuation based upon relevant information, as appropriate;

3. Prohibit the user from assigning its rights to such use or subletting, or otherwise allowing another person or entity to use and/or occupy the subject real property without the express written consent of the SDA;

4. Require any such user to pay all costs associated with its use and/or occupancy of the real property, including, but not limited to, the costs of operating and maintaining the real property,

payment of any taxes (real estate and otherwise) relating to the real property, the cost of providing security services to such real property, and all amounts payable with respect to utilities and services furnished to such real property;

5. Require such user to provide insurance coverage during the term of its use of the real property of a minimum of one million dollars in liability insurance, with the required amount determined by the SDA based upon the intended use and/or occupancy of the property, unless the user is a non-profit or public entity that can demonstrate non-insurance resources sufficient to finance the indemnity obligations at (c)6 below; and property insurance for improved property in an amount equivalent to the replacement value of the improved property;

6. Require such user to indemnify, defend, and hold the SDA harmless against any bodily injury, losses, and/or damages that result, either directly or indirectly, from such use and/or occupancy; and

7. Require such user to maintain a security deposit with SDA in amounts determined based on the value of the property; the nature and duration of the intended use and risk of damage to the property as a result of such use; the cost of property maintenance for the property; or a combination of these factors.

(d) If the use agreement pursuant to this section is with a public party, or a non-public, non-profit party, and the proposed use will serve either a valid charitable purpose or public purpose and will not result in the generation of income or profit, the agreement is not required to include consideration at fair market value, but, in addition to the general condition requirements set forth at (b) above, the agreement shall, at a minimum:

1. Identify the proposed use and define the charitable purpose or public purpose or governmental function or program, that is supported by the proposed use;

2. Require documentary proof that the proposed use has been approved through official action (for example, corporate resolution, board action or minutes, memorandum of agreement, or other documented official action) of the public party or nonprofit entity;

3. Provide for consideration that recognizes the value of the public benefit of the proposed use as a component of the consideration;

4. Require the public party or non-public, non-profit party seeking to use the property for a charitable purpose or public purpose to pay all costs associated with its use and/or occupancy thereof, including, but not limited to, operation, security, taxes, utilities, and maintenance, which must include landscaping and snow removal;

5. Prohibit the user from assigning its rights to such use or subletting or otherwise allowing another person or entity to use and/or occupy the subject real property without the express written consent of the SDA;

6. Require the user to provide insurance coverages during the term of its use of the real property in amounts to be determined by the SDA; and

7. Require the user to indemnify, defend, and hold the SDA harmless against any personal injury, losses, and/or damages that result, either directly or indirectly, from such use and/or occupancy.

(e) The SDA shall prepare a semi-annual informational report, to be submitted to the SDA Board, listing all current temporary use and occupancy authorizations, whether memorialized in leases, licenses, or use and occupancy agreements, and indicating any extensions or renewals thereof.

## ***Resolution—6a.***

Adoption of New Rules for Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority, N.J.A.C. 19:35

### **Resolution**

**WHEREAS**, P.L. 2007, 137 (N.J.S.A. 52:18A-238(k)) requires that the Members of the New Jersey Schools Development Authority (SDA or the Authority) adopt, amend and repeal rules and regulations to carry out the provisions of P.L. 2000, c. 72 (C. 18A:7G-13e) and P.L. 2007, c. 137 (C. 52:18A-238k); and

**WHEREAS**, management is seeking the approval of the Members of the Authority for the final adoption and publication of a Notice of Adoption of rules governing Disposition of the Authority's Surplus Real and Personal Property, N.J.A.C. 19:35 (Rules or Chapter 35 Rules); and

**WHEREAS**, the Chapter 35 Rules were proposed for adoption as new rules, and published in the August 16, 2021 edition of the New Jersey Register at 53 N.J.R. 1358(a), subject to a 60-day public comment period ending October 15, 2021; and

**WHEREAS**, no comments were received during that public comment period so the form of the Rules presented to the Board on this date has not changed from the original proposal as previously presented to the Members on June 2, 2021; and

**WHEREAS**, the Rules establish requirements and procedures for the disposition of property owned by the SDA if such property is deemed surplus as it is no longer needed for school facility projects or SDA operations; and

**WHEREAS**, the new Rules are intended to replace the SDA's expired surplus property disposition rules while improving and expanding upon the previous rules; and

**WHEREAS**, the memorandum presented to the Board on this date describes in comprehensive detail the provisions of the Chapter 35 Rules, highlighting how the proposed Rules differ from the prior SDA regulations governing SDA property disposition; and

**WHEREAS**, in advance of the meeting, the Members of the Authority were provided with the new Rules in their entirety and with the Notice of Adoption for review and consideration; and

**WHEREAS**, SDA management recommends Board approval of the adoption of the new Rules governing the Disposition of SDA's Surplus Real and Personal Property, N.J.A.C. 19:35, as presented, along with the filing of the accompanying Notice of Adoption with the Office of Administrative Law.

**NOW, THEREFORE, BE IT RESOLVED**, that the Members of the Authority hereby authorize and approve the adoption of the new rules governing the Disposition of Surplus Real and Personal Property as well as the filing of the Notice of Adoption with the Office of Administrative Law.

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

**Attached:** Memorandum, Adoption of New Rules for Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority for N.J.A.C. 19:35, dated February 2, 2022  
**Dated:** February 2, 2022

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

## **ACTIVE PROJECTS STATUS REPORT**





STATE OF NEW JERSEY

# SCHOOLS DEVELOPMENT AUTHORITY

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## MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director

DATE: February 2, 2022

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 1/19/22

**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 1/19/22

**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	\$28.4	Design-Bid-Build	Award for D-B approved Nov. 2019 Board. (Niram)	6/24/19
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 1/19/22

**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	School delivered Sep. 2020 (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	School delivered Nov. 2020 (Dobco)	11/10/15 7/13/16
Irvington	Madison Avenue ES	PK-5	463	504	\$38.6	Kit of Parts/ Design-Build	School occupied Sep. 2019. (Bock)	11/19/15 8/16/16
Millville	Senior HS Addition/Renovation	HS	2,026	2,384	\$145.0	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	School occupied Sep. 2019. (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	School delivered Sep. 2020. (Bock)	3/1/17 9/13/17
Perth Amboy	High School	HS	2,800	3,295	\$283.8	Design-Build	Award for D-B approved Nov. 2019 Board. (Terminal)	3/26/19
Perth Amboy	Rose M. Lopez ES (Seaman Avenue ES)	K-5	724	804	\$56.4	Kit of Parts/ Design-Build	School occupied Sep. 2019. (Epic Management).	2/3/16
Plainfield	New Woodland ES	K-5	756	840	\$59.4	Kit of Parts/ Design-Build	Award for D-B approved Feb. 2020 Board. (Epic Management)	5/23/18 8/29/19
Union City	New Grade 7 to 9 School	7-9	756	840	\$75.5	Kit of Parts/ Design-Build	Advertisement for D-B 11/15/21. Proposals received 12/16/21.	5/19/21 11/15/21
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 1/19/22

**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	School occupied Sep. 2021 (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	School occupied Sep. 2019. (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 1/1/2022

### 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	City of Orange	Cleveland Street ES	Addition/Renovation	Construction	Under Review	Under Review	Under Review	Under Review	\$ 34,978,332
2	City of Orange	Orange High School	Addition/Renovation	Construction	2Q 2022	On-target	Phased	On-target	\$ 51,931,218
3	Keansburg	Port Monmouth Road School	Addition/Renovation	Construction	2Q 2022	On-target	Sep-22	On-target	\$ 28,440,130
4	Millville	Millville Senior High School	Addition/Renovation	Construction	3Q 2022	On-target	Phased	On-target	\$ 145,005,733
5	Passaic City	New Dayton Avenue Educational Campus	New Construction	Construction	4Q 2021	Achieved	Phased	Achieved	\$ 240,923,270
6	Perth Amboy	New High School	New Construction	Construction	2Q 2024	On-target	Sep-24	On-target	\$ 283,830,000
7	Plainfield	New Woodland ES	New Construction	Construction	3Q 2022	On-target	Sep-22	On-target	\$ 59,440,000

## Active Project Status Report Status as of 1/1/2022

### 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	Bridgeton	Bridgeton Senior HS	Roof Replacement & Masonry Repairs	Construction	4Q 2021	Achieved	4Q 2021	Achieved	\$ 9,842,000
2	Newark	Harriet Tubman School	Basement Water Infiltration	Construction	1Q 2022	On Target	1Q 2022	On-Target	\$ 219,819
3	Newark	Ivy Hill School	Boiler Room Vault Repairs	Construction	1Q 2022	On Target	1Q 2022	On-Target	\$ 1,758,900
4	Newark	Malcolm X. Shabazz HS	Structural Repairs	Construction	1Q 2022	On Target	2Q 2022	On-Target	\$ 3,189,000
5	Newark	Roberto Clemente School	Sub-Basement Water Infiltration	Construction	3Q 2022	On Target	4Q 2022	On-Target	\$ 1,456,800
6	Newark	Techonology High School	Structural Vault Repairs and Façade Repairs	GCTO w/ Design Design Phase	2Q 2022	On Target	2Q 2022	On-Target	\$ 2,867,680
7	Paterson	PS #5	Roof Replacement & Masonry Repairs	Construction	2Q 2022	On Target	2Q 2022	On-Target	\$ 10,968,112

## **PROJECT STATUS REPORT**





**MEMORANDUM**

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director – Program Operations

DATE: February 2, 2022

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: January 2008 to December 2021

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

Millville	Millville Senior HS - Addition & Renovation	\$5,000,000	\$5,000,000	\$0	100.0%	80%	Board approved additional building condition repair work and flood hazard area mitigation work added to the project.	Project is in construction and scheduled for completion per the original schedule. Revised Final Project Charter approved by the CEO in June 2021 to allocate additional contingency to the project from the Unforeseen Events Reserve.
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### Substantially Complete & Building Occupied

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

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. Project close-out pending resolution of open contracts.
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. Project close-out pending resolution of open contracts.

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

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

Reporting Period: December 2021

#	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 Data During the Reporting Period

## Revisions to Project Charters

Reporting Period: December 2021

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

**CONTRACTS EXECUTED REPORT/AMENDMENTS & CHANGE ORDERS REPORT**



**MEMORANDUM**

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director, Program Operations

DATE: February 2, 2022

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 December 1 through December 31, 2021.

**Noteworthy Items during the reporting period:**

- No activity during the reporting period.

**Amendments & Change Orders Report**

This report contains the activity of Amendments and Change Orders executed during the period December 1 through December 31, 2021.

**Noteworthy Items during the reporting period:**

- 4 Professional Services Amendment were executed during the reporting period totaling \$358k, of the 4 executed amendments 2 required Board approval totaling \$465k.
- 24 Construction Services Change Orders were executed during the reporting period totaling \$3.1M, of the 24 executed change orders 1 required Board Approval totaling \$2.1M.

**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



## Amendments &amp; Change Orders Report

Reporting Period: 12/1/2021 through: 12/31/2021

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>													
Newark	New Science Park HS	NE-0071-A01	04/01/2014	4	USA Architects, Planners + Interior Designers, Ltd	12/20/2021	\$311,140	\$146,532	\$174,280	Y	7/7/2021	\$631,952	103.10%
Newark	New Science Park HS	NE-0071-A01	04/01/2014	5	USA Architects, Planners + Interior Designers, Ltd	12/20/2021	\$311,140	\$320,812	\$18,540			\$650,492	109.06%
<b>Design Consultant</b>													
<b>Construction Management Services</b>													
City Of Orange Township	Cleveland Street E.S.	ES-0043-M01	01/09/2019	1	Epic Management, Inc.	12/3/2021	\$1,185,078	\$0	\$272,467	Y	9/1/2021	\$1,457,545	22.99%
Garfield	James Madison Elementary School #10	NT-0014-M02	09/15/2015	1	McCloud Group, LLC (The)	12/20/2021	\$956,976	\$0	(\$105,441)			\$851,535	-11.01%
Garfield	James Madison Elementary School #10	NT-0014-M02	09/15/2015	2	McCloud Group, LLC (The)	12/20/2021	\$956,976	(\$105,441)	(\$1,421)			\$850,114	-11.16%
<b>Construction Management Services</b>													
<b>Professional Services</b>													
												<b>\$358,425</b>	
<b>Construction Services</b>													
<b>Contractor</b>													
Bridgeton	Bridgeton Senior H.S.	EP-0105-C01	08/27/2020	2	Ernest Bock & Sons, Inc.	12/20/2021	\$6,535,000	\$1,874	\$37,163			\$6,574,037	0.59%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	27	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$2,951,930	\$10,494			\$39,962,425	8.00%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	58	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$2,962,425	\$10,989			\$39,973,414	8.03%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	59	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$2,973,414	\$22,238			\$39,995,651	8.09%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	74	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$2,995,651	\$27,061			\$40,022,712	8.16%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	75	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$3,022,712	\$2,180			\$40,024,892	8.17%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	76	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$3,024,892	\$51,884			\$40,076,776	8.31%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	77	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$3,076,776	\$18,248			\$40,095,024	8.36%
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	80	Terminal Construction Corp.	12/23/2021	\$37,000,000	\$3,095,024	\$19,858			\$40,114,882	8.41%



Amendments & Change Orders Report

Reporting Period: 12/1/2021 through: 12/31/2021

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 %
City Of Orange Township	Orange H.S.	ES-0042-C01	04/29/2019	73	Terminal Construction Corp.	12/29/2021	\$37,000,000	\$3,114,882	\$83,027			\$40,197,909	8.64%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	05/02/2019	32	Brockwell & Carrington Contractors, Inc.	12/15/2021	\$18,400,000	\$3,060,699	\$14,520			\$21,475,219	16.71%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	05/02/2019	33	Brockwell & Carrington Contractors, Inc.	12/15/2021	\$18,400,000	\$3,075,219	\$160,423			\$21,635,642	17.58%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	05/02/2019	34	Brockwell & Carrington Contractors, Inc.	12/15/2021	\$18,400,000	\$3,235,642	\$24,781			\$21,660,422	17.71%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	05/02/2019	35	Brockwell & Carrington Contractors, Inc.	12/23/2021	\$18,400,000	\$3,260,422	\$18,912			\$21,679,334	17.82%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	05/02/2019	36	Brockwell & Carrington Contractors, Inc.	12/23/2021	\$18,400,000	\$3,279,334	\$75,000			\$21,754,334	18.23%
Neptune Township	Neptune Senior H.S.	ET-0015-C06	07/26/2021	2	Hall Building Corporation	12/6/2021	\$495,158	\$2,386	(\$10,000)			\$487,545	-1.53%
Newark	Ivy Hill	EP-0111-C01	05/25/2021	4	Catcord Construction Co., Inc.	12/10/2021	\$843,900	\$0	\$10,897			\$854,797	1.29%
Newark	Ivy Hill	EP-0111-C01	05/25/2021	6	Catcord Construction Co., Inc.	12/10/2021	\$843,900	\$10,897	\$3,939			\$858,736	1.75%
Paterson	Number 5 E.S.	EP-0113-C01	06/15/2021	3	Paul Otto Building Co., Inc.	12/28/2021	\$7,494,000	\$224,827	\$26,000			\$7,744,827	3.34%
Millville	High School	ST-0046-B01	05/24/2017	8	Hall Construction Co., Inc.	12/15/2021	\$114,453,000	\$5,320,760	\$2,087,708	Y	5/3/2020	\$121,861,468	6.47%
Passaic City	New ES at Leonard Place	NT-0050-B01	01/14/2016	9	Dobco, Inc.	12/17/2021	\$32,750,000	(\$490,199)	(\$62,184)			\$32,197,617	-1.68%
Passaic City	Dayton Ave. Educational Campus	NT-0052-B01	01/02/2018	9	Terminal Construction Corp.	12/17/2021	\$163,560,000	\$194,006	(\$18,964)			\$163,735,042	0.10%
Passaic City	Dayton Ave. Educational Campus	NT-0052-B01	01/02/2018	30	Terminal Construction Corp.	12/27/2021	\$163,560,000	\$367,926	\$177,400			\$164,105,326	0.33%
Perth Amboy	New Perth Amboy High School	ET-0099-B01	01/06/2020	6	Terminal Construction Corp.	12/23/2021	\$247,950,000	\$2,353,822	\$310,851			\$250,614,673	1.07%

<b>Contractor</b>	
<b>Construction Services</b>	<b>\$3,102,424</b>

<b>Grand Totals</b>	<b>Total Change Order</b>	<b>Total Change</b>
	<b>\$3,460,849</b>	<b>29</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)*

## **DIVERSITY AND WORKFORCE PARTICIPATION REPORT**



**MEMORANDUM**

TO: Members of the Authority

FROM: Karon L. Simmonds, Director, Risk Management

DATE: February 2, 2022

SUBJECT: Diversity and Workforce Participation Monthly Update for November 2021

The Risk Management staff continues to participate at mandatory pre-bid and pre-construction meetings to instruct and inform bidders regarding SDA’s Small Business Enterprise (SBE) and Workforce goals, policies and procedures, including:

- SBE subcontracting goal of 25% of all contracts
- County workforce goals for minorities and females
- Local 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 ATTAINMENT**

The SDA regularly exceeds the State-mandated 25% SBE goal. The total SDA contract dollars awarded through November 30, 2021 was \$293,829,563. The total contract dollars awarded to all SBE contractors was \$22,229,500 (including minorities, women and veterans). This represents an initial participation of 7.57% of all SDA contracts awarded in 2021. Participation will continue to increase as the Prime contractor continues to hire additional subcontractors/subconsultants through the lifecycle of the construction project.

**Diversity Breakdown**

<b>Type of Business Enterprise</b>	<b>Contract Amount</b>	<b>% of Total SDA Contracts</b>
Small Business Enterprises	\$ 20,564,270	7.00%
Small/ Minority Business Enterprises	\$ 472,515	0.16%
Small/Women Business Enterprises	\$ 1,192,715	0.41%
Small/Veteran Owned Business Enterprises	\$ -0-	0.00%
Small/Minority/Women Business Enterprises	\$ -0-	0.00%
<b>TOTAL DIVERSITY CONTRACTS</b>	<b>\$ 22,229,500</b>	<b>7.57%</b>

**WORKFORCE PARTICIPATION**

For the month of November 2021, there was a contractor workforce of 591 on SDA projects. This represents a total of 42,729 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	36	3,290	7.70%
Hispanic	131	8,887	20.80%
American Indian	0	0	0.00%
Asian	3	169	0.40%
<b>Total Minority Participation</b>	<b>170</b>	<b>12,346</b>	<b>28.90%</b>
Total Non-Minority Participation	421	30,383	71.10%
Total Contractor Workforce	591	42,729	100.00%

There was a contractor workforce of 751,323 total workforce hours and 13,889 total female workforce hours on SDA projects for the period of January 1, 2021 through November 30, 2021. The following table highlights the *Local County Contractor Workforce* participation for this period:

<b>Local County Contractor Workforce Participation</b>	<b>Workforce Hours</b>	<b>Percentage</b>
*Total Workforce Hours	751,323	100.00%
<b>*Total Local County Workforce Hours</b>	<b>37,418</b>	<b>4.98%</b>
<b>Total Local County Non-Minority Workforce Hours</b>	<b>18,262</b>	<b>2.43%</b>
<b>Total Local County Female Workforce Hours</b>	<b>253</b>	<b>0.03%</b>
<b>Total Local County Minority Workforce Hours</b>	<b>19,156</b>	<b>2.55%</b>
<b>**Local County Workforce Hours by Ethnicity:</b>		
Black	6,505	0.87%
Hispanic	11,987	1.60%
American Indian	184	0.02%
Asian	480	0.06 %

\*Total workforce and total local county workforce represent all laborers including females.

\*\*Minority breakdown represents Black, Hispanic, American Indian, and Asian laborers. Minority female laborers are captured as female laborers only and are not included in the minority breakdown.

The following table represents contractor minority and female workforce for all SDA active Capital Projects and all active and completed Emergent Projects for the period of January 1, 2021 through November 30, 2021.

<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	122,465	20,555	16.78%	5,771	4.71%
Harrison ES	60	0	0.00%	0	0.00%
Port Monmouth Road School	22,005	7,667	34.84%	214	0.97%
Millville HS	77,733	17,094	21.99%	3,301	4.25%
Dayton Ave Campus	136,956	42,847	31.29%	3,118	2.28%
Union Ave MS	146,812	44,973	30.63%	1,670	1.14%
Cleveland ES	22,482	8,798	39.13%	0	0.00%
Orange HS	58,976	17,050	28.91%	1,576	2.67%
Perth Amboy HS	101,512	26,404	26.01%	4,754	4.68%
Plainfield ES	29,463	5,012	17.01%	8,916	30.26%
Emergent Projects	32,859	12,466	37.94%	8,096	24.64%

Prepared by: Charlotte Brooks  
Zaida Olszak

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



**MEMORANDUM**

TO: Members of the Authority

FROM: Gregory Voronov  
Managing Director, Program Operations

DATE: February 2, 2022

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 December 2021. 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.
- 2 grants impacting 1 district were closed out during the reporting period representing \$0.5 million in total project costs and a state share of \$0.2 million.
- Since inception, over \$2.9B 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.





# SCHOOLS DEVELOPMENT AUTHORITY

## Monthly Regular Operating District Grant Report - Summary

December 2021

ROD Grant Summary Since Program Inception				
	Offered <sup>1</sup>	Executed	Closed-Out	Active
Districts Impacted	-	524	519	56
Number of Grant Projects	-	5,404	5,185	219
Total Project Cost Estimate	\$ -	\$ 8,942,630,629	\$ 8,744,674,879	\$ 197,955,750
Grant Amount	\$ -	\$ 3,001,961,767	\$ 2,912,867,778	\$ 89,093,989
Amount Disbursed	N/A	\$ 2,945,752,743	\$ 2,912,867,778	\$ 32,884,966

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	\$ 82,239,761
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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	-	1
Number of Grant Projects	-	2
Total Project Cost Estimate	\$ -	\$ 521,437
Grant Amount	\$ -	\$ 208,575
Amount Disbursed	NA	\$ 208,575

\* 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** *(no report)*

**MONTHLY FINANCIAL REPORT** *(no report)*

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