

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
BOARD MEETING
WEDNESDAY, APRIL 5, 2023 AT 9:00 A.M.
32 E. FRONT STREET, TRENTON, NJ
JOSEPH A. MCNAMARA BOARD ROOM**

1. NOTICE OF PUBLIC MEETING/PLEDGE OF ALLEGIANCE

2. ROLL CALL

3. APPROVAL OF MEETING MINUTES

- a. Board Open Session Meeting Minutes of March 1, 2023
- b. Board Executive Session Meeting Minutes of March 1, 2023

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: Catcord Construction Company, Inc.
District: Harrison
Contract No.: HU-0027-C01
PMF/CM: NJSDA
School Name: Harrison Elementary School
(aka Kennedy Elementary School)
Change Order No.: 2
Reason: Safety, Security and Other Upgrades
Amount: \$109,438.00
Original Contract Amount: \$384,850.00
Contract Status: 32.7 % Paid to Date against the Current Contract
- b. Company Name: Hall Construction Company, Inc.
District: Millville Public Schools
CM: Greyhawk North America
Contract No.: ST-0046-B01
School Name: Millville High School
Change Order No: 56
Reason: School Security Enhancement Work
Amount: \$1,700,000.00 (Not-to-Exceed)
Original Contract Value: \$114,453,000.00
Contract Status: 97.11% Paid to date against the Current Total Contract Value
- c. Company Name: Epic Management, Inc.
District: Orange
Contract No.: ES-0043-M01
School Name: Cleveland Street Elementary School
Amendment No. 11
Reason: Add MEP Manager Position
Amount: \$256,000.00
Original Contract Amount: \$ 1,185,078.41
Contract Status: 48.56% Paid to Date
Anticipated Occupancy Date: September, 2024

d. Company Name: LAN Associates
 District: Orange Public School District
 Contract No.: ES-0043-A01
 CM: Epic Management, Inc.
 Design Consultant: LAN Associates
 School Name: Cleveland Street Elementary School
 Amendment No.: 21
 Reason: Extension of Construction Administration Services
 Amount: \$180,107.00 Time and Material Not to Exceed
 Contract Status: 85.69% Paid to Date against the Current Contract Value
 Anticipated Occupancy Date: September 2024

e. Notice of Readoption – Preconstruction Activities, N.J.A.C. 19:34

f. Notice of Proposal for Readoption with Amendments – Section 13.a Delegation Agreements, N.J.A.C. 19:34A

6. 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 report*)
 - x. Monthly Financial Report
 - xi. Design Contract De-Obligations Report (*no activity*)

7. NO EXECUTIVE SESSION

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

8. ADJOURNMENT

APPROVAL OF MEETING MINUTES

March 1, 2023 Open Session Minutes

**NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
BOARD OF DIRECTORS MEETING
WEDNESDAY, MARCH 1, 2023**

A meeting of the Board of Directors of the New Jersey Schools Development Authority (SDA or the Authority) was held on Wednesday, March 1, 2023 at 9:00A.M. in the Joseph A. McNamara Board Room at the offices of the Authority at 32 East Front Street, Trenton, New Jersey.

Participating were:

Robert Nixon, Public Member, Chairman

Juan Burgos (EDA)

Kevin Luckie (DCA)

David Moore (Treasury)

Bernard Piaia (DOE)

Daniel Gumble, Public Member

Lester Lewis-Powder, Public Member

Michael Maloney, Public Member

Mario Vargas, Public Member

being all the Members of the Board. Mr. Gumble, Mr. Moore, Mr. Lewis-Powder and Mr. Piaia participated in the meeting by teleconference.

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

Pledge of Allegiance

Led by the Chairman, the Members and all assembled stood and recited the Pledge of Allegiance.

The meeting was called to order by Mr. Nixon, who requested that Ms. Kelly read the requisite notice of the meeting. Ms. Kelly announced that the meeting notice had been sent to the *Trenton Times* and *Star-Ledger* at least 48 hours prior to the meeting, and been duly posted on the Secretary of State's bulletin board at 20 West State Street in Trenton, New Jersey and on the SDA Website. Ms. Kelly then conducted a roll call and indicated that all the Members of the Board were present.

Approval of Meeting Minutes

The Chairman presented for consideration and approval the minutes of the Board's January 4, 2023 Open Session and Executive Session meetings, along with the minutes of the 2023 SDA Organizational meeting. A copy of all meeting minutes and resolutions were provided to the Members for review in advance of the meeting. Upon motion duly made by Mr. Luckie and seconded by Mr. Vargas, the January 4, 2023 Open Session, Executive Session and 2023 SDA Organizational meeting minutes of the SDA Board were approved with the Members' unanimous vote in favor of the resolutions attached hereto as ***Resolutions 3a., 3b. and 3c.***

Authority Matters

CEO Report

Mr. Nixon asked Mr. Da Silva for the report of the CEO. Mr. Da Silva began his report with an update on design-bid-build projects in the construction stage. He said that for the Union City New Grade 7-9 School project, site earthwork is ongoing and the initial design review package is currently under review by the Department of Community Affairs.

Turning to design-build projects in construction, Mr. Da Silva reported that for the Millville High School addition and renovations project, Phase IV auditorium addition interior finish work is ongoing with an expected delivery later this month. For the Perth Amboy High

School project, he said that interior wall framing continues and drywall work is commencing. He advised the Board that for the Plainfield Woodland Avenue Elementary School project, all finish work is proceeding on the interior and exterior of the building. He added that staff anticipates building turnover to the District later this summer.

Next, Mr. Da Silva gave an update on design-bid-build projects in the construction stage. He reported that for the Orange High School project, the building has been turned over and is being occupied by the District. He added that staff will return mid-year to install the new boiler breeching and the greenhouse.

With respect to projects in the procurement stage, Mr. Da Silva said that the Authority's procurement for a general contractor for the Orange Cleveland Street Elementary School project was advertised in late January. He added that bids will be publicly opened on April 5.

Turning to Authority events, outreach and other activities, Mr. Da Silva informed the Committee that director Joseph Lucarelli attended and received a New Jersey Leading Capital Construction Project Award from the Alliance for Action on Thursday, February 16. He said that this award recognizes the new Perth Amboy High School project that is currently in construction. Mr. Nixon thanked Mr. Lucarelli and his team for their work on the project.

Mr. Da Silva then reported that, the previous month, management attended the Presentation Award of Extraordinary Personal Action to Juancito "Tip" Jones, a construction trades professional at the Perth Amboy High School. He said that Mayor Caba and Kevin Duncan with the Trade Union Bricklayers and Allied Craftworks, presented the award in recognition of Mr. Jones' selfless and courageous act of rendering lifesaving aid to a co-worker on November 7, 2022, which resulted in Mr. Jones saving his co-worker's life.

Next, Mr. Da Silva gave an update on Assembly Bill No. 4496 (the Bill). He said that the Bill, which revises various statutory provisions governing construction of school facilities

projects and operations of SDA, was released by the Assembly Appropriations Committee on Thursday, February 23.

Finally, Mr. Da Silva said that the Members will recall that, after a competitive process, Mark Conte, was selected to fill the safety director role following the death of the Authority's longtime safety director, Jacob Moneta, in 2022. He advised the Board that Mr. Conte has been a member of the Safety team since 2003, serving as a field compliance inspector. He said that Mr. Conte has over 30 years of experience in construction safety and health, environmental safety and health management and has extensive training credentials. He explained that management posted the director position as a field-based position this time, meaning that, in addition to his leadership responsibilities in the unit, Mr. Conte continues to retain individual project-related responsibilities as well. Mr. Da Silva then introduced Mr. Conte to the Members.

Audit Committee

Mr. Nixon, as Audit Committee Chairman, reported that the Audit Committee met on February 13, 2023 at which time management provided the Committee with the January 2023 New Funding Allocation and Capital Plan Update. He reported that there was a \$3.7 million decrease in the Unforeseen Events Reserve balance. He said that this increase in commitments follows Board approval of the revised final project charter for the Orange High School addition and renovation project. He advised the Board that there were no changes in any of the other reserve balances for the reporting period. Additionally, he said that there was no change in the Program Reserve for the Regular Operating Districts during the reporting period.

Mr. Nixon said that, for informational purposes, management provided the Committee with the Authority's 2023 Capital Spending Forecast. He explained that the forecast is based on Treasury Updated Spending Models which help to ensure that there is an optimum level of cash on hand. He reported that the forecast anticipates the expenditure of approximately \$271 million

for school facilities projects, representing a decrease of approximately \$16.2 million over the estimated actual spending in 2022. He advised the Board that this decrease is attributable to a lower amount of forecasted payments for emergent & capital maintenance grants and school furniture, fixtures, equipment & technology costs. He noted that the decreases are offset primarily by increases in forecasted spending for design services, project insurance and property acquisition, relocation & environmental costs.

Next, Mr. Nixon reported that SDA's internal auditors (IA) provided the Committee with the results of one operational audit. He then advised the Members that the IA division also presented the Committee with the proposed 2023 Audit Plan (Plan) and identified audits initiated or to be initiated this year by IA staff or SDA's contract auditors, Baker Tilly. He said that the Plan equates to approximately 5,000 audit hours – 1,400 staff auditor hours, and 3,600 Baker Tilly hours.

Lastly, Mr. Nixon advised that, in compliance with the 2019 changes to the SDA Bylaws and Audit Committee Charter, the CEO reported to the Committee regarding Authority personnel matters in his quarterly staffing report.

School Review Committee

The Chairman asked Mr. Vargas to provide the report of the School Review Committee. Mr. Vargas reported that the Committee met on February 13, 2023, at which time four items were discussed. He said that the management is seeking Board approval of the proposed adoption of the Authority's Section 15 Grant Procedures Rules (Rules). He reported that these Rules govern the Authority's administration of a grant program for the state share of the final eligible costs for school facilities projects in non-SDA Districts (i.e. RODs). He explained that the Rules were scheduled to expire on July 1, 2022 and, in their review, staff determined that the Rules, in their then-current form, required no changes with the exception of certain minor

amendments. He reminded that Members that the Board approved the rules for proposal and publication and that they were later published in the New Jersey Register on September 6 as a Notice of Adoption of New Rules. He said that the Board memorandum includes a full discussion of the Rules' background and prior regulatory history, along with a summary of the proposed amendments.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Luckie and seconded by Mr. Piaia, the Board approved the Adoption of the Authority's New Rules for Section 15 Grant Procedures with minor amendments, the issuance of the Notice of Adoption and the filing of the Notice with the Office of Administrative Law upon the Board's unanimous vote in favor of ***Resolution 6a***.

Mr. Vargas informed the Members that the next three matters involve emergent work for two projects in Union City and one in Newark. He advised that in all three matters, management is seeking approval for a release of funds from the program reserve, a task order award and a final project charter. He said that, with respect to the funding source, the Members will recall that in 2008 and 2011, the Board approved a total of \$197 million to fund emergent project work in SDA Districts. He reported that, later, in July 2020, the Members provided an additional \$55.6 million to support the advancement of emergent projects by authorizing the reallocation of funds from the SDA's Unforeseen Events Reserve to the Emergent Projects Reserve. He said that also relevant to all three matters the Members are considering today is the General Contractors Task Order (GCTO) contract that the Authority has utilized for many years, the most recent one having been approved in 2019 and subsequently amended in 2022.

In continuing, Mr. Vargas advised that the first emergent project matter for Board consideration is the Union City Emerson Middle School (School) emergent project (Project). He said that the School was built in 1915 and is a 104,000 square foot facility educating 1,050

students in grades 6 through 8. He explained that in September 2021, after confirming the need for emergent roof replacement and stucco repairs at the School, the SDA engaged PS&S Architects to provide Project scope development services to address these conditions. He said that SDA staff decided to advance the Project through the GCTO contract and to require the general contractor (GC) to engage the services of a design consultant to complete design services. He informed the Members that on November 30, 2022, procurement staff contacted Delric Construction Company (Delric), the next firm on the GCTO contractor rotational list and, on December 1, 2022, Delric confirmed acceptance of the Task Order assignment. He noted that SDA staff will provide construction management oversight for the Project. Mr. Vargas said that SDA staff and Delric held a site visit on December 8, 2022 at the School to review and assess the condition of the roof and stucco. He noted that Delric's initial work will focus on project design based on the Project scope of work for a total not-to-exceed (NTE) cost of \$334,640. He explained that after the design work is completed, staff will review and validate the final projected cost and schedule and determine whether to advance the work on a time and materials (T&M) basis for the NTE amount or on a fixed cost basis. He said that the value of Delric's contract award will be \$2,047,000, with total funding for the Project estimated at \$2,843,000 as reflected in the Project's Charter. He added that funding for the total project costs is available within the SDA Program Reserve maintained for emergent projects.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Burgos and seconded by Mr. Luckie, a release of funds from the program reserve, task order award and final charter for the Union City Emerson Middle School emergent project were approved with the Board's unanimous vote in favor of ***Resolution 6b.***

Next, Mr. Vargas said management is requesting that the Board approve a release of funds from the program reserve, a task order award and final project charter for the Union City Hill Middle School (School) emergent Project (Project). He reported that the School, built in 1913, is a 102,000 square foot facility in the Union City Public Schools District educating 895 students in grades 7 and 8. He informed the Members that after confirming the need for emergent roof replacement and stucco and masonry repairs at the School, the SDA engaged Aptim Environmental & Infrastructure, LLC in November 2021 for the performance of Project scope development services. He explained that, upon completion of the services, staff determined to use the GCTO contract to advance the Project and to require the GC to engage the services of a design consultant. He advised that on November 28, 2022, procurement staff contacted Integrated Construction Enterprises (ICE), the next firm on the contractor rotational list and, on November 30, 2022, ICE confirmed acceptance of the Task Order assignment. Mr. Vargas reported that the assignment will be awarded on a T&M basis for a NTE value representing the most extensive scope of work pursuant to the Task Order Contract and that SDA staff will provide construction management oversight for the Project. He said that SDA staff and ICE held a site visit on December 8, 2022 at the School to review and assess the condition of the roof, stucco and masonry. He explained that ICE's initial work will focus on project design based on the Project scope of work for a total not-to-exceed cost of \$414,000. He said that once design work is completed, Authority staff will review and validate the final projected cost along with the schedule and determine whether to advance the work on a T&M basis for the NTE amount or on a fixed cost basis. He said that the value of the ICE contract award will be \$2,581,000, with total funding for the Project estimated at \$3,507,000, as reflected in the Project's Charter. He added that funding for the total project costs is available within the SDA Program Reserve maintained for emergent projects.

A resolution pertaining to this matter was provided to the Board for review in advance of the meeting. Upon motion duly made by Mr. Piaia and seconded by Mr. Maloney, a release of funds from the program reserve, task order award and final charter for the Union Hill Middle School emergent project were approved with the Board's unanimous vote in favor of ***Resolution 6c.***

Mr. Vargas said that the final matter for Board consideration pertains to the Newark University High School (School) emergent project (Project). He advised that the School was built in 1957 and is a 149,000 square foot facility in the Newark Public Schools District educating 464 students in grades 7 through 12. He said that staff confirmed the need for an emergent roof replacement at the School and engaged Dewberry Engineers in October 2021 to perform Project scope development services to address these conditions. He explained that, upon completion of these services, the SDA determined to advance the Project through the GC Task Order Contract and to require the GC to engage the services of a design consultant to complete the design services. He advised that on December 2, 2022, staff contacted Hall Building Corporation (HBC) the next firm on the Task Order contractor rotational list and, that same day, HBC confirmed acceptance of the assignment. He added that the assignment will be awarded on a T&M basis for a NTE value representing the most extensive scope of work pursuant to the contract.

In continuing, Mr. Vargas said that on December 20, 2022 SDA staff and HBC held a site visit at the School to review and assess the condition of the roof. He noted that HBC's initial work will focus on project design based on the Project scope of work for a total NTE cost of \$204,400. He reported that upon completion of design work, Authority staff will review and validate the final projected cost along with the schedule and determine whether to advance the work on a T&M basis for the NTE amount or on a fixed cost basis. He said that the value of

HBC's contract award will be \$1,172,000, with total funding for the Project estimated at \$1,819,500, as reflected in the Project's Charter. He explained that funding for this Project is available from 2 sources--the SDA Program Reserve maintained for emergent projects, and a separate fund maintained by the Authority that contains the remaining proceeds from the sale of the former Newark Central High School (Central HS). He added that the Central HS fund will provide \$486,000 towards the Project's cost. He said that, as with the two Union City projects, since the construction award and the funds requiring release from the Program Reserve exceed \$500,000, both require Board approval, along with their Project Charters.

A resolution pertaining to this matter was provided to the Board in advance of the meeting. Upon motion duly made by Mr. Luckie and seconded by Mr. Piaia, and with Mr. Lewis-Powder recused and abstaining, a release of funds from the program reserve, task order award and final charter for the Newark University High School emergent project were approved with the Board's unanimous vote in favor of ***Resolution 6d***.

Mr. Nixon then asked for a motion to adjourn the Open Session of the meeting into Executive Session. He asked Ms. Kelly to announce the matter to be considered by the Board in Executive Session. Ms. Kelly advised that the Board will adjourn into Executive Session to discuss one item. She said that the Board will discuss the Authority's acquisition of real property in the City of Newark for a school facilities project and associated legal issues.

Upon motion by Mr. Maloney and seconded by Mr. Vargas the Board unanimously voted to approve ***Resolution No. 9*** and thereby adjourn the Open portion of the meeting into Executive Session.

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 March 1, 2023 meeting.

/s/ Jane F. Kelly
Assistant Secretary

Resolution—3a./3b.

Approval of Minutes

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

WHEREAS, pursuant to Section 3(k) of P.L. 2007, Chapter 137, the minutes of the March 1, 2023 Board meeting of the New Jersey Schools Development Authority, for the Open and Executive Sessions 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 March 1, 2023 Open and Executive Session meetings are hereby approved.

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

Dated: April 5, 2023

AUTHORITY MATTERS

CHAIRMAN'S REPORT

CEO REPORT

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

**Change Order No. 2 - Harrison Public School District - Harrison Elementary School -
Catcord Construction Company, Inc.**



MEMORANDUM

TO: Members of the Authority
FROM: Joseph Lucarelli, Program Director, Construction Operations
DATE: April 5, 2023
SUBJECT: Change Order #2 – Catcord Construction Company, Inc.

COMPANY NAME: Catcord Construction Company, Inc.
DISTRICT: Harrison
CONTRACT NO.: HU-0027-C01
PMF/CM: NJSDA
SCHOOL NAME: Harrison Elementary School
(aka Kennedy Elementary School)
CHANGE ORDER NO.: 2
REASON: Safety, Security and Other Upgrades
AMOUNT: \$109,438.00
ORIGINAL CONTRACT
AMOUNT: \$ 384,850.00

INTRODUCTION

I am writing to request approval by the Members of the Authority of Change Order (CO) #2 in the lump sum value of \$109,438.00 for the Harrison Elementary School project (Project). This CO will compensate the Project's General Contractor ("GC"), Catcord Construction Company, Inc. ("Catcord"), for the additional funds required to provide upgraded systems consistent with current NJSDA Safety, Security and Other Upgrades standards.

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. This CO exceeds 10% of the contract value.

BACKGROUND

NJSDA has implemented School Security Systems Guidelines which are intended to ensure a consistent approach in the design of school security systems and bring those designs into conformance with the 2016 School Security Law, PL 2016 c. 79 ("the Law"). Upon enactment of the Law, NJSDA determined that these Standards would be applied to all projects then under

contract for design or construction that were scheduled to be delivered for opening in September 2019 or later.

The Harrison Elementary School (ES) is an approximately 67,800 square foot school facility designed to educate 392 students in grades Pre-K through One in the Harrison Public School District. The Harrison ES was delivered through a Design-Build Construction Contract following Board approval (on March 2, 2016) of a contract in the amount of \$25,899,600.00 for Brockwell and Carrington Construction Corporation (BCC). The Board approved the Project's Final Charter on that same date.

After development of the updated security standards, the NJSDA Design Studio established a Security Enhancement Scope consistent with those standards and presented it for review by representatives of the Harrison Public School District for application to the new ES facility.

The NJSDA originally intended to utilize BCC for these services but was unsuccessful in engaging BCC and its sub-consultants for this engagement. It was, therefore, not possible to complete the services prior to the required school opening date. For this reason, NJSDA determined that the security aspects of the Project ("Safety, Security and Other Upgrade Work") would be advanced following completion of the ES and District occupancy of the School through the engagement of a General Contractor utilizing the NJSDA's General Construction Services Task Order Contract (GC Task Order). It was further determined that the General Contractor engaged through the GC Task Order would be required to engage the services of a Design Consultant to complete the needed design services.

The package for Safety, Security and Other Upgrade Work was awarded to Catcord pursuant to the NJSDA's existing GC Task Order Contract on a time and materials (T&M) basis for a not-to-exceed (NTE) value of \$384,850.00 representing the most extensive scope of work.

In October of 2021, Catcord provided the NJSDA with a cost proposal to complete the entirety of the Safety, Security and Other Upgrade Work, inclusive of design services and implementation of the most extensive scope of work. The Project Team recommended that the award to Catcord proceed on a T&M basis, at a NTE value of \$384,850.00, which represented Catcord's cost proposal for the most extensive solution to address all scope elements. Catcord was issued the Notice to Proceed on January 5, 2022.

REASON FOR CHANGE

Upon completion of the design phase, the Project Team requested that Catcord review and submit the finalized construction cost. The Team and Catcord reviewed the work and anticipated product delivery schedule along with building availability to assist in the development of the construction cost estimate. The review determined that within the school calendar there were school closures that would allow the Safety, Security and Other Upgrade Work to be completed during normal work hours, and other available times when the District would allow access. Based upon this review, Catcord developed the cost estimate to include work hour restrictions and premium time

hours. Catcord then developed a proposal scheduling work activities based upon building availability consistent with the above.

Catcord’s proposal for construction costs to address the Safety, Security and Other Upgrade Work was for the amount of \$417,587.00. The Project Team reviewed the proposal and verified that the total scope of work was included. They also coordinated the schedule for construction with the District school calendar and facility availability, and included a cost for the work to be completed during premium time hours. The Project Team then reviewed the proposal with Financial Operations and together they determined that Catcord’s initial cost proposal was excessive. Ultimately, the Project Team negotiated the construction costs with Catcord and Catcord agreed to the total lump sum value of \$350,896.00 to address the Safety, Security and Other Upgrades.

The original award for this engagement was based upon Catcord’s review of the scope documents presented at the time of bid by the NJSDA. Following development of the schedule for construction and the refinement of scope, along with the establishment of expectations for the timing of material delivery and considering building accessibility, the NTE cost originally allocated for construction was determined to be insufficient. Therefore, CO#2 is required to provide an amount equal to the differential in cost.

The following provides a breakdown of the differences in construction costs following development and refinement of design:

<u>Original Project Cost Breakdown</u>	
Bond	\$ 5,542.00
Design	\$ 20,325.00
Design Construction Admin	\$ 20,325.00
Catcord Project Management	\$ 12,000.00
General Conditions	\$ 30,000.00
Insurance	\$ 5,000.00
Multiplier	\$ 50,200.00
<u>Construction Costs</u>	<u>\$241,458.00</u>
Total Original Project Cost	\$384,850.00

Original Value Allocated for Construction Costs	\$241,458.00
<u>Negotiated and Agreed Value of Construction for Approved Design</u>	<u>\$350,896.00</u>
Additional Funds Required	\$109,438.00

SUMMARY OF THE CHANGE

Change Order #2, in the total lump sum value of \$109,438.00, would provide the additional funds required for construction services to furnish and install the approved scope of work to address the Safety, Security and Other Upgrades.

All documents supporting this change order have been reviewed by the associated NJSDA Project Team for adherence to current NJSDA policy and procedures. All reviewing NJSDA staff members, including Financial Operations, have determined that the items included in the change order are justified and that the amount is reasonable and appropriate.

CALCULATIONS

a. Original Contract Amount	\$ 384,850.00
b. Change Orders to Date (excluding proposed change order)	\$ 16,446.00
c. Proposed Change Order Amount	\$ 109,438.00
d. Total Change Orders to Date including this Change Order (Total of Line (b.) and Line (c.))	\$ 125,884.00
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	32.71%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$ 510,734.00

RECOMMENDATION

The Members of the Authority are requested to approve Change Order #2 in the total lump sum value of \$109,438.00 to Catcord for the construction services required to furnish and install the approved design scope of work to address the Safety, Security and Other Upgrades.

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. This Change Order exceeds 10% of the contract value.

Recommended by:

/s/ Joseph Lucarelli

Joseph Lucarelli, Director, Construction Operations

Reviewed and Recommended by: Donald Guarriello, Vice President, CFO

Reviewed and Recommended by: Jane F. Kelly, Vice President, Corporate Governance & Legal Affairs

Reviewed and Recommended by: Gregory Voronov, Managing Director, Planning & Program Operations

Reviewed and Recommended by: Denise Petraglia, Deputy Director, Construction Operations

Prepared and Recommended by: George Kloutis, Senior Program Officer, Construction Operations

Resolution 5a.

Approval of Change Order No. 2 – Catcord Construction Company, Inc. –
Harrison School District – Harrison Elementary School

COMPANY NAME:	Catcord Construction Company, Inc.
DISTRICT:	Harrison
CONTRACT NO.:	HU-0027-C01
PMF/CM:	NJSDA
SCHOOL NAME:	Harrison Elementary School (aka Kennedy Elementary School)
CHANGE ORDER NO.:	2
REASON:	Safety, Security and Other Upgrades
AMOUNT:	\$109,438.00
ORIGINAL CONTRACT AMOUNT:	\$ 384,850.00
CONTRACT STATUS	32.7% Paid to Date against the Current Contract Value

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, SDA has implemented School Security Systems Guidelines (Standards) to ensure a consistent approach in the design of school security systems and to bring those designs into conformance with the 2016 School Security Law, PL 2016 c. 79 (the Law); and

WHEREAS, upon enactment of the Law, SDA determined that these Standards would be applied to all projects then under contract for design or construction that were scheduled to be delivered for opening in September 2019 or later; and

WHEREAS, the Harrison Elementary School (ES), is an approximately 67,800 square foot school facility designed to educate 392 students in grades Pre-K through One; and

WHEREAS, the Authority delivered the ES in 2020 through a design-build construction contract in the amount of \$25,899,600.00 with Brockwell and Carrington Contractors, Inc. (B&C); and

WHEREAS, after development of the Standards, the SDA Design Studio established a security enhancement scope consistent therewith for utilization in connection with a project at the ES project and presented it for review by the Harrison School District; and

WHEREAS, when SDA was unable to utilize B&C to provide the Safety, Security and Other Upgrades (the Services), it was not possible to complete the services prior to the required school opening date; and

WHEREAS, SDA determined that the Services would be advanced following completion, and District occupancy, of the School through the engagement of a General Contractor (GC) utilizing the SDA GC Task Order Contract (GCTO contract); and

WHEREAS, it was further determined that the GC so engaged would be required to obtain the services of a design consultant to complete the needed design services; and

WHEREAS, the package for the Services was awarded to Catcord Construction Company, Inc. (Catcord) pursuant to the GCTO contract and, in October 2021, Catcord provided the SDA with a cost proposal for the Services, inclusive of design services and implementation of the most extensive scope of work; and

WHEREAS, a notice-to-proceed was issued to Catcord in January 2022 and, upon completion of the design phase, Catcord submitted a finalized construction cost estimate; and

WHEREAS, the memorandum presented to the Board on this date describes subsequent negotiations resulting in a reduction in the cost of the construction portion of the Services and, thereafter, the identification of a \$109,438.00 insufficiency in the amount allocated for Catcord's provision of the same and the basis for management's recommendation for the issuance of Change Order No. 2; and

WHEREAS, Change Order No. 2 in the total lump sum value of \$109,438.00, would provide the additional funds required for the construction services required to furnish and install the approved scope of work to address the Safety, Security and Other Upgrades at the ES; and

WHEREAS, all documents supporting Change Order No. 2 in an amount which exceeds 10% of the contract value, have been reviewed by the associated SDA Project Team for adherence to current SDA policy and procedures and all reviewing SDA staff members, including financial operations, have determined that the items included in the change order are justified and that the amount is reasonable and appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve Change Order No. 2, in the total lump sum value of \$109,438.00, to Catcord Construction Co., Inc. for the construction services necessary to furnish and install the approved design scope of work to address the required Safety, Security and Other Upgrades at the Harrison Elementary School delivered by the Authority to the Harrison School District in 2020.

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, Concord Construction Company, Inc., Contract No. HU-0027-C01, Change Order No. 2, Harrison Elementary School, Harrison School District, dated April 5, 2023

Dated: April 5, 2023

**Change Order No. 56 – Millville Public Schools District - Millville High School -
Hall Construction Company, Inc.**

MEMORANDUM

TO: Members of the Authority

FROM: Robert Ryan, Program Director, Construction Operations

RE: District: Millville Public Schools
School: Millville Senior High School
Package No: ST-0046-B01
Design-Builder: Hall Construction Company, Inc.

DATE: April 5, 2023

SUBJECT: Millville High School Additions and Renovations Project
Change Order No. 56 – School Security Enhancements

COMPANY NAME: Hall Construction Company, Inc.
DISTRICT: Millville Public Schools
CM: Greyhawk North America
CONTRACT NO.: ST-0046-B01
SCHOOL NAME: Millville High School
CHANGE ORDER NO: 56
REASON: School Security Enhancement Work
AMOUNT: \$1,700,000.00 (Not-to-Exceed)
ORIGINAL CONTRACT
VALUE: \$114,453,000.00
CONTRACT STATUS: 97.11% Paid to date against the Current Total Contract Value

INTRODUCTION

On December 5, 2016, a new law was enacted requiring that certain school security measures be incorporated in architectural designs for new school construction while also addressing security measures for existing school buildings, P.L. 2016, c. 79 (the Law).

SDA staff subsequently developed School Security Systems Guidelines (Standards) to ensure compliance with the new Law and a consistent approach in the design of school security systems for the Authority's projects. Further, upon enactment of the Law, SDA determined that these Standards would be applied to all projects then under contract for design or construction that were scheduled to be delivered for opening in September 2019 or later.

The Members of the Authority are requested to approve Change Order No. 56 to Contract ST-0046-B01 for the Millville High School Additions and Renovations Project (Project) in the Millville School

District. Change Order No. 56, in the Not-to-Exceed (NTE) Amount of \$1,700,000.00, would provide funding to include security enhancements as part of the Project in order to comply with the 2016 Law.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, a change order which 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. The NTE value of Change Order No. 56 exceeds \$500,000.

BACKGROUND

The Project includes additions and renovations to Millville High School to increase its capacity by 860 new seats to 2,026 students in grades 9 through 12. The School is located on a site owned by the Millville Public Schools District located at 200 Wade Boulevard in Millville, New Jersey. The Project will increase the School's size from approximately 200,000 square feet to approximately 375,000 square feet. Additions include a three-story wing housing a new cafeteria and classrooms; a new gymnasium and two-story wing housing administration and guidance areas, health and fitness rooms and science labs. The Project will also provide a two-story connector wing housing art rooms, small-group rooms and a broadcast studio; a new auditorium; and a renovated boiler room. Other work will include conversion of the High School's existing auditorium to a media center and administration offices and include a number of alterations and renovations required to re-purpose existing spaces.

On May 24, 2017, Hall Construction Co., Inc. (Hall) was issued a Notice-To-Proceed (NTP) for the design phase of the Project. The District has been occupying completed phases of the building since 2018 and the Project is now nearing completion of all work. The last phase of the project, consisting of the new auditorium addition, has recently been completed and the District will begin occupying that space in April 2023.

REASON FOR CHANGE

Throughout 2018, the Authority developed new school security enhancement standards (Standards) to ensure projects are delivered in compliance with the 2016 School Security Law. On September 29, 2020 a scope change narrative and revised diagrammatic drawings were issued to Hall Construction for incorporation into the completed design documents under Contract Change Request (CCR) No. 35. The Design of the requested Security Enhancements issued in CCR No. 35 was authorized under Allowance No. 1, Authorization 30 and completed in December 2022. The same has been submitted to the Department of Community Affairs (DCA) where it is currently under review for compliance with applicable building codes. Release is expected in early April 2023.

Change Order No. 56 is submitted to the Board for approval with a proposed NTE cost since final costs are still being negotiated by SDA staff, Greyhawk and Hall. Costs cannot be finalized until after DCA acceptance and release of the design.

SUMMARY OF CHANGE

Change Order No. 56 would provide construction costs required to implement the designed SDA Security Enhancements to comply with the 2016 School Security Law (PL 2016 C. 79) for the Project. These security enhancements address items including, but not limited to, access control modifications; door position monitoring; door alarms; entrance security measures; and intercom systems.

Hall has submitted a proposal in the amount of \$1,675,629.86 to SDA for the construction services to provide the SDA requested security enhancements at the Millville High School. Although SDA staff and Greyhawk continue to review the proposal's dollar value, it is recommended and requested that the Board authorize advancement of the work now by approving Change Order No. 56 with an NTE value, in order to support the Project schedule. Construction of the security enhancements will not commence until after DCA acceptance and release of the design.

CALCULATIONS

a. Original Contract Amount	\$ 114,453,000.00
b. Change Orders to Date	\$ 8,555,328.96
c. Proposed Change Order Amount (Total Amount)	\$ 1,700,000.00
d. Total Change Orders to Date including this Change Order (Total of Line (b.) and Line (c.))	\$ 10,255,328.96
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	8.96%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$ 124,708,328.96

All current documents supporting Change Order No. 56 were reviewed by the associated SDA project team members as well as the program director, deputy program director, and Financial Operations for adherence to current SDA policy and procedures. All reviewing SDA staff members have determined that the proposed value of Change Order No. 56, in the total NTE amount of \$1,700,000.00, is reasonable and appropriate.

RECOMMENDATION

The Members of the Authority are requested to approve Change Order No. 56 in the NTE amount of \$1,700,000.00 for construction services associated with incorporation of the SDA requested security enhancements or the Millville High School additions and renovations project.

/s/ Bob Ryan

Bob Ryan, Program Director, Construction Operations

Reviewed and Recommended by: Steve Wendling, Deputy Program Director, Construction Operations
Prepared and Recommended by: Ted Bosnjak, Senior Program Officer, Construction Operations

Resolution—5b.

COMPANY NAME:	Hall Construction Company, Inc.
DISTRICT:	Millville Public Schools
CM:	Greyhawk North America
CONTRACT NO.:	ST-0046-B01
SCHOOL NAME:	Millville High School
CHANGE ORDER NO:	56
REASON:	School Security Enhancement Work
AMOUNT:	\$1,700,000.00 (Not-to-Exceed)
ORIGINAL CONTRACT VALUE:	\$114,453,000.00
CONTRACT STATUS:	97.11% Paid to date against the Current Total Contract Value

Resolution

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

WHEREAS, on December 5, 2016, a new law was enacted requiring that certain school security measures be incorporated in architectural designs for new school construction while also addressing security measures for existing school buildings, P.L. 2016, c. 79 (the Law); and

WHEREAS, the Authority thereafter developed School Security Systems Guidelines (Standards) to ensure compliance with the Law and a consistent approach in the design of school security systems for the Authority's projects; and

WHEREAS, SDA further determined to apply these Standards to all projects then under contract for design or construction that were scheduled to be delivered for opening in September 2019 or later; and

WHEREAS, the Millville High School (High School) additions and renovations project (Project) would increase the High School's capacity by 860 new seats to 2,026 students in grades 9 through 12; and

WHEREAS, on May 24, 2017, Hall Construction Co., Inc. (Hall) was issued a notice-to-proceed (NTP) for the design phase and, while the High School has been partially occupied since 2018, the Project is now nearing completion of all work; and

WHEREAS, management requests and recommends that the Members of the Authority approve Change Order No. 56 for the Project in the not-to-exceed (NTE) amount of \$1,700,000.00 to fund security enhancements to ensure the Project's compliance with the 2016 Law; and

WHEREAS, Change Order No. 56 is submitted for Board approval with a proposed NTE cost since final costs are still being negotiated and pending required Department of Community Affairs' design acceptance and release; and

WHEREAS, Board approval of Change Order No. 56 with an NTE value, is necessary in order to support the Project schedule.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve Change Order No. 56 in the not-to-exceed amount of \$1,700,000.00 for construction services associated with incorporation of security enhancements for the Millville High School additions and renovations project in the Millville School District.

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

Attached: Memorandum, Change Order No. 56, Millville High School, Hall Construction Company Inc., Millville School District, Security Enhancements Construction Costs, Package No. ST-0046-B0, dated April 5, 2023

Dated: April 5, 2023

**Amendment No. 11 - Orange Public School District - Cleveland Street Elementary School -
Epic Management, Inc.**



MEMORANDUM

TO: Members of the Authority
FROM: Joseph Lucarelli
Director, Construction Operations
DATE: April 5, 2023
RE: Amendment No. 11 – Epic Management, Inc.

COMPANY NAME:	Epic Management, Inc.
DISTRICT:	Orange
CONTRACT NO.:	ES-0043-M01
SCHOOL NAME:	Cleveland Street Elementary School
AMENDMENT NO.:	11
REASON:	Add MEP Manager Position
AMOUNT:	\$ 256,000.00
ORIGINAL CONTRACT AMOUNT:	\$ 1,185,078.41
CONTRACT STATUS:	48.56% Paid to Date
ANTICIPATED OCCUPANCY DATE:	September, 2024

INTRODUCTION

The Members of the Authority are requested to approve a contract amendment to Epic Management, Inc. (Epic) on a time and material not to exceed amount of \$256,000.00 for the addition of a MEP Manager position to the Construction Management (CM) Staff at the Orange Cleveland Street Elementary School project (Project). This amendment is precipitated by the provisions of the new bid package to engage a general contractor (GC) to complete the Project within the contractual substantial completion date of August of 2024.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, an Amendment which singularly exceeds \$100,000.00 or 10% of the Contract value requires approval by the Members of the Authority. This amendment exceeds \$100,000.00 and 10% of the Contract value.

BACKGROUND

The Orange Cleveland Street Elementary School (School), built in 1898, is a 38,750 square foot facility educating 306 students in grades Kindergarten through 7. The project scope includes an

11,550 square foot addition and renovations to the existing facility to address overcrowding and will allow a change in grade alignment to grades Pre-K through 6 consistent with the District's approved Long Range Facilities Plan (LRFP) for the School.

On March 6, 2019 the Members of the Authority approved the award of a contract to Brockwell & Carrington Contractors, Inc. (B&C) for Construction Services and the Final Project Charter for the Project. On May 2, 2019, the NJSDA issued a Notice to Proceed (NTP) for the performance by B&C of a Constructability Review, consistent with the contract, 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. After performance of the Constructability Review, B&C was issued a NTP for Construction Services on January 13, 2020, with a commencement date of January 15, 2020.

Concurrent with the NTP for Construction Services, Epic was issued a NTP to provide Construction Management Services for the Project with a commencement date of January 15, 2020.

Approximately two years after the construction NTP was issued to B&C, the NJSDA determined that termination of the Construction Services contract was in the best interest of the NJSDA and the State of New Jersey. Accordingly, the NJSDA issued a Notice of Termination for Convenience to B&C on January 20, 2022 in accordance with Section 11.3.2 of the contract. At the same time, SDA directed B&C to complete portions of the work and demobilize from the Project site by March 1, 2022. Due to the length of time between the termination of B&C and the procurement of a new Construction Services contract, Epic's contract was amended to add site security and site services to their list of deliverables. SDA is currently soliciting bids for the procurement of a new contract for Construction Services, with revised design documents, in order to complete the Project.

REASON FOR CHANGE

In preparation for the new Construction Services contract, the Project is being bid with a construction duration of approximately 15 months based upon a May 2023 NTP and a substantial completion date of August of 2024. This shortened construction duration will require the new contractor to include overtime and weekend services for the Project. To assure the Project is properly staffed from the management side, SDA and Epic conducted a review and it was determined that one additional staff member is required to assure proper management coverage on site. The original RFP for CM Services did not require a Mechanical Electrical Plumbing (MEP) Manager position for the project, but did require a Project Manager and Office Engineer. Given the shortened duration for the new General Construction Services engagement and the complexities of the Project, the Project Team determined that engaging the services of a MEP Manager is critical to completing the work.

SUMMARY OF CHANGE

At the request of the NJSDA, Epic submitted a proposal for the addition of a full time MEP Manager for the partial duration of the new construction contract and part time during the close-out phase. Epic submitted a proposal and resume for the MEP Manager position at a cost of \$16,000.00 per month for a duration of 14 months (for a total cost \$224,000.00); and close-out at 2 months full time or 4 months part time in the amount of \$32,000.00, for a combined total cost of \$256,000.00 for Amendment #11).

Based upon the Project Team review and comparison to other projects the cost was found to be fair and reasonable.

All documents supporting this amendment have been reviewed by the associated NJSDA Project Team and Financial Operations for adherence to current NJSDA policy and procedures. All reviewing NJSDA staff members have determined that the items included in the amendment are justified and that the amount is reasonable and appropriate.

CALCULATIONS

a. Original Contract Amount	\$ 1,185,078.41
b. Amendment(s) to Date	\$ 1,513,089.90
c. Proposed Amendment Amount	\$ 256,000.00
d. Total Amendments to Date including this Amendment (Total of Line (b.) and Line (c.))	\$ 1,769,089.90
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	\$ 149.28%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$ 2,954,168.31

RECOMMENDATION

As detailed above, the Members of the Authority are requested to approve Contract Amendment #11 to Epic Management, Inc. in a time and materials not to exceed amount of \$256,000.00 for the addition of a Mechanical Electrical Plumbing Manager to the Construction Management staff for the remaining construction duration and close-out phase for the Orange Cleveland Street Elementary School project.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, an Amendment which singularly exceeds \$100,000.00 or 10% of the Contract value requires approval by the Members of the Authority. This amendment exceeds \$100,000.00 and 10% of the Contract value.

Recommended by:

/s/ Joseph Lucarelli

Joseph Lucarelli, Program Director, Construction Operations

Reviewed and Recommended by: Donald Guarriello, Vice President and Chief Financial Officer
Reviewed and Recommended by: Denise Petraglia, Deputy Program Director, Construction Operations
Reviewed and Recommended by: Felipe Marrero, Senior Program Officer, Construction Operations

Resolution 5c.

Amendment No. 11 - Epic Management, Inc., Orange Public Schools District, Cleveland Street Elementary School, ES-0043-M01, Add Mechanical Electrical and Plumbing Manager Position

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (SDA or the Authority) requires that the Members of the Authority authorize and approve contract amendments in an amount exceeding \$100,000 or 10% of the contract value; and

WHEREAS, the Orange Cleveland Street Elementary School (OCES) is a 38,750 square foot facility currently educating 306 students in grades Kindergarten through 7; and

WHEREAS, in March 2019 the SDA Board approved an award for construction services to Brockwell & Carrington Contractors, Inc. (B&C) and a final charter for a project at the OCES (the Project); and

WHEREAS, the Project scope includes an 11,550 square foot addition and renovations to address overcrowding at the existing facility and will allow a change in grade alignment to Pre-Kindergarten through grade 6 consistent with the Orange Public Schools District's approved Long Range Facilities Plan; and

WHEREAS, on January 15, 2020, B&C commenced the provision of construction services for the Project, with Epic Management, Inc. (Epic) concurrently providing construction management services; and

WHEREAS, on January 20, 2022, the SDA issued a Notice of Termination for Convenience to B&C in accordance with Section 11.3.2 of the contract while, at the same time, directing B&C to complete portions of the work and demobilize from the project site by March 1, 2022; and

WHEREAS, SDA is currently soliciting bids for the procurement of a new contract for construction services with revised design documents, in order to complete the Project; and

WHEREAS, the Project's remaining construction duration shall be approximately 15 months, utilizing a May 2023 notice-to-proceed and a substantial completion date of August 2024; and

WHEREAS, this shortened construction duration, the need for overtime and weekend work, and the complexities of the Project render engagement by Epic of a full-time Mechanical Electrical Plumbing Manager (MEP Manager position) for the duration critical to ensuring timely completion of the Project; and

WHEREAS, the terms and duration of the MEP Manager Position engagement, as proposed and to be facilitated through contract Amendment No. 11, are set forth in the memorandum presented to the Board on this date and reflect a total cost of \$256,000.00; and

WHEREAS, following a project team review and comparison of the proposal to other projects, the cost as proposed was determined to be fair and reasonable; and

WHEREAS, all documents supporting Amendment No. 11 have been reviewed by the associated SDA project team and financial operations for adherence to current SDA policy and procedures and all reviewing staff members have determined that the items included therein are justified and that the amount is reasonable and appropriate; and

WHEREAS, SDA management recommends that the Members of the Authority approve the proposed contract Amendment No. 11 to Epic for the time and material based not-to-exceed amount of \$256,000.00 to facilitate the addition of a MEP Manager position to the Project's construction management staff.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve contract Amendment No. 11 to Epic Management, Inc. in the time and material based, not-to-exceed amount of \$256,000.00 for the addition of a Mechanical Electrical Plumbing Manager position to the construction management staff for the remaining construction duration and close-out phase of the Orange Cleveland Street Elementary School project consistent with the memorandum presented to the Board on this date and incorporated herein.

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, Amendment No. 11, Epic Management, Inc., Orange Public Schools District, Cleveland Street Elementary School, Security Services, dated April 5, 2023

Dated: April 5, 2023

**Amendment No. 21 - Orange Public School District - Cleveland Street Elementary School -
LAN Associates**



MEMORANDUM

TO: Members of the Authority

FROM: Joseph Lucarelli
Director, Construction Operations

DATE: April 5, 2023

SUBJECT: Amendment No. 21

COMPANY NAME:	LAN Associates
DISTRICT:	Orange Public School District
CONTRACT NOS.:	ES-0043-A01
CM:	Epic Management, Inc.
DESIGN CONSULTANT:	LAN Associates
SCHOOL NAME:	Cleveland Street Elementary School
AMENDMENT NO.:	21
REASON:	Extension of Construction Administration Services
AMOUNT: (NTE)	\$180,107.00 Time and Material (T&M) Not to Exceed
CONTRACT STATUS:	85.69% Paid to Date against the Current Contract Value
ANTICIPATED OCCUPANCY DATE:	September 2024

INTRODUCTION

The Members of the Authority are requested to approve a contract amendment to LAN Associates (LAN) for additional construction administrative services (the services). Specifically, the contract amendment would extend LAN's provision of these services to align with the revised construction completion date for the Orange Cleveland Street Elementary School project. The recommended amendment will be administered on a Time & Material (T&M) basis, in the Not-To-Exceed (NTE) amount of \$180,107.00. The revision to the construction completion date is precipitated by the termination of the original general contractor. The new date aligns with the anticipated contractual completion date for the project included within the contract documents for the new general contractor currently being procured.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, an Amendment which singularly exceeds \$100,000.00 or 10% of the Contract value requires approval by the Members of the Authority. This amendment exceeds \$100,000.00.

BACKGROUND

The Cleveland Street ES, built in 1898, is a 38,750 square foot facility educating 306 students in grades Kindergarten through Grade 7. The project scope includes an 11,550 square foot addition and renovations (the Project) to address overcrowding at the existing facility. The Project also will allow a change in grade

alignment to Pre-K through Grade 6 consistent with the District's approved Long Range Facilities Plan (LRFP) for the Cleveland Street ES. In the interim, the students have been relocated and are currently being educated in a NJSDA-leased facility.

On March 6, 2019, the Members of the Authority approved an award of a contract to Brockwell & Carrington Contractors, Inc. (B&C) for construction services along with the Project's Final Charter. On May 2, 2019, the NJSDA issued a Notice to Proceed (NTP) for the performance by B&C of a Constructability Review. Per the contract, as part of the Constructability Review scope of work, B&C was required 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. Subsequently, the Construction Administration Phase NTP was issued to LAN on January 13, 2020.

Consistent with the Contract requirements, B&C submitted a proposed change order at the conclusion of the Constructability Review to remedy identified Constructability Review deficiencies. At the same time, B&C 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, Change Order No. 1 was approved by the NJSDA in January 2020 in the net total amount of \$411,505.89. On January 13, 2020, B&C was issued a NTP for Construction Services.

Approximately two years after the construction NTP was issued to B&C, the NJSDA determined that termination of its construction services contract with B&C was in the best interest of the NJSDA and the State of New Jersey. Accordingly, the NJSDA issued a Notice of Termination for Convenience to B&C on January 20, 2022 in accordance with Section 11.3.2 of the contract. At the same time, NJSDA directed B&C to complete portions of the work and demobilize from the Project site by March 1, 2022.

Given the length of time between the termination of B&C and the pending procurement of a new construction services contract, at its April and July 2022 meetings, the Board approved the following in support of the revised forecasted substantial completion date of August 2024:

- Amendments to the Construction Manager's (Epic Management, Inc.) contract to compensate the firm for added security and site maintenance services, along with the provision of additional services in preparation for procurement of a new GC for the Project.
- A contract amendment for the extended services to be provided by Epic through the revised substantial completion date of August 2024.
- An extension and modification of the lease period for temporary educational space to accommodate the students relocated during the period of construction.
- An amendment to the Design Consultant's (LAN) contract for additional design services to prepare revised design documents for bid and procurement of a new GC to complete the project.
- The final change orders for the settlement of the B&C contract termination.

CURRENT PROJECT STATUS

The Project is in the bid stage for procurement of a new general contractor. The bid schedule anticipates receiving bids April 5, 2023 and the issuance of the Notice of Award is projected for May 2023. This Amendment No. 21 is required to extend the provision of construction administrative services by LAN Associates during the current procurement phase of a new contractor through Project completion. The Orange Cleveland Street Elementary School is expected to be completed in time for a September 2024 school opening.

REASON FOR AMENDMENT

LAN's consultant contract for design and construction administrative services was amended several times for the provision of additional services. These amendments include the following recent amendments: Amendment No. 17, issued prior to the termination for convenience of B&C to extend LAN's construction administration services through July 2022; Amendment No. 18, presented to the August 2022 Board for approval, for additional design services necessary to address numerous structural issues discovered after abatement and selective demolition performed post-Constructability Review; and Amendment No. 19 for additional design services to prepare as-built drawings documenting the existing conditions of the building post termination of B&C (note: the as-built drawings will be included as existing conditions drawings in the new construction documents being utilized to procure a new construction services contract to complete the Project); and Amendment No. 20 for the preparation of revised design documents for the rebidding and procurement of a new general contractor.

Amendment No. 21 is now required to continue LAN's construction administrative services for the period from the new bid construction contract award to substantial completion projected to be August 2024.

SUMMARY OF CHANGE

This amendment is to extend the provision of construction administrative services which shall include, but not be limited to, review of submittals, shop drawings, attendance at job meetings and on site review of the Project's progress. The cost presented in Amendment No. 21 does not include close out services as the fee in the contract for those services have not been utilized yet and therefore remain available to be used at close out.

The additional services will be performed by LAN on a T&M basis and will be confirmed by a review of relevant records by the Construction Management Team (Epic) and NJSDA's Project Team.

All documents supporting this amendment have been reviewed by the associated NJSDA Project Team members, inclusive of Financial Operations, as well as the Directors and Deputy Director, for adherence

to current NJSDA policy and procedures. All reviewing NJSDA staff members, including Financial Operations, have determined that the items contained in LAN Amendment No. 21 are justified and the amount is reasonable and appropriate.

CALCULATIONS

Additional Design Consultant Construction Administration Services

a. Original Contract Amount	\$ 1,820,017.00
b. Amendments to Date	\$ 907,478.35
c. Proposed Amendment Amount	\$ 180,107.00
d. Total Amendments to Date including this Amendment (Total of Line (b.) and Line (c.))	\$ 1,087,585.35
e. Percentage Change to Original Contract (Line (d.) represents a percent of Line (a.))	59.76%
f. Proposed Adjusted Contract Price (Line (a.) plus Line (d.))	\$ 2,907,602.35

RECOMMENDATION

The Members of the Authority are requested to approve Amendment No. 21 in the NTE amount of \$180,107.00 to extend the performance by LAN Associates of construction administrative services to complete the Project at the Orange Cleveland Street Elementary School. LAN will perform the additional construction administrative services on a T&M basis.

Pursuant to the NJSDA Operating Authority adopted by the Board on December 1, 2010, as amended March 7, 2012, an Amendment which singularly exceeds \$100,000.00 or 10% of the Contract value requires approval by the Members of the Authority. This amendment exceeds \$100,000.00.

Recommended by:

/s/ Joseph Lucarelli
 Joseph Lucarelli, Director, Construction Operations

Reviewed and Recommended by:	Jane Kelly, Vice President Corporate Governance and Legal Affairs
Reviewed and Recommended by:	Donald Guarriello, Vice President and Chief Financial Officer
Reviewed and Recommended by:	Gregory Voronov, Managing Director, Planning and Program Operations
Reviewed and Recommended by:	Denise Petraglia, Deputy Director, Construction Operations
Prepared and Recommended by:	Felipe Marrero, Senior Program Officer, Construction Operations

Resolution 5d.

Amendment No. 21 - LAN Associates, Orange School District, Cleveland Street Elementary School, Extension of Construction Administration Services

Resolution

WHEREAS, the Operating Authority of the New Jersey Schools Development Authority (SDA or the Authority) requires that the Members of the Authority authorize and approve contract amendments in an amount exceeding \$100,000 or 10% of the contract value; and

WHEREAS, the Orange Cleveland Street Elementary School (OCES), built in 1898, is a 38,750 square foot facility educating 306 students in grades Kindergarten through 7; and

WHEREAS, in March 2019 the SDA Board approved an award for construction services to Brockwell & Carrington Contractors, Inc. (B&C) and a final charter for a project at the OCES (the Project); and

WHEREAS, the Project scope includes an 11,550 square foot addition and renovations to the existing facility to address overcrowding and will allow a change in grade alignment to grades Pre-Kindergarten through 6 consistent with the district's approved Long Range Facilities Plan; and

WHEREAS, approximately two years after issuance of the construction notice-to-proceed, the SDA terminated its construction services contract with B&C through issuance of a Notice of Termination on January 20, 2022 in accordance with Section 11.3.2 of the contract, and directed B&C to complete portions of the work and demobilize from the Project site by March 1, 2022; and

WHEREAS, the Project is in the bid stage for procurement of a new general contractor and a revised forecasted substantial completion date has been set for August 2024; and

WHEREAS, LAN Associates (LAN) provides design and construction administrative services for the Project (the Services); and

WHEREAS, Amendment No. 21 in the amount of \$180,107.00 is required to extend LAN's provision of the Services during the current general contractor procurement phase through to the Project's substantial completion; and

WHEREAS, the memorandum presented to the Board on this date provides a detailed background of the Project, along with a description of previous contract amendments to LAN and the Services that presently are, and going forward shall be, provided by LAN; and

WHEREAS, the additional Services will be performed by LAN on a time and materials basis and will be confirmed by a review of relevant records by the construction management team and the SDA Project Team; and

WHEREAS, all documents supporting Amendment No. 21 have been reviewed by the associated SDA project team members, inclusive of financial operations, for adherence to current SDA policy and procedures and all reviewing SDA staff members have determined that the items contained in Amendment No. 21 are justified and the amount is reasonable and appropriate.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve a contract amendment to LAN Associates in the not-to-exceed amount of \$180,107.00 for additional extended construction administrative services to align with the revised construction completion date for the Orange Cleveland Street Elementary School project, with such services to be provided on a time and materials basis.

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, Amendment No. 21 - LAN Associates, Orange Public School District,
Cleveland Street Elementary School, Extension of Construction Administration
Services, dated April 5, 2023

Dated: April 5, 2023

Notice of Readoption: Preconstruction Activities N.J.A.C 19:34



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: April 5, 2023

RE: Notice of Readoption – Preconstruction Activities, N.J.A.C. 19:34

On May 4, 2016 the Members of the NJSDA Board approved for final adoption regulations for Preconstruction Activities, N.J.A.C. 19:34 (“the Rules”). The Rules were formally published in the New Jersey Register on July 5, 2016 and will expire on May 26, 2023.

Management of the Authority now seeks the Members’ approval of the filing of a Notice of Readoption to extend the effective date of the Rules for a period of seven years. The form of Notice of Readoption is attached to this Memorandum. A Notice of Readoption takes advantage of a statutorily-authorized expedited process that permits regulations to be readopted without amendments, and without prior publication or public comment, pursuant to a filing of the Notice of Readoption with the Office of Administrative Law at least thirty days prior to the expiration of the regulations.

Background

The Rules establish the standards and procedures for the SDA’s undertaking of preconstruction activities on behalf of SDA school districts. Pursuant to N.J.S.A. 18A:7G-5, preconstruction activities are those activities required to prepare an application for Department of Education approval of a school facilities project, which include site identification, investigation and acquisition, feasibility studies, land-related design work, design work, site remediation, demolition, and acquisition of temporary facilities. A full copy of the Rules is provided with this memorandum.

The Rules address: definitions; disclosure and publicity; access to documents and record retention; waivers; appeals; the roles and responsibilities of SDA school districts, the Department of Education and the SDA; the standards and procedures with respect to district applications for approval of preconstruction activities; procedures for site identification, including the creation of an inventory of district-owned and municipal-owned property for consideration in response to a site acquisition request; as well as the procedures for conducting a feasibility analysis, environmental investigation, title review, and site appraisal, all in support of site acquisition. Also

provided for are standards governing the relocation of residential and commercial parties displaced by SDA site acquisitions, as well as the procedures for the Authority's procurement of temporary facilities to support a school facilities project.

Requested Board Action

The Members of the Authority are requested to approve the use of the Notice of Readoption process to effect the readoption and extension of the Rules for a seven-year period. Upon approval of the Notice of Readoption, the Notice will be submitted to the Office of Administrative Law for processing and publication in the New Jersey Register, and once published, the Rules will be effective for another seven years.

 /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

Notice of Readoption

Preconstruction Activities

Readoption: N.J.A.C. 19:34

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; 52:18A-240) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); and P.L. 2007, c.137 (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

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

Proposal Number: PRN 2023-

Take notice that, in accordance with N.J.S.A. 52:14B-1, the rules of the New Jersey Schools Development Authority (SDA) at N.J.A.C. 19:34 are set to expire on May 26, 2023. The rules implement Section 5 of the Educational Facilities Construction and Financing Act (“EFCFA” or the “Act”), P.L. 2000 c. 72 (N.J.S.A. 18A:7G-1 et seq.), and govern the standards and procedures for the SDA’s undertaking of preconstruction activities on behalf of SDA school districts. Pursuant to N.J.S.A. 18A:7G-5, preconstruction activities are those activities required to prepare an application for Department of Education approval of a school facilities project, which include site identification, investigation and acquisition, feasibility studies, land-related design work, design work, site remediation, demolition, and acquisition of temporary facilities.

This chapter addresses: definitions; disclosure and publicity; access to documents and record retention; waivers; appeals; the roles and responsibilities of SDA school districts, the Department

of Education and the SDA; the standards and procedures with respect to district applications for approval of preconstruction activities; procedures for site identification, including the creation of an inventory of district-owned and municipal-owned property for consideration in response to a site acquisition request; as well as the procedures for conducting a feasibility analysis, environmental investigation, title review, and site appraisal, all in support of site acquisition. Also provided for are standards governing the relocation of residential and commercial parties displaced by SDA site acquisitions, as well as the procedures for the Authority's procurement of temporary facilities to support a school facilities project.

The SDA has reviewed Chapter 34 and has determined that this chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which it was originally promulgated, as amended and supplemented over time, and should be readopted without amendment. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1) and N.J.A.C. 1:30-6.4(h), N.J.A.C. 19:34 is readopted and shall continue in effect for a seven year period.

Approved: _____ /s/
Manuel M. Da Silva
Chief Executive Officer, NJSDA

Date: _____, 2023

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*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 48 No. 22, November 21, 2016 ***

TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 34. PRECONSTRUCTION ACTIVITIES

Go to the New Jersey Administrative Code Archive Directory

N.J.A.C. 19:34 (2016)

Title 19, Chapter 34 -- Chapter Notes

CHAPTER AUTHORITY:

P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238k and 52:18A-240) (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.), and N.J.S.A. 52:34-9.3 (enabling statutes).

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2016 d.073, effective May 26, 2016.

See: 48 N.J.R. 192(a), 48 N.J.R. 1385(a).

CHAPTER EXPIRATION DATE:

Chapter 34, Preconstruction Activities, expires on May 26, 2023.

CHAPTER HISTORICAL NOTE:

Chapter 34, Pre-Development Activities, was adopted as new rules by R.2003 d.299, effective July 21, 2003. See: 35 N.J.R. 586(a), 35 N.J.R. 3394(a).

Chapter 34, Pre-Development Activities, was readopted as R.2009 d.14, effective December 8, 2008. As a part of 2008 d.14, Chapter 34, Pre-Development Activities, was renamed Preconstruction Activities; Subchapter 2, General Guidelines for Undertaking and Funding Pre-Development Activities, was renamed General Guidelines for Undertaking and Funding Preconstruction Activities; Subchapter 3, Abbott Districts Land Pre-Development, was renamed SDA School Districts Site Preconstruction Activities; and Subchapter 5, Other Districts Required To Use the Corporation: Undertaking and Funding Pre-Development Activities and Subchapter 6, Demonstration Projects, were repealed, effective January 5, 2009. See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 34, Preconstruction Activities, was scheduled to expire on December 8, 2015. See: 43 N.J.R. 1203(a).

Chapter 34, Pre-Development Activities, was readopted as R.2016 d.073, effective May 26, 2016. See: Source and Effective Date. See, also, section annotations.

§ 19:34-1.1 Purpose and applicability of rules

(a) These rules are promulgated by the New Jersey Schools Development Authority (the Authority or SDA), to provide guidance for school districts on the Authority's undertaking and funding of preconstruction activities. Section 5 of 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, § 20 (the "Act") identifies "preconstruction" activities as including, but not limited to, site identification, investigation and acquisition, feasibility studies, land-related design work, design work, site remediation, demolition, and acquisition of temporary facilities. With Commissioner authorization, the SDA may undertake preconstruction activities required to prepare an application for commissioner approval of a school facilities project.

(b) In accordance with P.L. 2007, c. 137, section 1h, these rules provide for the involvement of SDA school districts, the public and stakeholders at critical points throughout the preconstruction phase of a school facilities project, including the identification and selection of proposed sites for school facilities projects. The rules also provide selection criteria to assist school districts in performing their responsibilities to identify prospective school sites.

(c) The rules in this chapter shall apply to SDA school districts, the school districts required to use the Authority to construct their school facilities projects.

(d) Upon the approval of an SDA school district's long range facilities plan, and based upon the educational priority ranking of the school facilities projects in an SDA school district, as determined by the Commissioner pursuant to section 5m(2) of the Act, and the establishment of a Statewide strategic plan to be used by the Authority in the sequencing of school facilities projects, pursuant to section 5m(3) of the Act, an SDA school district may, pursuant to *N.J.A.C. 6A:26-3.9*, apply to the Department for approval of preconstruction activities, provided such activities are consistent with its approved long-range facilities plan. The SDA school district submits an application for preconstruction activities to the Department, which notifies both the district and the Authority whether the activities are approved.

(e) An SDA school district for which the Authority undertakes preconstruction activities shall, at minimum, comply with the requirements of this chapter, as applicable.

§ 19:34-1.2 Definitions

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

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (*N.J.S.A. 18A:7G-1* et seq.), as amended, and P.L. 2007, c. 137.

"Approved preconstruction activity" means a preconstruction activity submitted to the Department for approval and approved by the Department, pursuant to *N.J.A.C. 6A:26-3.9*.

"Architectural pre-design and programming" means the preliminary drawing of the school facility on a site or proposed site, showing how the facility, including the programmatic model for the facility, will fit on the site with all ancillary and accessory uses (parking, recreation, etc.), which may be submitted to the local planning board, pursuant to *N.J.S.A. 40:55D-1* et seq.

"Authority" or "SDA" means the New Jersey Schools Development Authority, established pursuant to Section 3 of P.L. 2007, c. 137 (*N.J.S.A. 52:18A-235* et seq.), the successor entity to the New Jersey Schools Construction Corporation. The Authority is statutorily charged with undertaking and funding school facilities projects, pursuant to the Act.

"Boundary survey" means the research of deeds, easement, utility records, title reports, fieldwork, including precision survey measurements, and preparation of maps and plans which accurately measure the boundaries of a parcel of land proposed for a school facilities project, in accordance with the "Minimum Standard Detail Requirements for American Land Title Association/American Congress on Surveying and Mapping (ALTA/ACSM) Land Title Surveys," (2011), available at www.alta.org/forms/download.cfm?formID=338&type=word, which requirements are incorporated herein by reference, as amended and supplemented.

"Capital maintenance project" means a school facilities project intended to extend the useful life of a school facility, including up-grades and replacements of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems.

"Commissioner" means the Commissioner of Education.

"Consultant" means a consultant, including a design consultant and a site consultant, engaged by the Authority for an approved preconstruction activity providing professional services associated with research, development, design, engineering and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. There may be one or more consultants engaged by the Authority for an approved preconstruction activity.

"DCA" means the New Jersey Department of Community Affairs.

"Demolition services" means the removal of asbestos and hazardous building materials, such as lighting fixtures and thermostats containing mercury, air conditioning units containing chlorofluorocarbons (CFCs) and light ballasts containing PCBs, followed by the razing of existing structures and removal of building foundations not beneficial to the construction of the proposed school facilities project, disposal of demolition debris and the backfill of the demolition area with fill suitable for unrestricted residential use and the removal of underground storage tanks and associated remediation of soil impacted by a discharge from the tank.

"Department" means the New Jersey Department of Education.

"Design consultant" means an architect or engineer or other consultant that undertakes design work and/or construction administration services in connection with a school facilities project pursuant to a design consultant contract.

"Design work" or "preconstruction design work" means design work performed by a design consultant in preparation of a school facilities project, pursuant to *N.J.S.A. 18A:7G-5*, and may include design work in connection with land acquisition, site investigation, demolition services and preparation of the drawings required for submission of a school facilities project application or for temporary facilities educational adequacy approval.

"District" or "school district" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a school district under full State intervention pursuant to P.L. 1987, c. 399 (*N.J.S.A. 18A:7A-34 et seq.*).

"Environmental preliminary assessment" means the information gathering required by N.J.A.C. 7:26E-3, entailing historical record search and review and non-invasive analysis of a site to identify all potentially contaminated areas of concern at the site and to determine an appropriate environmental site investigation scope of work to characterize the soil and groundwater conditions.

"Environmental screening report" means the report required to be submitted to the NJDEP for assessing the likelihood of obtaining the various environmental, historical and cultural, land use approvals and permits relevant to a proposed school site.

"Environmental site investigation" means an invasive analysis of the site, involving soil and/or groundwater sampling as well as laboratory analysis, to determine if any contaminants are present at the site above the applicable unrestricted use remediation criteria or if any remediation or any further remediation is required, and shall comply with the requirements for site investigation set forth in N.J.A.C. 7:26E-3.

"E.O. 215" means the 1989 Executive Order requiring State agencies to assess the environmental impacts of new construction projects that exceed certain cost thresholds and that are either initiated by the State or funded by the State.

"Feasibility study" means a study undertaken with respect to a school facilities project proposed in a district's approved LRFP to determine if it is achievable in view of possible factors identified that may influence the project's design or construction, including, but not limited to, applicable Federal, State and local laws, physical site conditions, market conditions, costs and benefits. A feasibility study may include, but is not limited to, boundary and topographical

surveys, geotechnical and preliminary architectural design studies, evaluation of land use requirements to meet educational adequacy needs, evaluation of community relocation and displacement requirements of the project, adequacy of utilities such as water supply, sewerage, power and gas, evaluation and quantification of environmental quality issues, development of appropriate specifications for environmental exposure pathway controls and site remediation, evaluation of traffic impacts related to the school, compatibility of neighboring land uses, impacts to the local community and the evaluation and definition of preservation needs for historical buildings and culturally significant resources. It shall also entail the obtaining of data, documentation, statements, reports, permits and other material needed to satisfy any required approvals for the acquisition or use of land. A feasibility study may also consist of a pre-construction evaluation to determine whether, because of health and safety, efficiency, or cost, it would be more feasible to replace rather than renovate a school facility.

"Final eligible costs" means for a school facilities project to be constructed by the Authority, the final eligible costs of the school facilities project as determined by the Commissioner, in consultation with the Authority, pursuant to section 5 of the Act.

"Geotechnical investigation" means the investigation of subsurface soil and geologic conditions, such as groundwater conditions and depth to bedrock, to determine the impact of such conditions on construction costs, and adequacy of foundation support for the proposed building, and the suitability of the site for the proposed building.

"Land-related design work" means the preliminary design work required for the acquisition of vacant or improved land, the acquisition of land with existing school or other facilities, or the use of district-owned land for the construction of a school facilities project, such as architectural pre-design and programming, or existing building evaluations.

"Local share" means the total costs of the school facilities project less the State share as determined pursuant to section 5 of the Act.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to *N.J.S.A. 18A:7G-4* and *N.J.A.C. 6A:26-2*, and an "approved LRFP" is an LRFP approved by the Commissioner pursuant to *N.J.S.A. 18A:7G-4* and *N.J.A.C. 6A:26-2*.

"NJDEP" means the New Jersey Department of Environmental Protection.

"NJEDA" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c. 80 (*N.J.S.A. 34:1B-1 et seq.*).

"Preconstruction activities" means the activities that must be undertaken prior to submitting a school facilities project application to the Department for approval and calculation of preliminary eligible costs. Such activities may include site identification, investigation, and acquisition, demolition services, feasibility studies, design work, land-related design work and acquisition of temporary facilities, as set forth in this chapter and in *N.J.S.A. 18A:7G-5d(2)* and *N.J.A.C. 6A:26-3.9*.

"Preliminary project report" means the report that the Department prepares for the Authority after approving a school facilities project application containing the preliminary eligible costs and other project information, pursuant to *N.J.A.C. 6A:26-3.5(b)*.

"PSCL" means the Public School Contracts Law, *N.J.S.A. 18A:18A-1 et seq.*, together with all applicable rules and guidance issued by DCA and the Department in connection with *N.J.S.A. 18A:18A-1 et seq.*

"Remediation" means all necessary actions to clean up or respond to any known, suspected, or threatened discharge of contaminants at the site that may be required to protect public health, safety, and the environment. Remediation may include the removal, treatment, containment, transportation, securing, or other engineering measures at the site designed to ensure that any contamination at the site is remediated in compliance with the applicable remediation health risks or environmental standards.

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

"School facilities project application" means an application submitted by a district for approval of a school facilities project pursuant to *N.J.A.C. 6A:26-3.2*.

"SDA school district" or "SDA district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39.

"Section 13(a) delegation agreement" means the grant agreement between the Authority and an SDA school district by which the Authority funds the State share in connection with a proposed capital maintenance project delegated by the Authority to be undertaken by an SDA school district, pursuant to section 13(a) of the Act and *N.J.A.C. 19:34A*.

"Site consultant" means a consultant engaged to undertake site feasibility and/or site investigatory work, plans and specifications for demolition and/or oversight of remediation, but shall exclude design work, in connection with a land acquisition for a school facilities project.

"State Comptroller" means the Office of State Comptroller, created pursuant to P.L. 2007, c. 52, in, but not of, the State Department of the Treasury, which is responsible for financial auditing; performance and management reviews; and reviewing the contract procurement process of the Executive Branch of State government, independent State authorities, public institutions of higher education, units of local government and boards of education.

"State share" means the State's proportionate share of the final eligible costs of a school facilities project. For the SDA school districts, this equals 100 percent of the final eligible costs of a school facilities project.

"Topographic survey" means the detailed mapping or description of the relief features or a surface configuration of a parcel of land, pursuant to the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" (see definition of "boundary survey" above).

"Traffic study" means a study of the existing traffic conditions in the immediate vicinity of the proposed school site and determination of the surrounding area(s) of impact from the proposed school facilities project. The background analysis may include, but is not limited to, traffic counts, intersection movement studies and other site specific traffic engineering tasks. The determination of the impact may include, but is not limited to, trip generation analysis, air quality analysis at intersections, and the study of parking requirements. The traffic study shall be performed by or under the supervision of a licensed engineer with expertise in traffic analysis.

"Utility investigation" means the research and field investigations performed by the consultant to determine whether or not the existing utility infrastructure is adequate to support the proposed school facilities project. The determination of whether or not public water, sanitary sewer, electric or other utilities are reasonably available in sufficient capacity to service the proposed school facilities project is critical to evaluating whether the site is viable for that purpose.

"Wetland investigation" means the evaluation of wetland area to determine the net developable area of a specific proposed school site. A wetland area is a land form, containing soil, groundwater and vegetation, which provides a critical habitat for sustaining wildlife species, and is therefore, a constraint on land use. The wetland area must be identified, delineated and mapped prior to the design of a school facilities project and associated site improvements. This investigation is typically performed by consultants trained in wetlands biology and certified by the New Jersey Department of Environmental Protection and the U.S. Army Corps of Engineers.

(b) Words and terms implementing the Act but not defined in this section shall have the meanings defined in *N.J.A.C. 6A:26-1.2*.

§ 19:34-1.3 Disclosure and publicity

(a) Applications and submissions received by the Authority under this chapter which are government records as defined in the Open Public Records Act, P.L. 2001, c. 404, shall be made available to persons who request their release as provided by State law.

(b) Press releases and other public dissemination of information by the SDA school district concerning the preconstruction activities shall acknowledge Department approval and Authority financing and undertaking of the preconstruction activities.

§ 19:34-1.4 Access and record retention

(a) The Authority shall make available records and accounts pertaining to preconstruction activities undertaken by the Authority to the State Comptroller and the State Auditor in their investigations, examinations and inspections of the activities related to the financing and undertaking of preconstruction activities. The Authority shall also cooperate, upon request, in sharing information with other entities.

(b) The school district shall keep those records and accounts for the preconstruction activities as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following substantial completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

(c) The Authority shall keep those records and accounts and shall require all parties with whom it has contracted to keep those records and accounts for the preconstruction activities as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following substantial completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

§ 19:34-1.5 Waiver

The provisions set forth in *N.J.A.C. 19:34A-1.8* shall apply to any district requesting a waiver or release from the express provisions of any of the rules in this chapter.

§ 19:34-1.6 Appeals

The provisions set forth in *N.J.A.C. 19:34A-1.9* shall apply to the appeals by SDA school districts of Authority determinations made pursuant to this chapter.

§ 19:34-1.7 (Reserved)

§ 19:34-1.8 (Reserved)

§ 19:34-2.1 General guidelines

(a) An SDA school district may require preconstruction activities to be undertaken in connection with a school facilities project prior to submission of a school facilities project application to the Department. In such case, the SDA school district may submit an application for Department approval of the undertaking and funding of the requested preconstruction activity(ies), pursuant to *N.J.A.C. 6A:26-3.9*. The preconstruction application shall be accompanied by a district board resolution authorizing the application. In the event that the application for preconstruction activities entails site acquisition, the SDA school district is encouraged to include an endorsement of the community advisory committee formed under *N.J.A.C. 19:34-3.2(c)*.

(b) The undertaking and funding of preconstruction activities shall depend on the educational priority ranking of the proposed school facilities project and the sequencing of the project in accordance with the Statewide strategic plan, pursuant to section 5 of the Act.

(c) In the case of an SDA school district, the Authority shall undertake the approved preconstruction activity or activities, unless the Authority determines that the proposed school facilities project is a capital maintenance project, which may be delegated to the SDA school district pursuant to *N.J.S.A. 18A:7G-13(a)*. In such a case, the Authority may delegate the entire capital maintenance project and any related preconstruction activities to the district and such undertaking shall be done pursuant to *N.J.A.C. 19:34A*.

§ 19:34-2.2 (Reserved)

§ 19:34-2.3 (Reserved)

§ 19:34-3.1 General criteria and procedures

If an SDA school district wishes to acquire a site in connection with a school facilities project in its approved long-range facilities plan, the Authority shall fund and undertake the following approved preconstruction activities: site identification, investigation, and acquisition, feasibility studies, land related design work, design work, site remediation, demolition, and acquisition of temporary facilities. If an SDA school district has already acquired land on which it proposes to construct a school facilities project, the Authority shall fund and undertake the aforementioned approved preconstruction activities with the exception of the activities associated with site acquisition and, at the Authority's option, activities associated with remediation of district-owned land.

§ 19:34-3.2 Site identification

(a) If the preconstruction activities to be undertaken by the SDA include site acquisition, prior to the submission by an SDA school district of an application to the Department for approval of preconstruction activities, the board of education of the district and the governing body of the municipality in which the district is situated shall jointly submit to the Commissioner and the Authority a complete inventory of all district- and municipal-owned land located in the municipality. The school district shall separately identify and provide to the Authority an inventory of any privately-owned sites that it is considering as potential school sites. The inventory shall include a map of the district showing the location of each of the identified parcels of land. If the contemplated school facilities project necessitates a property acquisition to augment an already-selected project site, the inventories of district-owned and municipal-owned land, and the inventory of privately-owned land shall be confined to parcels adjoining, adjacent, or in functional proximity to the already-selected project site to be expanded or augmented.

(b) The board of education and the governing body of the municipality shall together provide a written analysis to the Authority concerning each district- or municipal-owned site, or privately-owned site, identified pursuant to (a) above explaining whether it is suitable for a school facilities project identified in the district's long range facilities plan. The written analysis of the publicly- and privately-owned sites identified shall include the information in (b)1 through 4 below, if applicable, as follows:

1. Cost and schedule impacts: adjustments to overall project schedule, complexity of land acquisition or fair market value considerations. This shall include cost estimates based on the assessed valuation multiplied by the current municipal equalization ratio;
2. Significant site location, size and improvement considerations: constructability, community impacts related to construction and time to implement, compatibility of neighboring land uses, overall revitalization and economic development and open space plans, proximity of public transportation and relocation and displacement impacts;
3. Known significant infrastructure considerations: sufficiency of water supply (drinking and fire) and sewerage capacity, traffic impacts, including road widening and partial takings and utility relocation; and
4. Known significant environmental considerations: technical impracticability of remediation, environmental quality impacts (soil and groundwater), historic and cultural resources, compatibility with neighboring land uses, wetlands, stream encroachment, endangered species and Green Acres encumbrances.

(c) In order to promote community participation during the various phases in the development of school facilities projects, the Authority encourages SDA school districts to host a community advisory committee, which may be composed of, but not limited to, a broad range of interested parties, such as parents and teachers, business and community

leaders, school administrators and board members, land use planners and engineers and government officials. The SDA school district is encouraged to provide the members of the community advisory committee with the written analysis provided for under (b) above, and subsequent to the Department's approval of site acquisition preconstruction activities, the information provided to the SDA pursuant to (f) below.

(d) The Authority shall review the analysis provided by the district and/or municipality regarding district- and municipal-owned sites, and any privately-owned sites identified by the school district, and determine, in consultation with the Commissioner, whether any of the sites so analyzed should be excluded from further consideration, or if one or more of these sites should be submitted by the district to the Commissioner for his or her consideration of preconstruction activities to determine its suitability as a site for a proposed school facilities project. In making such determinations, the Authority, in accordance with its planning authority under the Act, may obtain information from a wide range of sources including, but not limited to, commercial database reports of environmental and historical land use information concerning potential school sites.

(e) After the SDA school district's receipt of the Authority's written determination concerning the suitability of publicly-owned and privately-owned land identified pursuant to (d) above, the district shall be responsible for identifying from one to three sites in its application to the Department for site acquisition preconstruction approval.

1. The basis for the site search area is a district's five-year Long Range Facilities Plan approved by the Department, which projects the educational needs by attendance area and future school populations. Using this plan, the site search should be conducted in the appropriate attendance area.
2. Districts shall identify prospective school sites within the attendance area of a school facilities project from the following types of properties, in order of priority, as follows:
 - i. District owned land;
 - ii. Municipal owned land;
 - iii. Other government owned land, such as that owned by a parking authority, housing authority, redevelopment agency or county;
 - iv. Undeveloped land;
 - v. Privately developed light industrial or commercial land; and
 - vi. Privately owned residential land.
3. The SDA school district shall submit an application for approval of preconstruction activities to the Department, and a copy to the Authority, which shall be accompanied by:
 - i. An endorsement of the sites by an authorized representative of the community advisory committee, if such committee has been created by the SDA school district pursuant to (c) above, provided such committee has held a public hearing to receive input from members of the public regarding the prospective school sites identified by the district, pursuant to (e)2 above; and
 - ii. A statement signed by the district board of education president and chief school administrator indicating that a special board of education meeting has been held by the school district concerning the sites that have been selected for submission to the Department for preconstruction approval.

(f) Upon receiving a copy of the SDA school district's application to the Department for approval of preconstruction activities, the Authority may obtain information from a wide range of sources, including commercial database reports of environmental and historical land use information, concerning potential school sites and communicate its findings to the SDA school district and the Department. After the Authority receives a copy of the Department approval of site acquisition preconstruction activities for a school facilities project, indicating from one to three sites identified by the SDA school district for a school facilities project, the SDA school district shall provide to the Authority, and if applicable, to the SDA school district's community advisory committee created pursuant to (c) above, the items in (f)1 through 11 below.

1. A district board of education resolution authorizing the preconstruction activities;
2. Lot and block numbers and addresses of all parcels under consideration for the proposed site;

3. A description and photographs of the proposed site, including any existing improvements on the site;
4. A map of the district showing location of the land and the location of existing schools in the district;
5. A map showing the attendance area to be served by the school and the number of students who reside therein;
6. Data regarding the impact of the acquisition upon racial balance within the district's public schools;
7. The district and Department-approved school programmatic model;
8. An assessment of water and sewer infrastructure availability and addressing service and treatment capacity for the proposed school facilities project;
9. The current municipal zoning and/or redevelopment plans concerning the properties under consideration, tax map, master plan and applicable redevelopment plan(s);
10. To the extent available, any prior engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment); and
11. To the extent available, in the case of acquisition of land with an existing facility, any as-built documents for an existing facility proposed to be rehabilitated.

(g) After the Authority receives a copy of the Department approval of site acquisition preconstruction activities for a school facilities project, the Authority shall convene a working group to undertake, among other tasks, preliminary evaluation of the suitability of a proposed site(s) based on the information provided by the SDA school district, pursuant to (b) and (f) above, any additional information, including commercial database searches undertaken with respect to the approved sites, and an initial site review undertaken pursuant to *N.J.A.C. 19:34-3.3(c)*. The working group shall consist of appropriate staff of the SDA and DOE and an SDA school district official, and may include an SDA environmental consultant, an authorized member of the SDA school district's community advisory committee, if applicable, and other experts and/or specialists, as determined by the Authority.

(h) In the event that none of the sites identified by the SDA school district and approved by the Department for preconstruction activities is determined by the Authority to be available or suitable for acquisition as a school site, the Authority may require the SDA school district to undertake the task of identifying an additional site or sites. Such undertaking may involve matching the programmatic model for the school in the district's long-range facilities plan with alternative sites.

§ 19:34-3.3 Feasibility studies and land-related design work

(a) After a site has been identified, and is approved by the Department for site-related preconstruction activities, the Authority shall undertake any feasibility studies or land-related design work necessary to determine whether to acquire the site or construct on the site.

(b) The feasibility studies relevant to site acquisition or to the use of district-owned land for the construction of a school facilities project may consist of a cost comparison of rehabilitation of an existing school facility, conversion of a facility, and the construction of a new school facility on a new site or some other basis for analysis. For example, the feasibility study may include a traffic study, which analyzes the existing traffic conditions in the immediate vicinity of the proposed school site, determines the surrounding area of impact from the proposed school facilities project, and is performed by a consultant who is a licensed engineer with expertise in traffic analysis. Land-related design work may consist of any of the architectural and engineering work required for the acquisition or use of vacant or improved land or land with existing school or other facilities, such as a architectural pre-design and programming.

(c) The Authority shall undertake an initial site review for each proposed school site approved by the Department for preconstruction services in order to determine whether to proceed with site feasibility services and to determine the scope of the feasibility services to be undertaken. The initial site review shall consist of recent aerial photographs of the proposed site and the surrounding area, a review of the site's historic property uses, surrounding area land uses, wetlands, flood plain information, land title information, as well as a commercially available database search of local, State and Federal environmental records to determine the potential suitability of the proposed site for a school facilities project.

(d) Based on the information provided by the SDA school district, pursuant to *N.J.A.C. 19:34-3.2(b)* and (f), the initial site review undertaken pursuant to (c) above, and any other relevant information, the Authority, in consultation with the members of the working group, shall determine whether to continue site feasibility services with respect to a proposed site and, if so, the scope of such feasibility services.

1. If the Authority determines that a proposed site is unavailable or unsuitable for acquisition or use as a school site, it shall terminate the feasibility study for that site, summarize in writing the reason(s) for the rejection of the site and proceed to undertake approved preconstruction activities on another site(s) identified by the school district.
2. If based on the initial site review, environmental and other development constraints are minimal; for example, the proposed site is predominantly residential without the need for substantial relocation, has no extraordinary infrastructure improvements, the site has a known historic use, remediation is limited, and the environmental regulatory involvement would have a minimal impact on project schedule and budget and would not impede the development of the property for a school, the Authority may undertake a streamlined process to acquire the site, which shall, at a minimum, consist of the completion of a preliminary assessment supported by such tasks as boundary surveys, title searches, relocation analysis, site feasibility concept plans, preliminary geotechnical investigations and utility evaluations, as well as additional tasks dependent on the site-specific circumstances of the school facilities project.
3. If, based on the initial site assessment, the Authority determines that significant infrastructure and environmental uncertainty remains and further environmental characterization is necessary to quantify development and remediation liability exposure, additional feasibility studies shall be undertaken in a process of increasingly more stringent investigations. Such feasibility studies shall ascertain a site's environmental quality and remediation requirements, extraordinary site development and infrastructure improvement needs, former property ownership, adequacy of water and sewerage, geotechnical conditions or potential title complications, or some other basis for analysis.

(e) For purposes of involving the community in the site selection process, an SDA school district is obligated, pursuant to its Educational Facilities Construction and Financing Act 13(c) Implementation Agreement executed by the school district and the Authority, to hold a public meeting of its board of education no later than 30 days from the date of its receipt from the Authority of the NJDEP's written comments to the environmental screening report (ESR) regarding a proposed school site. The ESR is a tool for assessing the likelihood of obtaining the various environmental, historical and cultural and land use approvals and permits relevant to the proposed site. The ESR alerts stakeholders that potential insurmountable technical and administrative obstacles may exist on a proposed school facilities project.

1. The district shall serve public notice of such meeting, including notice to the members of its community advisory committee, if created pursuant to *N.J.A.C. 19:34-3.2(c)*, at least 20 days prior to the scheduled date of the public meeting.
2. The SDA shall assist the SDA school district and the community advisory committee on an as-needed basis in communicating the results of the ESR of a proposed school site.

(f) The scope of feasibility studies undertaken with respect to a proposed site will be dictated by the proposed location and the site-specific circumstances of the property under consideration. Recognizing that each proposed site is unique, the Authority shall utilize a process for increasingly detailed feasibility evaluations that provide for the rapid elimination of a proposed site where it is inappropriate for a school, and, conversely, expedited acquisition where a proposed site is suitable for a school facilities project.

(g) The Authority shall define the scope of the feasibility study, approve of the scope, and determine how and when the scope has been satisfied. If, in the course of a feasibility study, the Authority determines that the site is unavailable or unsuitable for acquisition or use as a school site, it may terminate the feasibility study for that site and proceed to have the Authority undertake approved preconstruction activities on another site identified by the school district. Alternatively, the Authority may proceed with feasibility studies on several sites concurrently and terminate the feasibility study for the site that the Authority determines is unavailable or unsuitable for acquisition or use as a school site.

§ 19:34-3.4 Site investigation

(a) Site investigations entail the planning and implementation of environmental site sampling, detailed utility investigations and other activities that rely on site-specific field data to quantify remediation liability exposure and define the extent of impacts, the development of site-specific remediation action objectives and the development of remedial action alternatives and their corresponding remediation costs estimates.

(b) The Authority shall undertake the site investigation needed for purposes of site acquisition or use of a district-owned site for the construction of a school facilities project, in accordance with the rules of the NJDEP governing the undertaking of environmental investigations in their Technical Requirements for Site Remediation, *N.J.A.C. 7:26E*, as amended.

(c) The Authority shall communicate its findings of data and information (gathered from a site investigation) with the district's chief school administrator prior to submitting an application for any required approval of the acquisition of land to the Department. Further, the Authority shall undertake any other due diligence required for the site acquisition or the use of district-owned land for a school facilities project. The Authority shall also undertake the submission of the application for land acquisition approval to the SDA school district. If more than one site has been evaluated, the Authority, after consultation with the SDA school district, shall notify the Department of what it considers to be the most suitable site.

(d) At any point during or after site investigation, if the Authority determines that a proposed site is not suitable or available for school use, due to environmental or other reasons, it may either terminate or require the district to terminate any further site investigation for that site.

§ 19:34-3.5 Site acquisition approvals

(a) Following a feasibility study, land-related design work, site investigation, and consultation, as applicable, the Authority shall determine whether or not to acquire the site. The criteria for the Authority's decision shall include the following considerations:

1. Cost and schedule impacts: adjustments to overall project schedule, complexity of land acquisition or fair market value considerations;
2. Significant site location and improvement considerations: constructability, community impacts related to construction and time to implement, compatibility of neighboring land uses, overall revitalization and economic development and open space plans, proximity of public transportation and relocation and displacement impacts;
3. Significant infrastructure considerations: sufficiency of water supply (drinking and fire) and sewerage capacity, traffic impacts, including road widening and partial takings and utility relocation; and
4. Significant environmental considerations: technical impracticability of remediation, environmental quality impacts (soil and groundwater), historic and cultural resources, compatibility with neighboring land uses, wetlands, stream encroachment, endangered species and Green Acres encumbrances.

(b) If the Authority determines to acquire the site, the Authority shall submit the architectural pre-design and programming, or, in the case of a contemplated design-build school facilities project pursuant to *N.J.A.C. 19:36*, a conceptual design, to the local planning board, pursuant to *N.J.S.A. 40:55D-31*, and obtain the approvals, reports and statements required by the Department prior to the submission of an application for approval of the acquisition of the site to the Department.

(c) The Authority shall undertake title review and appraisal of the site.

(d) The Authority shall undertake any submissions required to the New Jersey Department of Environmental Protection, pursuant to E.O. 215 (1989).

§ 19:34-3.6 Ownership of site

(a) Upon the obtaining of all necessary approvals required for the acquisition of a site, the Authority shall take all steps necessary, including condemnation, required to take title to the site.

(b) The Authority may, at its option, take title in its own name, or the site shall be conveyed directly to the SDA school district.

(c) If the Authority conveys title to the SDA school district prior to close out of the school facilities project on the site, the district shall agree to permit the Authority access to the site by way of ground lease or other form of right of entry as appropriate to undertake preconstruction activities and school facilities project(s) on the site.

(d) Any site funded by the Authority pursuant to this chapter shall contain a reverter that if the site is not used for a school facility as defined under the Act, ownership of and title to the land together with the school facility on the site funded under the Act, will revert to and the title thereof shall vest in the Authority. The district shall execute any documents including, but not limited to, a deed of conveyance necessary to accomplish such reversion. If applicable, the district shall also comply with the requirements for Department approval of the disposal of land and/or the closing of a school facility, pursuant to *N.J.A.C. 6A:26-7.4* and 7.5.

(e) After such time as the SDA school district becomes the owner of the site, it shall execute any documents required of owners by NJDEP rules. In the event that the NJDEP approved remediation includes an engineering control and/or the recording of a deed notice, then the Authority shall prepare the deed notice, which shall be signed by the district as the ultimate owner of the site. The district shall comply with the conditions of the deed notice which may be imposed by the NJDEP, including, but not limited to, periodic inspection of engineering controls placed on the site and submission of reports to the NJDEP.

§ 19:34-3.7 Relocation assistance

When the Authority acquires a site in connection with a school facilities project, by purchase or by eminent domain, and thereby becomes a displacing agency within the meaning of *N.J.A.C. 5:40*, the Authority shall provide and fund relocation assistance to displaced persons in accordance with applicable law and regulation.

§ 19:34-3.8 Remediation and site development

(a) Upon acquisition by the Authority of the land, the Authority shall perform any necessary remediation and/or site development work to prepare the land for construction.

(b) For land already owned by the SDA school district on which the district is proposing to locate a school facilities project, the Authority may, but is not obligated to, perform any necessary remediation and/or site development to prepare the land for construction, pursuant to the district's provision of access to the land by way of ground lease or other form of right of entry.

§ 19:34-4.1 (Reserved)

§ 19:34-4.2 Temporary facilities

(a) After receipt of an approval by the Department of an SDA school district request for temporary facilities and as part of the process of undertaking a school facilities project, the Authority shall procure, install and fund, the procurement and installation of temporary facilities to be used for educating students on a temporary basis while awaiting completion of a school facilities project that will permanently house students.

(b) If the temporary facilities are located on land owned by the SDA school district, the district shall agree to permit the Authority a right of entry upon the land to undertake preconstruction activities and, if applicable, the school facilities project. If the temporary facilities are located on land not owned by the district, the Authority shall require a right of entry upon the land to undertake preconstruction activities and, if applicable, the school facilities project.

(c) The Authority shall obtain all required approvals prior to district occupancy of temporary facilities, such as Department approval pursuant to *N.J.A.C. 6A:26-3.14* and 6A:26-8, which may in turn be conditioned upon local planning board review and Uniform Construction Code compliance.

Title 19, Chapter 34, Subchapter 5 (Reserved).

Title 19, Chapter 34, Subchapter 6 (Reserved).

Resolution—5e.

Notice of Re-adoption – Preconstruction Activities, N.J.A.C. 19:34

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) adopt, amend and repeal rules and regulations to carry out the provisions of P.L. 2000, c. 72 (C. 18A:7G-1 et seq.) and P.L. 2007, c. 137 (C. 52:18A-235 et seq.); and

WHEREAS, on May 4, 2016, the Members of the Authority approved for final adoption regulations for Preconstruction Activities, N.J.A.C 19:34 (the Rules); and

WHEREAS, the Rules, which establish the standards and procedures for the SDA’s undertaking of preconstruction activities on behalf of SDA school districts, were formally published in the New Jersey Register on July 5, 2016 and will expire on May 26, 2023; and

WHEREAS, a memorandum describing in detail those activities that are governed by the Rules is presented to the Members on this date, along with the Rules in their entirety and a copy of a proposed form of Notice of Re-adoption for Board consideration and approval; and

WHEREAS, the Notice of Re-adoption process is a statutorily-authorized expedited process (process) that permits regulations to be re-adopted without amendments, and without prior publication or public comment, pursuant to a filing of the same with the Office of Administrative Law at least thirty days prior to the expiration of the regulations; and

WHEREAS, management requests Board authorization to utilize this process for re-adoption of the Rules as presented; and

WHEREAS, upon publication in the New Jersey Register, the Rules will be effective for a period of seven years; and

WHEREAS, SDA management recommends that the Members of the Authority authorize and approve the Authority’s utilization of the Notice of Re-adoption process to effectuate the re-adoption and extension of the Rules for an additional seven-year period.

NOW, THEREFORE, BE IT RESOLVED, that the Members of the Authority hereby authorize and approve management’s utilization of the Notice of Re-adoption process to effectuate the re-adoption and extension of the Authority’s Preconstruction Rules for a seven-year period.

BE IT FURTHER RESOLVED, that, upon approval of the Notice of Re-adoption, the Notice will be submitted to the Office of Administrative Law for processing and publication in the New Jersey Register.

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, Proposed Re-adoption with Amendments, Preconstruction Activities,
N.J.A.C. 19:34 dated, April 5, 2023

Dated: April 5, 2023

**Notice of Proposal for Readoption with Amendments – Section 13.a Delegation
Agreements, N.J.A.C. 19:34A**



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: April 5, 2023

RE: Notice of Proposal for Readoption with Amendments – Section 13.a Delegation Agreements, N.J.A.C. 19:34A

Management of the New Jersey Schools Development Authority (“Authority” or “SDA”) is seeking the approval of the Board for the proposed readoption and amendment of the Authority’s regulations at N.J.A.C. 19:34A, governing Section 13.a Delegation Agreements (the “Rules”). A Notice of Proposal that specifies the proposed amendments to the existing Rules is provided with this Memorandum, as well as a full copy of the existing rules.

Background

Chapter 34A provides the conditions, eligibility criteria, and process for capital maintenance projects to be delegated to an SDA school district by the Authority, pursuant to N.J.S.A. 18A:7G-13.a. This chapter sets forth the requirements for grant disbursements to fund such delegated capital maintenance projects, and addresses grant oversight. The process spans the initiation of delegation to the final completion and closeout of a capital maintenance project and is intended to balance the goal of expediting the funding and construction of capital maintenance projects with prudent oversight of the State share expended.

SDA proposes to readopt Chapter 34A with amendments to a single section of the rules. The proposed changes are intended to facilitate the use of electronic submissions in applications for delegation of capital maintenance projects to SDA Districts, and to delete an obsolete signage requirement. The SDA has reviewed Chapter 32 and has determined that, with the addition of the few minor amendments described herein, this chapter remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated.

Prior Regulatory History

Chapter 34A was previously readopted by SDA with amendments and repeals on May 4, 2016, and is scheduled to expire on May 26, 2023.

Summary of Amendments

The proposed amendments to the Rules are minimal and are intended to conform the Rules to the Authority's current procedures for grant administration, or to facilitate electronic submissions in the grant administration process. Only one section of the existing rules is proposed for amendment, with the remainder of the rules proposed for re adoption in their current form.

N.J.A.C. 19:34A-2.3, captioned "Execution and other conditions for delegation," is proposed for re adoption with an amendment to delete a requirement that the district submit a "certified, true sealed copy" of the district resolution authorizing entering into the grant agreement, in favor of requiring only the submission of a "true copy" of the resolution. This amendment is proposed in order to facilitate administration of the grant process utilizing electronic documents. An additional amendment to this section is proposed to delete reference to an obsolete signage requirement for grant projects.

Requested Board Action

The Members of the Authority are requested to approve the proposed re adoption of the Authority's Rules for Section 13.a Delegation Agreements with amendments, as well as the issuance of the attached Notice of Proposal, 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

Section 13.a Delegation Agreement

Proposed Readoption with Amendments: N.J.A.C. 19:34A

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-238.k; 52:18A-240) (rulemaking authority), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); and P.L. 2007, c. 137, (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

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

Proposal Number: PRN 2023-.

Submit written comments by DATE, to:

Cecelia Haney, Administrative Practice Officer

New Jersey Schools Development Authority

PO Box 991

Trenton, NJ 08625-0991

chaney@njsda.gov

The agency proposal follows:

Summary

The New Jersey Schools Development Authority (SDA) proposes to readopt N.J.A.C. 19:34A, captioned “Section 13.a Delegation Agreement”, with minor substantive amendments. Chapter 34A, which implements Section 13a of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), (the “Act”), governs SDA’s discretionary delegation of capital maintenance projects to school districts pursuant to a Section 13.a delegation agreement. Chapter 34A, as previously readopted by SDA with amendments and repeals on May 4, 2016, is scheduled to expire on May 26, 2023, pursuant to N.J.S.A. 52:14B-5.1.c(2).

Chapter 34A provides the conditions, eligibility criteria, and process for capital maintenance projects to be delegated to an SDA school district by the Authority, pursuant to N.J.S.A. 18A:7G-13.a. This chapter sets forth the requirements for grant disbursements to fund such delegated capital maintenance projects, and addresses grant oversight. The process spans the initiation of delegation to the final completion and closeout of a capital maintenance project and is intended to balance the goal of expediting the funding and construction of capital maintenance projects with prudent oversight of the State share expended.

SDA proposes to readopt Chapter 34A with amendments to a single section of the rules (N.J.A.C. 19:34A-2.3, captioned “Execution and other conditions for delegation”). The proposed changes are intended to facilitate the use of electronic submissions in applications for delegation of capital maintenance projects to SDA Districts, and to delete an obsolete signage requirement. SDA has reviewed Chapter 34A and has determined that, with the addition of the proposed amendments described herein, this chapter remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated: to provide a mechanism by which SDA can, in

its discretion, delegate to SDA school districts the ability to perform capital maintenance projects funded by an SDA grant pursuant to a Section 13.a delegation agreement.

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

A summary of the rules proposed for re adoption, as well as the substantive amendments to such rules, follows.

Subchapter 1. General Provisions

N.J.A.C. 19:34A-1.1 Purpose and applicability of rules

This section, regarding the purpose and applicability of this chapter, sets forth that the rules are promulgated to implement N.J.S.A. 18A:17G-13.a, which provides that the Authority may, in its discretion, authorize an SDA school district to undertake a capital maintenance project funded through a grant agreement with the district for the payment of the State share. This section is proposed for re adoption without amendment.

N.J.A.C. 19:34A-1.2 Definitions

This section sets forth the meaning of the words and terms used throughout this chapter. This section is proposed for re adoption without amendment.

N.J.A.C. 19:34A-1.3 Administration and performance of grant agreements

This section provides that the SDA school district, not the Development Authority, is responsible for the administration and success of the capital maintenance project. This section is proposed for re adoption without amendment.

N.J.A.C. 19:34A-1.4 Noncompliance

This section describes the events constituting an event of default, providing a cure process for some of these events, and further provides for broadly framed other non-compliance in addition to the events of default. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-1.5 Remedies for events of default and noncompliance

This section provides that in addition to any other remedies as may be provided by law or by the section 13.a delegation agreement, in the event of noncompliance, SDA, after notice to the district, may take any of the actions or combinations of actions contained in this section: withholding of grant disbursements, suspension of the section 13.a delegation agreement, termination, and any other remedies available under State law warranted. The section further provides that SDA may, at its option, take an assignment of any of the contracts in order to complete the capital maintenance project, and the SDA school district shall, on demand, pay to the Authority reasonable fees and expenses incurred by the Authority in the collection of the repayment of the grant. This section is proposed for readoption without amendment.

19:34A-1.6 (Reserved)

This reserved section is proposed for readoption without amendment.

N.J.A.C. 19:34A-1.7 Termination by mutual agreement

This section provides that the Authority and the school district may terminate the section 13.a delegation agreement when both parties agree that the continuation of the capital maintenance project would not produce beneficial results commensurate with the further expenditure of funds. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-1.8 Waiver

This section provides that any school district desiring a waiver or release from the express provisions of any of the rules in this chapter may submit a written request to the Authority, which may grant the waiver only when the Authority determines that such waiver would not contravene the provisions of the Act and would instead promote the statutory purposes of the Act. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-1.9 Appeals

This section provides for an appeals process that anticipates a request to SDA for a discretionary informal hearing on the papers, and subsequent appeal procedures in the instance of a contested case, involving a subsequent hearing before the Office of Administrative Law. This section is proposed for readoption without amendment.

Subchapter 2. Delegation to the District of the Design and Construction or Acquisition and Installation of the Capital Maintenance Project

N.J.A.C. 19:34A-2.1 Applicability

This section provides that this subchapter establishes the Authority's procedures and requirements governing the eligibility determination of a section 13.a delegation agreement as well as the circumstances ending the delegation. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-2.2 Eligible criteria for delegation

This section sets forth the eligibility criteria for delegation in three different circumstances: at the design phase after preconstruction approval, at the design phase after project approval, and

prior to the construction phase for capital maintenance projects without a design phase. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-2.3 Execution and other conditions for delegation

This section provides the terms and conditions for Authority execution of the section 13.a delegation agreement, such as receipt by the Authority of a certified copy of a district board resolution and proof of the district board's delegation to the school business administrator or other authorized officer for supervision of the capital maintenance project, as well as providing for signage to be posted by the district indicating that financing for the facilities project was made available to the district through the Authority. This section is proposed for amendment to delete a requirement that the district submit a “certified, true sealed copy” of the district resolution authorizing entering into the grant agreement, in favor of requiring only the submission of a “true copy” of the resolution, to facilitate administration of the grant process utilizing electronic documents. An additional proposed amendment provides that at the Authority’s option, the resolution, certificate, and any other documentation required in support of the administration of the 13 (a) delegation agreement may be submitted electronically. A further proposed amendment deletes reference to the signage requirement.

N.J.A.C. 19:34A-2.4 Initial delegation and engagement of the design consultant

This section addresses the initial delegation in three different circumstances: at the design phase after preconstruction approval, at the design phase after project approval, and prior to the construction phase for capital maintenance projects without a design phase. It also addresses the requirements for district engagement of a design consultant for capital maintenance projects in the first and second of the aforementioned delegation phases. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-2.5 Design of the capital maintenance project

This section addresses the stages in the delegation from the time the Department of Education (the “Department”) issues a preliminary project report, to the submission of detailed plans and specifications and final eligible costs recommendations to the Department, to the issuance by the Authority of an authorization-to-proceed to the construction phase, which permits the district to proceed with the procurement of contractors to perform the acquisition and installation for the capital maintenance project. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-2.6 Construction or acquisition and installation of the capital maintenance project

This section sets forth the Authority requirements for the district to proceed with the construction of the capital maintenance project, including a requirement that all contractors engaged by the district be prequalified with the Authority, and a requirement that before commencing the construction phase the district shall submit the following to the Authority for review and approval: a construction phase checklist, a contractor certification, acceptable documentation of insurance coverage, and an adjustment of the current working estimate (CWE) to reflect the construction award. This section further specifies that change orders affecting educational spaces must be submitted to the Department for approval, and change orders exceeding five percent of the grant amount must be submitted to the Authority for approval. Finally, this section specifies that the capital maintenance project must be constructed in accordance with the New Jersey Uniform Construction Code and the educational facility planning standards at *N.J.A.C. 6A:26-6.2*. This section is proposed for readoption without amendment.

Subchapter 3. Grant Amount and Disbursement of the Grant

N.J.A.C. 19:34A-3.1 Grant amount

This section addresses the full funding of approved design work prior to a determination of final eligible costs, the requirement that grant funds shall only pay for approved costs, the periodic adjustment of the grant amount and current working estimate, and the process for funding of change orders for which the district is not responsible. This section is proposed for reoption without amendment.

N.J.A.C. 19:34A-3.2 Disbursement schedule

This section addresses the schedule and the conditions upon which the Authority is obligated to disburse. This section is proposed for reoption without amendment.

N.J.A.C. 19:34A-3.3 Disbursement documentation and procedures

This section addresses the documentation required for disbursement of grant funds (invoice, voucher, insurance coverage, certification, and/or checklists), the requirements for disbursement of grant funds upon final completion, and the conditions upon which the Authority is obligated to disburse funds. This section is proposed for reoption without amendment.

N.J.A.C. 19:34A-3.4 Closeout procedures

This section addresses the process of achieving closeout of a delegated capital maintenance project and provides that closeout shall occur when all applicable administrative actions and all required work have been completed by the district. This section is proposed for reoption without amendment.

Subchapter 4. Contract Award and Compliance

N.J.A.C. 19:34A-4.1 General provisions

This section requires a school district to design and construct a capital maintenance project pursuant to the plans and specifications and as approved by the Department. This section also addresses changes in the capital maintenance project impacting educational adequacy and the approval needed for change orders and consultant amendments. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-4.2 Contract award and compliance

This section addresses the district's broad range of responsibilities in awarding contracts for the capital maintenance project, supervising design and construction, monitoring performance to ensure efficient and effective completion, exhausting remedies in the event of default, and taking action involving the contracted party deemed by the district to be reasonably necessary. This section requires the district to obtain and maintain licenses and certifications required by governmental authorities, to award contracts in accordance with the Public School Contracts Law, and to have construction contracts include provisions regarding compliance with the New Jersey Prevailing Wage Act, the New Jersey Law Against Discrimination, and the Law establishing the Office of the State Comptroller. This section incorporates the School Ethics Law by reference, and also contains other conflict of interest provisions requiring reporting by the district. This section further addresses the maintenance plan of a capital maintenance project, proof of insurance, district responsibilities regarding the tax-exempt status of bonds issued by the NJEDA, a variety of required district certifications, bid guarantees, performance bonds, and general language providing that the Authority may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purposes and intent of the Act.

This section conforms with the Authority's contractor and consultant prequalification rules, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Corporation, found at N.J.A.C. 19:38A. This section further requires that the district comply with the requirements of N.J.S.A. 52:15C-10 concerning the notices to the State Comptroller and the timing of the procurement process relative to the award of contracts. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-4.3 Fraud and other unlawful and corrupt practices

This section addresses the district's responsibilities in administering moneys pursuant to this chapter, the section 13.a delegation agreement and any contracts entered into in connection with the capital maintenance project free from bribery, graft, and corrupt practices. This section also provides that the district must take appropriate remedial actions with respect to any allegations or evidence of such illegality or corrupt practices. This section is proposed for readoption without amendment.

N.J.A.C. 19:34A-4.4 Debarment

This section provides that the district and its consultants or contractors shall not enter into a contract for work on a preconstruction activity or capital maintenance project with any person or firm that has been debarred, suspended or disqualified from State, NJEDA, Authority or Federal government contracting. This section also sets forth requirements for statements in contracts and bid specifications relating to debarment, suspension or disqualification from contracting. Addressed as well is the district's affirmative obligation to notify the Authority in writing whenever it has knowledge that any contracted party, subconsultants or subcontractor is on the debarment or

suspension list maintained by the Authority, the Department of the Treasury, NJEDA, or the Federal government. This section is proposed for re adoption without amendment.

N.J.A.C. 19:34A-4.5 (Reserved)

This reserved section is proposed for re adoption without amendment.

N.J.A.C. 19:34A-4.6 Disclosure and publicity

This section provides that submissions received by the Authority shall constitute government records and that public dissemination of information by the district concerning the capital maintenance project shall acknowledge the Authority's financial support. This section is proposed for re adoption without amendment.

N.J.A.C. 19:34A-4.7 Access and record retention

This section provides that the governmental entities with oversight responsibilities concerning the schools construction program shall have broad access to records pertaining to capital maintenance activities retained by the districts. This section also provides that the district must also include in all contracts a provision requiring contracted parties to permit the Authority and other governmental units to investigate, audit, examine, and inspect these records. This section additionally addresses record retention requirements for records relating capital maintenance projects that are funded through a 13.a delegation agreement. This section is proposed for re adoption without amendment.

Social Impact

The rules proposed for re adoption with amendments will apply to SDA school districts that seek to manage and administer the performance of capital maintenance projects funded by an SDA grant and delegation of authority pursuant to a Section 13.a delegation agreement.

SDA believes that the rules proposed for re adoption with amendments will have a positive social impact and that no negative impact will result. The re adoption of these rules can be expected to positively impact the students, teachers, and parents served by SDA school districts because they provide guidance on the roles and responsibilities of the Authority and SDA school districts with respect to State funding and delegation of capital maintenance projects pursuant to a section 13.a delegation agreement. The rules provide flexibility sought by both SDA school districts and the Authority for delegating capital maintenance projects pursuant to section 13.a delegation agreements. This will enable SDA school districts to better meet health and safety facilities standards, and by successfully undertaking capital maintenance projects, allow SDA school districts to build the capacity that will enable them to undertake other, more complex school facilities projects.

Economic Impact

The rules proposed for re adoption with amendments address the Authority's discretionary delegation to SDA school districts of capital maintenance projects, pursuant to section 13.a of the Act. The State share for section 13.a delegated projects is funded with State contract bonds issued by the NJEDA pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. The rules proposed for re adoption with amendments will have a positive economic impact on the long-term economic growth of the State of New Jersey because significant activity in the planning, construction, architecture, and engineering professions will directly result from these rules, providing obvious Statewide economic benefits in the short term.

Federal Standards Statement

The rules proposed for readoption with amendments implement State statutes, namely P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), and specifically N.J.S.A. 18A:7G-13.a. There are no Federal standards or requirements governing the subject matter of these rules in as much as the rules proposed for readoption with amendments apply only to SDA school districts that are authorized by SDA to manage and perform capital maintenance projects to be performed at school facilities within the State of New Jersey. A Federal standards analysis, therefore, is not required.

Jobs Impact

The rules proposed for readoption with amendments will support the creation of a number of new jobs in New Jersey as a result of facilitating the delegation of capital maintenance projects to SDA school districts pursuant to N.J.S.A. 18A:7G-13.a. Jobs will primarily be created in the construction and design sectors.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments primarily impact New Jersey SDA school districts, but may, through implication, impose compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that are engaged by districts

to support or perform delegated capital maintenance projects. The types of small businesses that may be affected by the rules include consultants (for example, design consultants such as architects and engineers), contractors, and their subconsultants and subcontractors providing materials or services to the school district in connection with a school facilities project. Because of the scale of capital maintenance projects delegated to SDA school districts by the Authority, it is anticipated that the number of small businesses to which the rules will apply will be substantial. These rules, specifically N.J.A.C. 19:34A-4.7, impose records access and retention of records obligations that may affect contractors and consultants that are small businesses; the requirement that consultant and contractors be prequalified by the Authority as a condition of Authority funding of a section 13.a grant, and the contract award and compliance requirements set forth in N.J.A.C. 19:34A-4.2.

The majority of the aforementioned requirements are imposed by other laws and rules, in that the rules impose virtually no change to the way school districts procure goods and services. One exception is the record access and retention provisions (access to additional governmental entities, retention period of 10 years to correlate with the statute of limitations for architectural services claims). The costs entailed in the records provisions are not anticipated to be substantially more than the costs otherwise incurred for record retention. It is unlikely that a small business would have to employ professional services to comply with this requirement. The rules are designed to minimize any adverse economic impact on small businesses by making few changes in the ways school districts procure goods and services.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments address the discretionary delegation of authority to SDA school districts for capital maintenance projects and administration of a grant

program for funding the State share of such capital maintenance projects, and therefore will not have an impact on affordable housing or evoke a change in the average costs of housing in the State of New Jersey.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth development because it is extremely unlikely that the adoption of the rules would evoke a change in housing production in the State of New Jersey Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:34A.

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

N.J.A.C. 19:34A-2.3 Execution and other conditions for delegation

(a) (No change.)

(b) The district shall execute the section 13.a delegation agreement within such period of time and pursuant to such terms and conditions as the Authority may determine in its sole discretion,

and return the section 13.a agreement together with all applicable attachments to the Authority for execution by the Authority. Such terms and conditions shall include:

1. Delivery by the district to the Authority of a [certified] **true** copy of a resolution of the district board authorizing the execution and delivery of the agreement and proof of the district board's delegation of authority to the school business administrator or other authorized officer for supervision of the capital maintenance project; and
2. (No change)
3. **At the discretion of the Authority, the above resolution, certificate, and any other documentation required in support of the administration of the 13 (a) delegation agreement may be submitted electronically.**

(c) (No change).

(d) Upon execution of the agreement, the Authority shall transmit to the district the section 13.a delegation agreement [as well as a sign to the extent permitted by zoning laws indicating that financing was made available to the district through the Authority].

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TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 34A. SECTION 13(A) DELEGATION AGREEMENT

N.J.A.C. 19:34A (2016)

Title 19, Chapter 34A -- Chapter Notes

CHAPTER AUTHORITY:

P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238k and 52:18A-240) (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.), and N.J.S.A. 52:34-9.3 (enabling statutes).

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2016 d.074, effective May 26, 2016.

See: 48 N.J.R. 198(a), 48 N.J.R. 1387(a).

CHAPTER EXPIRATION DATE:

Chapter 34A, Section 13(A) Delegation Agreement, expires on May 26, 2023.

CHAPTER HISTORICAL NOTE:

Chapter 34A, Section 13(A) Delegation Agreement, was adopted as new rules by R.2003 d.299, effective July 21, 2003. See: 35 N.J.R. 586(a), 35 N.J.R. 3394(a).

Chapter 34A, Section 13(A) Delegation Agreement, was readopted as R.2009 d.14, effective December 8, 2008. As a part of R.2009 d.14, Subchapter 2, Delegation to the District of the Design and Construction or Acquisition and Installation of the School Facilities Project, was renamed Delegation to the District of the Design and Construction or Acquisition and Installation of the Capital Maintenance Project, effective January 5, 2009. See: 40 N.J.R. 4735(a), 41 N.J.R. 295(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 34A, Section 13(A) Delegation Agreement, was scheduled to expire on December 8, 2015. See: 43 N.J.R. 1203(a).

Chapter 34A, Section 13(A) Delegation Agreement, was readopted as R.2016 d.074, effective May 26, 2016. See: Source and Effective Date. See, also, section annotations.

§ 19:34A-1.1 Purpose and applicability of rules

(a) These rules are promulgated by the New Jersey Schools Development Authority (the "Authority"), to implement section 13(a) of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (*N.J.S.A. 18A:7G-13(a)*), as amended, and P.L. 2007, c. 137 (the "Act"). The Act provides for, among other things, the Authority to undertake all of the school facilities projects in the SDA school districts and to undertake and fund certain preconstruction activities, pursuant to *N.J.A.C. 6A:26-3.9* and 19:34. Section 13(a) of the Act provides that in the case of a capital maintenance project, the Authority may, in its discretion, authorize a district to undertake the project and shall enter into a grant agreement with the district for the payment of the State share.

(b) The rules in this chapter implementing section 13(a) of the Act shall apply to SDA school districts.

§ 19:34A-1.2 Definitions

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

"Agreement" or "grant agreement" means the section 13(a) delegation agreement (and all attachments thereto) between the Authority and the SDA school district.

"Amendment" means a written modification to a contract executed between the SDA school district and a consultant.

"Approved costs" means costs of the capital maintenance project which are eligible to be paid from the proceeds of the grant and either have been paid or shall be paid by the SDA school district.

"Authority" or "SDA" means the New Jersey Schools Development Authority, an entity which undertakes and funds school facilities projects under the Act and which is an entity formed pursuant to section 3 of 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 schools facilities projects pursuant to the Act.

"Authorization-to-proceed" means a notice to the district from the Authority directing the district to commence performance of its responsibilities pursuant to the agreement. There may be separate authorizations-to-proceed as the capital maintenance project progresses and according to the procurement, contract award, or other action authorized.

"Authorized officer" means with respect to the district, any person or persons authorized pursuant to a resolution of the governing body of the district to perform any act or execute any document relating to the grant and the agreement including the school business administrator; and with respect to the Authority, any person or persons authorized to perform any act or execute any document relating to the grant and the agreement.

"Capital maintenance project" means a school facilities project intended to extend the useful life of a school facility, including up-grades and replacements of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems.

"Change order" or "CO" means a written order, directing or authorizing a change in the work, to a construction contract, which is executed by an authorized school district official and the contractor, and includes all adjustments, if any, to the compensation and time warranted by the change in the work. For purposes of this definition, a "change in work" is a change in the capital maintenance project, the work or the contract documents, including, but not limited to, an increase or decrease in the work to be performed by the contractor or an acceleration of time for the performance of such work, or a change in the sequence in which such work is being performed.

"Checklist" means a form to be provided by the Authority and to be completed by the district at a milestone or milestones in the delegation of the capital maintenance project to be submitted to the Authority for review and approval prior to receiving an authorization-to-proceed and/or certain disbursements of the grant.

"Commencement date" means the date on which the agreement has been fully executed by all the parties thereto and the district has delivered, to the satisfaction of the Authority, the documentation required by the agreement.

"Completion date" means the date specified by the district for completion of the capital maintenance project which may be changed by the district upon notice to the Authority.

"Construction contract" means the agreement between the SDA school district and the contractor governing the construction, including the procurement of goods and services, of all or a portion of the capital maintenance project, and any documents attached thereto and amendments thereof. There may be one or more construction contracts for the capital maintenance project.

"Construction phase" means that phase of the capital maintenance project in which the capital maintenance project is undertaken by a contractor or contractors or in which the acquisition and installation of the capital maintenance project occurs.

"Consultant" means a consultant, including a design consultant, engaged by the SDA school district for the capital maintenance project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services. There may be one or more consultants engaged by the SDA school district for the capital maintenance project.

"Contract" means any agreement between a contracted party and the SDA school district for the capital maintenance project. The term "contract" includes the design consultant contract, the construction contract and any other agreements between the district and its consultants, the district and its contractors, contractors and their subconsultants and subcontractors, and consultants and their subconsultants and subcontractors.

"Contracted party" means the consultants, contractors, and their subconsultants and subcontractors and any other party providing material or services to the SDA school district in connection with the capital maintenance project.

"Contractor" means those persons or firms engaged by the SDA school district to undertake the construction or the acquisition and installation of the capital maintenance project. There may be either a single "general" contractor who has overall contractual responsibility for delivering all of the construction services needed to complete the capital maintenance project or there may be multiple contractors who have responsibility for delivering particular aspects of the capital maintenance project.

"Current working estimate" or "CWE" means the estimated cost to complete the capital maintenance project and includes the cost of design and construction or the acquisition and installation of the capital maintenance project. The Authority shall establish an initial CWE upon delegation by the Authority of the capital maintenance project to the district. The CWE shall be updated, as needed, throughout the preconstruction phase, the design phase, and the construction phase.

"DCA" means the New Jersey Department of Community Affairs.

"Department" means the New Jersey Department of Education.

"Department rules" means rules issued by the Commissioner and/or the State Board of Education that govern the financing, construction and maintenance of the school facilities project, as may be in effect as of the date of the agreement and thereafter.

"Design consultant" means the architect or engineer or other consultant selected by the district to provide design services and/or construction administration services in connection with the capital maintenance project pursuant to the design consultant contract.

"Design phase" means that phase of the capital maintenance project in which the design of the capital maintenance project is undertaken by the design consultant. The design phase may commence upon issuance by the Department of an approval of preconstruction activities or, as applicable, upon issuance by the Department of the preliminary project report and ends upon commencement of the construction phase.

"Design work" means design work performed by a design consultant to design the capital maintenance project so that it may be bid out for construction. If the delegation by the Authority to the district of the capital maintenance pro-

ject commences upon issuance by the Department of a preconstruction approval, design work shall include approved preconstruction design work.

"Disbursement" means a release of a portion of the grant to the district to pay for approved costs.

"Event of default" means any event specified in *N.J.A.C. 19:34A-1.4*.

"Excess costs" means the additional costs of the school facilities project, if any, which shall be borne by the district.

"Facilities efficiency standards" means the standards developed by the Commissioner pursuant to *N.J.S.A. 18A:7G-4(h)* and published in the New Jersey Register.

"Final completion" means that point in time when all requirements of all contracts for a capital maintenance project have been fully performed, all items on the punch list have been fully performed, all manuals, warranties and as-builts are delivered, all liens have been released and a final certificate of occupancy, continued use or completion has been issued.

"Final eligible costs" means the final approved costs as determined pursuant to *N.J.S.A. 18A:7G-5(h)(2)* and *N.J.A.C. 6A:26-3.5*, and for purposes of the agreement, shall be set forth in the final project report.

"Final grant amount" means the final amount of the grant as determined by *N.J.A.C. 19:34A-3.1(b)*.

"Final project report" means the report prepared by the Department which contains all of the information included in the preliminary project report and, in addition, includes: the final eligible costs, the excess costs, if any, the State share and the local share.

"Grant" means the funds to be provided to the district by the Authority to pay for the approved costs subject to the terms and conditions of the section 13(a) delegation agreement. The estimated grant amount shall be adjusted during the course of the capital maintenance project until such time as the Authority determines the final grant amount.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a district pursuant to *N.J.S.A. 18A:7G-4* and *N.J.A.C. 6A:26-2* and an "approved LRFP" means an LRFP approved by the Commissioner pursuant to *N.J.S.A. 18A:7G-4* and *N.J.A.C. 6A:26-2*.

"NJEDA" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c. 80 (*N.J.S.A. 34:1B-1 et seq.*).

"Preconstruction approval" means the approval by the Department issued pursuant to *N.J.A.C. 6A:26-3.9* pursuant to which the Department has approved, among other things, undertaking the approved preconstruction design work.

"Preliminary eligible costs" means the initial approved costs of the capital maintenance project determined pursuant to the formulas set forth in *N.J.S.A. 18A:7G-7* which shall be deemed to include the costs of construction and other allowable costs and for the purposes of the agreement, shall be set forth in the preliminary project report.

"Preliminary project report" means the report that the Department prepares for the Authority after approving a capital maintenance project application containing the preliminary eligible costs and other project information, pursuant to *N.J.A.C. 6A:26-3.5(c)*.

"PSCL" means the Public School Contracts Law, *N.J.S.A. 18A:18A-1 et seq.*, together with all applicable rules and guidance issued by DCA and the Department in connection therewith.

"School facility" means and includes any structure, building or facility used wholly or in part for educational purposes by a district and facilities that physically support such structures, buildings and facilities such as district wastewater treatment facilities, power generating facilities, steam generating facilities and other central service facilities, but shall exclude other facilities.

"School facilities project" means the planning, acquisition, construction, improvement, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings, and equipment, and shall include, but is not limited to, 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. The capital maintenance project which the district is undertaking is described in the preconstruction approval if the delega-

tion occurs at this point in the design phase or in the preliminary project report if the delegation occurs later in the design phase.

"School facilities project application" means the form provided by the Commissioner of the Department to be submitted to the Department for approval of a school facilities project, pursuant to *N.J.A.C. 6A:26-3.2*.

"SDA school district" is a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39.

"Section 13(a) delegation agreement" means the grant agreement between the Authority and an SDA school district by which the Authority funds the State share, including the costs of preconstruction activities in connection with a proposed capital maintenance project delegated by the Authority to be undertaken by an SDA school district, pursuant to section 13(a) of the Act and this chapter.

"State Comptroller" means the Office of State Comptroller, created pursuant to P.L. 2007, c. 52, in, but not of, the State Department of the Treasury, which is responsible for financial auditing; performance and management reviews; and reviewing the contract procurement process of the Executive branch of State government, independent State Authorities, public institutions of higher education, units of local government and boards of education.

"State share" means the State's proportionate share of the final eligible costs. For the SDA school districts, this equals 100 percent of the final eligible costs of a capital maintenance project.

"Termination" means the cancellation of the section 13(a) delegation agreement by the Authority as a result of an event of default or other noncompliance or by mutual consent of the parties.

"Total costs" means the actual total amount spent on the capital maintenance project. The estimated amount of the total costs upon the commencement date shall be set forth in the agreement and shall be adjusted to reflect the actual total amount spent on the capital maintenance project upon final completion.

(b) Words and terms implementing the Act but not defined in this chapter shall have the meanings defined in *N.J.A.C. 6A:26-1.2* and in 19:34-1.2.

§ 19:34A-1.3 Administration and performance of grant agreements

The district is responsible for the administration and success of the capital maintenance project, and the provision of the grant by the Authority shall not in any way be deemed to imply that the Authority shall have any responsibility for the administration or success of the capital maintenance project. Although districts are encouraged to seek the advice and opinion of the Authority on problems that may arise regarding the capital maintenance project, the giving of such advice by the Authority shall not shift the responsibility for final decisions from the district to the Authority, nor render the Authority responsible for such advice. Moneys awarded pursuant to this chapter shall be used in conformance with the Act, this chapter and the provisions of the grant agreement to achieve the grant objectives and to insure that the purposes set forth in the Act are fully executed.

§ 19:34A-1.4 Noncompliance

(a) Any of the following events shall constitute an event of default under the agreement and noncompliance with this chapter:

1. Failure by the district to observe and perform any duty, covenant, condition or agreement on its part to be observed or performed under the grant agreement, which failure shall continue for a period of 30 days after receipt of written notice specifying such failure and requesting that it be remedied is given to the district by the Authority, unless the Authority shall agree in writing to any extension of such time prior to its expiration, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Authority may not unreasonably withhold its consent to an extension of such time up to 120 days from delivery of the written notice referred to above or if corrective action is instituted by the district within the applicable period and diligently pursued until the event of default is corrected;

2. Any representation made by or on behalf of the district contained in the agreement, or in any instruction furnished in compliance with or with reference to the section 13(a) delegation agreement or the grant, is false or misleading in any material respect;
3. A determination is made by the Authority that:
 - i. The grant was obtained by fraud; or
 - ii. Gross abuse or corrupt practices have occurred in the administration of the capital maintenance project by the district;
4. Subject to unavoidable delays (for example, delays due to weather, strikes, acts of God or other causes similarly beyond the control of the district), the construction or the acquisition and installation of the capital maintenance project has not commenced within 18 months after the commencement date;
5. Subject to unavoidable delays, the construction or the acquisition and installation of the capital maintenance project has not reached final completion on or before the completion date;
6. The district has utilized grant moneys for costs that are not approved costs;
7. Work on the capital maintenance project has ceased without good cause as agreed to by the Authority. The term "good cause" shall include, but not be limited to, circumstances beyond the control of the district or any of the contracted parties such as fire, flood, riot or strike;
8. The district has contracted with a contractor, subcontractor, consultant or subconsultant who has not been pre-qualified by the Authority, if such prequalification would be required for the performance of similar work on an Authority managed school facilities project;
9. The district has disbursed grant monies to a firm which is debarred, suspended or disqualified from State or Authority contracting or to a firm which has not been pre-qualified; or
10. The district fails to permit the Authority, DCA, or the State Comptroller immediate entry or inspection.

(b) In addition to (a) above, other non-compliance may include any failure on the part of the district to comply with any provision of the Act, this chapter, or any law, regulation, or rule applicable to the agreement.

§ 19:34A-1.5 Remedies for events of default and noncompliance

(a) In addition to any other remedies as may be provided by law or by the section 13(a) delegation agreement, in the event of noncompliance with any provisions of the Act, any condition of the section 13(a) delegation agreement, an event of default, or any requirement of this chapter, the Authority, after taking the action in (a)1 below, may take any of the actions or combinations thereof set forth in (a)2 through 4 below:

1. Issue a notice of noncompliance in writing to the district stating that if corrective action is not taken within the requisite time period specified or if the action is inadequate as determined by the Authority, the Authority may take any of the actions or combinations contained in *N.J.A.C. 19:34A-1.5(a)2* through 5;
2. Withhold, upon written notice to the district, grant disbursements or any portion thereof;
3. Suspend, upon written notice to the district, the section 13(a) delegation agreement and withhold further payments thereunder and prohibit the district from incurring additional obligations of grant funds pending corrective action by the district;
4. Terminate, upon written notice to the district, the section 13(a) delegation agreement or rescind the grant moneys.
 - i. The Authority shall promptly notify the district, in writing, of its determination to terminate the grant agreement and the reasons for the termination, together with the date on which the termination shall take effect.
 - ii. Upon termination of the grant agreement, the Authority may demand that an amount equal to the grant received by the district be immediately returned to the Authority and the district shall waive payment by the Authority of the undistributed balance, and upon notice to the district, the amount of the grant disbursed by the

Authority shall be immediately due and payable by the district together with any costs to the Authority resulting from an event of default by the district; and/or

5. In addition to any withholding, suspension or termination action, the Authority retains the right to pursue any and all other remedies as may be available under State law as warranted.

(b) At the option of the Authority, in its sole discretion, the Authority may, without prejudice to any other rights or remedies, take an assignment of any of the contracts in order to complete the capital maintenance project, and the district shall take whatever actions are necessary in order to ensure the proper assignment to the Authority of such contracts.

(c) The district shall on demand pay to the Authority the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of the repayment of the grant or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements, of the district upon an event of default or non-compliance with this chapter.

§ 19:34A-1.6 (Reserved)

§ 19:34A-1.7 Termination by mutual agreement

The Authority and the district may terminate the section 13(a) delegation agreement when both parties agree that the continuation of the capital maintenance project would not produce beneficial results commensurate with the further expenditure of funds. The Authority and the district shall agree upon the conditions for termination including the date on which the termination shall take effect. The closeout provisions specified in *N.J.A.C. 19:34A-3.4* shall apply.

§ 19:34A-1.8 Waiver

Any district desiring a waiver or release from the express provisions of any of the rules in this chapter may submit a written request to the Authority. Waivers may be granted by the Authority, only when the Authority determines that such a waiver would not contravene the provisions of the Act and upon a finding that, in granting the waiver, the Authority will be promoting the statutory purposes expressed in the Act.

§ 19:34A-1.9 Appeals

(a) Appeals arising from decisions of the Authority may be requested in writing, and an opportunity given for any informal hearing on the papers, in person or via telephone with Authority staff. Such written request for an informal hearing must be made within 30 days of the receipt of the Authority's decision.

(b) In the event of an adverse decision after an informal hearing under (a) above, or if a district determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in *N.J.S.A. 52:14B-2(b)*, a district may request, within 90 days of the written decision resulting from the informal hearing or the determination of the Authority if an informal hearing is not sought, a formal hearing.

(c) Upon filing of the initial pleading in a contested case, the Authority shall transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *52:14F-1* et seq., and the Uniform Administrative Procedures Rules, *N.J.A.C. 1:1*.

(d) Every determination of a dispute or controversy arising from this chapter by the Authority, constituting final agency action by the Board, shall be embodied in a written decision which shall set forth findings of fact and conclusions of law pursuant to the applicable rules of the Office of Administrative Law.

§ 19:34A-2.1 Applicability

This subchapter establishes the Authority's procedures and requirements governing the conditions and eligibility criteria for delegation under *N.J.S.A. 18A:7G-13(a)* as well as the circumstances ending the delegation.

§ 19:34A-2.2 Eligibility criteria for delegation

(a) The following criteria shall apply regarding eligibility for delegation when determined upon issuance by the Department of a preconstruction approval of the preconstruction design work:

1. The district has obtained approval of the district's long-range facilities plan pursuant to *N.J.A.C. 6A:26-2.3*;
2. There are no preconstruction activities related to land acquisition or special circumstances such as site development or remediation;
3. The Department has approved the undertaking of preconstruction design work pursuant to *N.J.A.C. 6A:26-3.9*; and
4. The delegation, as determined by the Authority, is in the best interests of the capital maintenance project.

(b) If eligibility is determined upon issuance by the Department of a preliminary project report (that is, later in the design phase of the capital maintenance project or prior to the construction phase for capital maintenance projects without a design phase), the criteria shall be the following:

1. The district has obtained approval of the district's long-range facilities plan pursuant to *N.J.A.C. 6A:26-2.3*;
2. The Department has approved the capital maintenance project and issued a preliminary project report to the Authority pursuant to *N.J.S.A. 18A:7G-5* and *N.J.A.C. 6A:26-3.3*; and
3. The delegation, as determined by the Authority, is in the best interests of the capital maintenance project.

§ 19:34A-2.3 Execution and other conditions for delegation

(a) After the Authority has determined that a capital maintenance project has satisfied the eligibility criteria for a section 13(a) delegation agreement, it shall transmit the section 13(a) delegation agreement to the district for execution. The Authority may transmit along with the agreement, a scope of work that shall serve as the basis for any further design work undertaken by the district's consultant.

(b) The district shall execute the section 13(a) delegation agreement within such period of time and pursuant to such terms and conditions as the Authority may determine in its sole discretion, and return the section 13(a) agreement together with all applicable attachments to the Authority for execution by the Authority. Such terms and conditions shall include:

1. Delivery by the district to the Authority of a certified copy of a resolution of the district board authorizing the execution and delivery of the agreement and proof of the district board's delegation of authority to the school business administrator or other authorized officer for supervision of the capital maintenance project; and
2. Delivery by the district to the Authority of a certificate executed by the school business administrator or other authorized officer as to the following:
 - i. All adoptions and approvals required to be given by the district or by any other governmental entity with respect to the agreement have been obtained;
 - ii. The district has full legal right, power and authority to enter into the agreement to consummate the transactions contemplated thereby; and
 - iii. The agreement has been duly authorized, executed and delivered by the district, and constitutes a valid and binding agreement of the district enforceable in accordance with its terms.

(c) Upon determining that all conditions precedent to the execution of the section 13(a) delegation agreement have been satisfied, the Authority shall execute the agreement.

(d) Upon execution of the agreement, the Authority shall transmit to the district the section 13(a) delegation agreement as well as a sign to the extent permitted by zoning laws indicating that financing was made available to the district through the Authority.

§ 19:34A-2.4 Initiation of delegation and engagement of the design consultant

(a) If delegation occurs upon issuance by the Department of a preconstruction approval:

1. Upon execution of the agreement by the district and the Authority pursuant to *N.J.A.C. 19:34A-2.3*, the district shall proceed to engage a design consultant and shall submit to the Authority an executed consultant certification in the form attached to the agreement and acceptable documentation of insurance coverage.
2. Disbursement for any services performed by the design consultant prior to the execution of the agreement by the district and the Authority pursuant to *N.J.A.C. 19:34A-2.3* shall be at the risk of the district.
3. The design consultant shall prepare the design documents required for submission by the district to the Department of a school facilities project application, pursuant to *N.J.A.C. 6A:26-3.3*.
4. Upon approval by the Department of the school facilities project application and issuance of the preliminary project report, the district may proceed further in the design phase.

(b) If delegation occurs upon Department issuance of a preliminary project report, and, therefore, later in the design phase:

1. Upon execution of the agreement by the district and the Authority pursuant to *N.J.A.C. 19:34A-2.3*, the district shall proceed to engage a design consultant or may continue to engage a design consultant and shall submit to the Authority an executed consultant certification in the form attached to the agreement and acceptable documentation of insurance coverage.
2. Disbursement for any services performed by the design consultant prior to the execution of the agreement between the district and the Authority pursuant to *N.J.A.C. 19:34A-2.3* shall be at the risk of the district.

(c) If delegation occurs for capital maintenance projects that do not have a design phase:

1. The delegation shall occur after the issuance by the Department of the preliminary project report and prior to the construction phase.

2. Upon execution of the agreement by the district and the Authority pursuant to *N.J.A.C. 19:34A-2.3*, the district shall have final eligible costs of the capital maintenance project determined by the Department, pursuant to *N.J.A.C. 6A:26-3.5*, and comply with the provisions governing approval of local share, if applicable, in this chapter, before the Authority issues an authorization-to-proceed with the construction phase, pursuant to *N.J.A.C. 19:34A-2.6*.

(d) Any design consultant engaged by the district for the capital maintenance project shall be engaged pursuant to the PSCL and must be prequalified by the Authority.

§ 19:34A-2.5 Design of the capital maintenance project

(a) The design consultant shall design the capital maintenance project in accordance with the preliminary project report.

(b) When the detailed plans and specifications are completed, the district shall submit them to the Authority with an updated CWE, to review for consistency with the initial scope of work provided pursuant to *N.J.A.C. 19:34A-2.3(a)*, if applicable, and for the Authority to make a final eligible cost recommendation for the capital maintenance project to the Department, pursuant to *N.J.A.C. 6A:26-3.5*. At the same time, or before or after the determination by the Department of final eligible costs, pursuant to *N.J.A.C. 6A:26-3.5*, the district shall submit the detailed plans and specifications to the Department for approval of final educational adequacy, if applicable, pursuant to *N.J.A.C. 6A:26-5.4*.

1. If the updated CWE provided by the design consultant is less than or equal to the preliminary eligible costs, the final eligible costs shall equal the updated CWE.
 2. If the updated CWE is greater than the preliminary eligible costs:
 - i. The Authority shall, in consultation with the district and the Department, determine whether changes can be made in the scope of the capital maintenance project to reduce costs but not impact the facilities efficiency standards and, if such changes can be made, the CWE shall be adjusted accordingly and the final eligible costs shall equal such adjusted CWE.
 - ii. If the Authority determines that it is not possible to make changes in the capital maintenance project either because the additional costs are the result of factors outside the control of the district or the additional costs are required to meet the facilities efficiency standards, the Authority shall recommend to the Department to accept the updated CWE as the final eligible costs.
 - iii. If the Authority determines that the additional costs are the result of factors that are within the control of the district or are the result of design factors that are not required to meet the facilities efficiency standards, the district shall either make the appropriate changes to reduce costs or agree to pay such additional costs.
- (c) After the Authority receives a final project report evidencing final eligible costs, the Authority shall issue an authorization-to-proceed with the construction phase, whereupon the district shall proceed with the procurement of contractors for the construction or the acquisition and installation of the capital maintenance project.

§ 19:34A-2.6 Construction or acquisition and installation of the capital maintenance project

- (a) Upon receipt of an authorization-to-proceed with the construction phase, the district shall proceed to bid for contractors, if applicable, or for goods and services, in accordance with the PSCL. All contractors engaged by the district shall be pre-qualified by the Authority.
- (b) The district shall forward to the Authority for review and approval:
1. The construction phase checklist attached to the agreement;
 2. A contractor certification in the form attached to the agreement;
 3. Acceptable documentation of insurance coverage; and
 4. A CWE which has been adjusted to take into account the award of the construction contract(s).
- (c) Upon approval by the Authority of the documents required in (b) above, the district shall proceed with the construction phase and the contractor may proceed to undertake the work.
- (d) Disbursement for any services performed by the contractor prior to such approval shall be at the risk of the district.
- (e) If, during the design and construction of the capital maintenance project, a district determines that an amendment or a change in the work of the design consultant, any other consultant and/or the contractor(s) is required, as applicable, the following shall apply:
1. Any change order, or amendment regardless of the amount, which affects the number, configuration, size, location, or use of the educational spaces, shall be submitted by the district to the Department for approval;
 2. Any change order or amendment which exceeds five percent of the grant amount, in the singular or aggregate, shall be submitted by the district to the Authority for approval;
 3. If required to be approved and if approval is obtained pursuant to (e)1 or 2 above, upon receipt of an authorization-to-proceed, the district may authorize the design consultant, other consultant and/or the contractor(s) to proceed with the work specified in the request for change order or amendment, as applicable; and
 4. After receipt by the Authority of the final project report, the district shall be responsible for the costs associated with changes to the scope of the capital maintenance project, unless the district provides evidence satisfactory to

the Authority that the change order is necessitated by either an emergency consistent with *N.J.S.A. 18A:18A-7* or unforeseeable physical conditions.

(f) The capital maintenance project shall be constructed in conformity with the New Jersey Uniform Construction Code, *N.J.A.C. 5:23*, and the educational facility planning standards, *N.J.A.C. 6A:26-6.2*.

§ 19:34A-3.1 Grant amount

(a) Since the delegation to the district of the capital maintenance project shall commence prior to the determination of final eligible costs, the Authority shall provide funding to the district in an amount equal to 100 percent of the costs for approved preconstruction design work and design work required to be performed to prepare the detailed plans and specifications. Any amounts paid by the Authority shall upon determination of final eligible costs be applied to the State share.

(b) The grant shall be used only to pay for approved costs. Approved costs shall be reasonable, as determined by the Authority, pursuant to policies and procedures to be established and updated from time to time.

(c) The grant amount shall equal the State share of the final eligible costs of a capital maintenance project, as adjusted. The CWE and grant amount shall be adjusted by the Authority at the following time points: when the Authority receives the preliminary project report (if the delegation occurred at the preconstruction phase), after the Authority receives the final project report, upon award of the construction contract(s), and upon any change orders.

(d) Upon final completion, the CWE shall be adjusted to reflect the final approved costs of the capital maintenance project and the final grant amount shall equal the State share plus the costs of any change orders for which the district is not responsible.

§ 19:34A-3.2 Disbursement schedule

(a) Disbursement of grant funds shall be made at intervals as work progresses and expenses are incurred by the district and approved by the Authority for payments.

(b) Total disbursements shall not exceed the grant amount.

§ 19:34A-3.3 Disbursement documentation and procedures

(a) No disbursement of grant funds for expenses incurred by the district shall be made until the Authority receives all the documentation required for that disbursement.

(b) Disbursement documentation under (a) above shall include:

1. An invoice with a complete description of the costs incurred;
2. A payment voucher signed by an authorized officer of the district;
3. Submission of acceptable documentation of required insurance coverages; and
4. Completion to the satisfaction of the Authority of certifications or checklists as applicable.

(c) Upon receipt and approval by the Authority of a request for disbursement, the Authority shall disburse the amount set forth in such request for disbursement less the retainage specified in *N.J.S.A. 18A:18A-40.3*.

(d) Upon final completion, the district shall prepare and submit to the Authority, for review and approval, a request for disbursement together with the final completion checklist in the form attached to the agreement. Upon approval, the Authority shall disburse an amount equal to such request for disbursement together with any retainage previously withheld by the Authority pursuant to (b) above, and, thereupon, the Authority shall be released from any further responsibility to make any disbursements.

(e) The Authority shall not be under any obligation to make disbursements of the grant unless:

1. The agreement has been duly executed and delivered by the parties thereto;
2. No event of default or noncompliance, nor any event which with the passage of time or service of notice would constitute an event of default or noncompliance, shall have occurred and shall be continuing at the time of the request for disbursement; and
3. All of the conditions precedent contained within the agreement to the request for disbursement have been discharged completely and to the full satisfaction of the Authority.

§ 19:34A-3.4 Closeout procedures

(a) Closeout shall occur when all applicable administrative actions and all required work have been completed by the district. This process shall include the steps enumerated below:

1. In the event there are any grant proceeds which have not been expended on approved costs, such unexpended grant proceeds shall be released to the Authority and the amount of the grant shall be reduced by the amount of the unexpended proceeds.
2. (Reserved)
3. The district shall refund to the Authority any grant funds spent on any costs which were disallowed by the Authority as not being approved costs. Such refund shall be made within 30 days of the request by the Authority.
4. If a final audit has not been performed on behalf of the district prior to closeout of the capital maintenance project, the Authority retains the right to recover any appropriate amount after full consideration of any recommendation on disallowed costs resulting from the final audit.
5. The Authority may require additional information from the district or its consultants and contractors and/or retain any grant amount not disbursed until closeout is completed.

§ 19:34A-4.1 General provisions

(a) The district shall design and construct the capital maintenance project pursuant to the plans and specifications and as approved by the Department pursuant to N.J.S.A. 18A:7G-5. Any changes in the capital maintenance project which may impact educational adequacy (the number, size, configuration, location or use of educational spaces) shall be reviewed and approved by the Department as required under *N.J.A.C. 6A:26-4.9* and this chapter prior to such changes being made.

(b) The district shall, with all due diligence, proceed to construct or acquire and install the capital maintenance project in accordance with the plans and specifications, as applicable. If during the construction or acquisition and installation of the capital maintenance project, the district determines that a change in a construction contract is required, it shall comply with any and all requirements for approval of a request for a change order pursuant to *N.J.A.C. 6A:26-4.9*, any other applicable Department regulations, and this chapter.

(c) The district shall promptly notify the Authority in writing of events or proposed changes in the scope of the capital maintenance project, and schedule for completion and/or any other significant changed conditions concerning the capital maintenance project.

§ 19:34A-4.2 Contract award and compliance

(a) The district shall continually monitor the performance of the capital maintenance project and preconstruction activities, if applicable, to assume that time schedules are being met and that the completion of the capital maintenance project will occur in a timely, efficient and effective manner.

(b) In the event of default of any contracted party under any contract, or in the event of a breach of warranty with respect to any contract, the district shall reasonably exhaust the remedies against the defaulted contracted party and against each such surety for the performance of such contracts.

(c) The district shall obtain and maintain all licenses, certifications, authorizations, or any documents required by all governmental authorities whenever necessary. The district shall promptly notify the Authority and the State Comptroller in writing of any disciplinary action against itself, or, if it has knowledge of, against any contracted party or any change in the status of any license, permit, or other authorization required for the capital maintenance project.

(d) The district shall award all contracts for the capital maintenance project in accordance with *N.J.S.A. 52:15C-10* and the PSCL and the rules issued pursuant thereto. The district shall award a contract for design work on the capital maintenance project only to a design consultant that has been pre-qualified by the Authority and has the pre-qualification classification required for the engagement.

(e) All consultants and contractors with whom the district contracts, and their subconsultants and subcontractors, must be prequalified by the Authority if such prequalification would be required for the performance of similar work on a Authority managed school facilities project.

(f) All construction contracts shall contain provisions that the contractor and the subcontractor, as applicable, shall comply with the New Jersey Prevailing Wage Act, *N.J.S.A. 34:11-56.25* et seq. The district shall not hire any contractor or subcontractor to perform any work for the district who is listed or is on record in the Office of the Commissioner, Department of Labor, as having failed to pay prevailing wages in accordance with the provisions of the New Jersey Prevailing Wage Act.

(g) All contracts shall provide that the contracted party shall comply with the anti-discrimination provisions of *N.J.S.A. 10:2-1* et seq., the New Jersey Law Against Discrimination, *N.J.S.A. 10:5-1* et seq., *N.J.A.C. 17:27* and *N.J.A.C. 6:4-1.6*. The district and its contracted parties shall in addition agree by contract and guarantee to afford equal opportunity in the performance of the contracts in accordance with an affirmative action program approved by the State Treasurer.

(h) No official or employee of the district who is authorized in his or her official capacity to negotiate, make, accept or approve or to participate in such decision regarding a contract in connection with the preconstruction activity shall have any financial or other personal interest in any such contract. The School Ethics Law, *N.J.S.A. 18A:12-21* et seq., and *N.J.A.C. 6A:28* shall by reference be incorporated as part of the applicable agreement.

(i) The district shall submit proof to the Authority and it and any contracted party shall comply with all insurance requirements of the section 13(a) delegation agreement and, when appropriate, shall certify that the insurance is in full force and effect and that the premiums have been paid.

(j) The district shall not take any action or omit to take any action that would result in the loss of the exclusion of the interest on any NJEDA bonds from Federal gross income for Federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended.

(k) The district shall require all contracted parties to enter into certifications at the times and in the manner specified by the Authority in the applicable agreement. Such certifications may include a certification by a consultant or a contractor upon award of contract; certifications by the school business administrator upon either award of a contract or final completion of the preconstruction activity or both; and tax certifications by the district as may be required by the Authority or the NJEDA to ensure the tax-exempt status of NJEDA bonds.

(l) The district shall require the provision of performance bonds or other security pursuant to *N.J.S.A. 18A:18A-25*.

(m) The following concern contracts:

1. The district shall include the following statements in each contract awarded by the district in connection with the preconstruction activity and capital maintenance project: "This contract or subcontract is or may be funded in part with funds from the New Jersey Schools Development Authority. Neither the State, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, nor any of their departments, agencies, board members or employees is or will be a party to this contract or subcontract or any lower tier contract or subcontract. This contract or subcontract is subject to the requirements contained in *N.J.A.C. 19:34A* and the contractor (subcontractor) (consultant) (subconsultant) agrees to comply with those requirements."
2. The district shall include a provision in each contract awarded by the district in connection with the capital maintenance project which states that the contract is assignable to the Authority.

(n) The district shall comply with the requirements of *N.J.S.A. 52:15C-10* concerning the notices to the State Comptroller and the timing of the procurement process relative to the award of contracts.

(o) The Authority and/or the NJEDA may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Act.

§ 19:34A-4.3 Fraud and other unlawful or corrupt practices

(a) The district shall administer moneys pursuant to this chapter, the section 13(a) delegation agreement and any contracts entered into in connection with an approved preconstruction activity and a capital maintenance project free from bribery, graft and corrupt practices. The district has the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The Authority shall have the right to pursue administrative or other legally available remedies in the event it suspects the occurrence of such conduct.

(b) The district shall diligently pursue judicial and administrative remedies and take any other appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The district shall immediately notify the Authority in writing when any such allegation or evidence comes to its attention and shall periodically advise the Authority and the State Comptroller in writing of the status and ultimate disposition of any related matter.

§ 19:34A-4.4 Debarment

(a) The district and its consultants or contractors shall not enter into a contract for work or an approved preconstruction activity or capital maintenance project with any person or firm that has been debarred, suspended, or disqualified from State, NJEDA, Authority or Federal government contracting.

(b) The district shall insert in all contracts with all contracted parties, and all contractors and consultants shall insert into all of their contracts with all subconsultants and subcontractors, a clause stating that the contracted party, its subconsultants or subcontractors may be debarred, suspended or disqualified from contracting and/or working on the approved preconstruction activity or capital maintenance project if the contracted party commits any of the acts listed in N.J.A.C. 17:19-3 or any applicable regulation issued by the Authority or the NJEDA.

(c) The district's bid specification for any work on an approved preconstruction activity or a capital maintenance project shall require all bidders to submit a sworn statement by the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's, the NJEDA's, the Authority's, or the Federal government's list of debarred, suspended or disqualified bidders as a result of action taken by any State or Federal agency, as the case may be. Bid specifications for the approved preconstruction activity or capital maintenance project shall state that the district shall immediately notify the State, the Authority and the NJEDA in writing whenever it appears that a bidder is on the Treasurer's, the Authority's, the NJEDA's or the Federal government's list. The State, the Authority, and the NJEDA reserve the right in such circumstances to immediately suspend such bidder from contracting and/or engaging in work on the approved preconstruction activities or capital maintenance project and to take such other action as it deems appropriate pursuant to N.J.A.C. 17:19-3 or any applicable regulation issued by the Authority.

§ 19:34A-4.5 (Reserved)

§ 19:34A-4.6 Disclosure and publicity

(a) Submissions received by the Authority under this chapter which are government records as defined in the Open Public Records Act, P.L. 2001, c. 404, shall be made available to persons who request their release as provided by State law.

(b) Press releases and other public dissemination of information by the school district concerning the capital maintenance project shall acknowledge Department approval and Authority financial assistance when such assistance is provided.

§ 19:34A-4.7 Access and record retention

(a) The Authority shall make available records and accounts pertaining to the capital maintenance project undertaken by the Authority to the State Comptroller, and the State Auditor in their investigations, examinations and inspections of the activities related to the financing and undertaking of preconstruction activities. The Authority shall also cooperate, upon request, in sharing information with other entities.

(b) The school district shall keep these records and accounts for the capital maintenance activities as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following substantial completion of the school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

(c) The Authority shall keep those records and accounts and shall require all contracted parties to keep those records and accounts for the capital maintenance project as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following completion of the capital maintenance project and any additional period required for the resolution of litigation, claims or audit findings.

Resolution—5f.

Proposed Re-adoption with Amendments
Section 13(a) Delegation Agreement Rules, N.J.A.C. 19:34A

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) adopt, amend and repeal rules and regulations to carry out the provisions of P.L. 2000, c. 72 (C. 18A:7G-1 et seq.) and P.L. 2007, c. 137 (C. 52:18A-235 et seq.); and

WHEREAS, the SDA's regulations at N.J.A.C. 19:34A, governing Section 13.a Delegation Agreements (the Rules), provide the conditions, eligibility criteria, and process for capital maintenance projects to be delegated to an SDA school district by the Authority, pursuant to N.J.S.A. 18A:7G-13.a.; and

WHEREAS, the Authority previously adopted the Rules with amendments and repeals on May 4, 2016 and they are scheduled to expire on May 26, 2023; and

WHEREAS, the proposed amendments will facilitate the use of electronic submissions in applications for delegation of capital maintenance projects to SDA Districts and eliminate an obsolete signage requirement; and

WHEREAS, A Notice of Proposal describing the proposed amendments to the existing Rules has been provided to the Members along with a full copy of the existing Rules; and

WHEREAS, the Rules' background, regulatory history and a summary of the proposed amendments are fully described in the memorandum presented to the Board on this date and incorporated herein; and

WHEREAS, SDA management recommends that the Members of the Authority approve the re-adoption of the Rules with amendments as proposed and presented, as well as issuance of the attached Notice of Re-adoption and the filing of the Notice with the Office of Administrative Law.

NOW, THEREFORE, BE IT RESOLVED, that, consistent with the memorandum presented to the Board on this date, the Members of the Authority hereby authorize and approve the proposed re-adoption of the Authority's Section 13(a) Delegation Agreement Rules, N.J.A.C. 19:34A, with amendments, as well as the issuance of the attached Notice of Re-adoption and the filing of the Notice with the Office of Administrative Law.

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

Attached: Memorandum, Proposed Re-adoption with Amendments: Section 13(a) Delegation Agreement Rules, N.J.A.C. 19:34A, dated, April 5, 2023

Dated: April 5, 2023

MONTHLY REPORTS
(For Informational Purposes)

ACTIVE PROJECTS STATUS REPORT

MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director

DATE: April 5, 2023

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

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

The 2nd 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 3/22/23

2011 Portfolio Projects - sorted by District		1				Design Status	Advancement Status	Projected Construction Advertisement Date*
District	Project	Grade Alignment	FES Capacity	Max. Capacity	Total Estimated Cost (millions)			
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 3/22/23

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 3/22/23

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	Award for D-B approved Jun. 2022 Board. (Dobco, Inc.)	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 3/22/23

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	\$38.9	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	\$59.8	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 3/1/2023

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	\$ 38,860,332
2	City of Orange	Orange High School	Addition/Renovation	Construction	1Q 2023	On-target	Phased	On-target	\$ 59,769,930
3	Keansburg	Port Monmouth Road School	Addition/Renovation	Construction	1Q 2023	On-target	Sep-22	Achieved	\$ 28,440,130
4	Millville	Millville Senior High School	Addition/Renovation	Construction	1Q 2023	On-target	Phased	On-target	\$ 145,005,733
5	Perth Amboy	New High School	New Construction	Construction	2Q 2024	On-target	Sep-24	On-target	\$ 283,830,000
6	Plainfield	New Woodland ES	New Construction	Construction	3Q 2023	On-target	Sep-23	On-target	\$ 59,440,000
7	Union City	New Grade 7 to 9 School	New Construction	Design-Build Design	3Q 2025	On-target	Sep-25	On-target	\$ 93,696,300

Active Project Status Report Status as of 3/1/2023

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	Irvington	Grove Street School	Boiler Replacement	GCTO w/ Design Design Phase	2Q 2023	On Target	2Q 2023	On-Target	\$ 3,762,782
2	Newark	Cleveland School	Boiler Room Vault Repairs	GCTO w/ Design Design Phase	2Q 2023	On Target	2Q 2023	On-Target	\$ 1,664,389
3	Newark	Malcolm X. Shabazz HS	Structural Repairs	Construction	3Q 2022	Achieved	1Q 2023	On-Target	\$ 3,189,000
4	Newark	Roberto Clemente School	Sub-Basement Water Infiltration	Construction	3Q 2022	Achieved	1Q 2023	On-Target	\$ 1,456,800
5	Newark	Techonology High School	Structural Vault Repairs and Façade Repairs	GCTO w/ Design Design Phase	2Q 2023	On Target	3Q 2023	On-Target	\$ 2,867,680
6	Paterson	PS #5	Roof Replacement & Masonry Repairs	Construction	1Q 2023	Achieved	1Q 2023	On-Target	\$ 10,968,112

PROJECT STATUS REPORT

MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director – Planning and Program Operations

DATE: April 5, 2023

SUBJECT: Executive Summary – Monthly Project Status Reports

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 February 2023

District	Project	Board Approved Project Charter Contingency	Contingency Expended/Committed	Contingency Remaining ¹	% 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%	86%	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.
Orange	Orange HS - Addition & Renovation	\$4,525,000	\$4,525,000	\$0	100.0%	92%	Unforeseen conditions related to the site and renovation portions of the project and connection of the HS to the Orange Preparatory Academy.	Project is in construction and scheduled for completion this year. Revised Final Project Charter approved by the CEO to allocate additional contingency to the project from the Unforeseen Events Reserve.

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.

¹ 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: February 2023

#	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: February 2023

#	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 Activity 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: April 5, 2023

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

Contracts Executed Report

This report contains the activity of Contracts executed during the period February 1, 2023 through February 28, 2023.

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 February 1, 2023 through February 28, 2023.

Noteworthy Items during the reporting period:

- 7 Professional Services Amendments were executed during the reporting period totaling \$23k, of the 7 executed amendments none required Board approval.
- 12 Construction Services Change Orders were executed during the reporting period totaling a credit of \$9.5M, of the 12 executed change orders 2 required Board approval totaling a credit of \$10.1M.

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 & Change Orders Report

Reporting Period: 2/1/2023 through: 2/28/2023

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 %
Professional Services													
Design Consultant													
Newark	Roberto Clemente E.S.	EP-0110-A01	10/31/2018	2	SSP Architectural Group, Inc.	2/2/2023	\$271,680	\$0	(\$35,180)			\$236,500	-12.95%
Newark	Ivy Hill	EP-0111-A01	10/29/2018	3	Design Resources Group, Architects, AIA	2/24/2023	\$312,177	(\$87,698)	(\$3,500)			\$220,979	-29.21%
Others													
Bridgeton	Bridgeton Senior H.S.	EP-0105-M02	8/27/2020	3	GREYHAWK North America LLC	2/10/2023	\$677,400	(\$118,548)	\$1,452			\$560,304	-17.28%
Bridgeton	Bridgeton Senior H.S.	EP-0105-M02	8/27/2020	4	GREYHAWK North America LLC	2/10/2023	\$677,400	(\$117,096)	(\$65,200)			\$495,104	-26.91%
City Of Orange Township	Cleveland Street E.S.	ES-0043-M01	1/9/2019	8	Epic Management, Inc.	2/10/2023	\$1,185,078	\$1,387,792	\$12,870			\$2,585,740	118.19%
City Of Orange Township	Cleveland Street E.S.	ES-0043-M01	1/9/2019	9	Epic Management, Inc.	2/10/2023	\$1,185,078	\$1,400,662	\$17,028			\$2,602,768	119.62%
City Of Orange Township	Cleveland Street E.S.	ES-0043-M01	1/9/2019	10	Epic Management, Inc.	2/21/2023	\$1,185,078	\$1,417,690	\$95,400			\$2,698,168	127.67%
Professional Services									\$22,870				
Construction Services													
Contractor													
City Of Orange Township	Orange H.S.	ES-0042-C01	4/29/2019	239	Terminal Construction Corp.	2/24/2023	\$37,000,000	\$7,547,874	\$390,978			\$44,938,852	21.45%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	5/2/2019	43	Brockwell & Carrington Contractors, Inc.	2/21/2023	\$18,400,000	\$2,782,256	\$380,536			\$21,562,792	17.18%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	5/2/2019	44	Brockwell & Carrington Contractors, Inc.	2/21/2023	\$18,400,000	\$3,162,792	(\$1,591,466)	Y	1/4/2023	\$19,971,326	8.53%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	5/2/2019	45	Brockwell & Carrington Contractors, Inc.	2/21/2023	\$18,400,000	\$1,571,326	(\$59,195)			\$19,912,131	8.21%
City Of Orange Township	Cleveland Street E.S.	ES-0043-C01	5/2/2019	46	Brockwell & Carrington Contractors, Inc.	2/21/2023	\$18,400,000	\$1,512,131	(\$8,503,315)	Y	1/4/2023	\$11,408,816	-37.99%
Newark	Lafayette Street E.S.	EP-0103-C01	6/6/2018	5	Mark Construction, Inc.	2/24/2023	\$447,929	\$78,005	(\$45,000)			\$480,935	7.36%
Newark	Lafayette Street E.S.	EP-0103-C01	6/6/2018	6	Mark Construction, Inc.	2/24/2023	\$447,929	\$33,005	(\$10,000)			\$470,935	5.13%
Newark	Lafayette Street E.S.	EP-0103-C01	6/6/2018	7	Mark Construction, Inc.	2/24/2023	\$447,929	\$23,005	(\$51,320)			\$419,614	-6.32%
Newark	Harriet Tubman E.S.	EP-0115-C01	11/17/2021	2	Epic Management, Inc.	2/21/2023	\$56,819	(\$25,000)	(\$18,147)			\$13,672	-75.93%
Millville	High School	ST-0046-B01	5/24/2017	55	Hall Construction Co., Inc.	2/21/2023	\$114,453,000	\$8,509,092	\$46,237			\$123,008,329	7.47%
Pemberton Township	Denbo Crichton E.S.	WT-0023-B01	2/14/2018	35	Ernest Bock & Sons, Inc.	2/21/2023	\$43,185,000	(\$547,516)	(\$29,490)			\$42,607,994	-1.33%
Pemberton Township	Denbo Crichton E.S.	WT-0023-B01	2/14/2018	36	Ernest Bock & Sons, Inc.	2/21/2023	\$43,185,000	(\$577,006)	(\$12,035)			\$42,595,959	-1.36%
Construction Services									(\$9,502,217)				
										Total Change Order Summary		Total Change Orders	
										(\$9,479,347)		19	
Grand Totals													
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: J Manuel Castillo, Director - EEO/Affirmative Action & Vendor Services 

DATE: April 5, 2023

SUBJECT: Diversity and Workforce Participation Monthly Update for January 2023

The EEO/Affirmative Action & Vendor Services Team consistently participates in mandatory pre-bid and pre-construction meetings to inform and provide guidance to bidders regarding SDA’s Small Business Enterprise (SBE) and Workforce goals, policies and procedures. The guidance provided in such meetings is on, among other things, the following:

- 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

During these meetings, our Team strongly encourages vendors to identify and hire minority-owned, women-owned and disabled veteran-owned firms, as well as locally based enterprises, for diverse business participation on all school building projects. Our Team provides vendors outreach strategies for them to analyze and utilize.

SMALL BUSINESS ENTERPRISE ATTAINMENT

The SDA regularly exceeds the State-mandated 25% SBE goal. The total SDA contract dollars awarded through January 31, 2023 was \$0. The total contract dollars awarded to all SBE contractors was \$0. (including minorities, women and veterans). This represents an initial participation of 0% of all SDA contracts awarded in calendar year 2023. Participation will continue to increase as the Prime contractor hires additional subcontractors/subconsultants throughout the lifecycle of the construction project.

Diversity Breakdown

Type of Business Enterprise	Contract Amount	% of Total SDA Contracts
Small Business Enterprises	\$ -0-	0.00%
Small/ Minority Business Enterprises	\$ -0-	0.00%
Small/Women Business Enterprises	\$ -0-	0.00%
Small/Minority/Women Owned Business Enterprises	\$ -0-	0.00%
Small/Veteran Owned Business Enterprises	\$ -0-	0.00%
Small/Disabled Veteran Owned Business Enterprises	\$ -0-	0.00%
TOTAL DIVERSITY CONTRACTS	\$ -0-	0.00%

WORKFORCE PARTICIPATION

For the month of January 2023, there was a contractor workforce of 473 on SDA projects. This represents a total of 39,161 contractor workforce hours. This is explained in more detail below:

Contractor Workforce Breakdown (All Trades/Districts/Counties)			
Ethnicity	Total Workforce	Total Workforce Hours	Workforce Hours Percentage
Black	28	2,357	6.02%
Hispanic	82	7,715	19.70%
American Indian	1	16	0.04%
Asian	1	82	0.21%
Total Minority Participation	112	10,170	25.97%
Total Non-Minority Participation	361	28,991	74.03%
Total Contractor Workforce	473	39,161	100.00%

There was a contractor workforce of 39,161 total workforce hours on SDA projects for the period of January 1, 2023 through January 31, 2023, which includes 128 total female workforce hours.

The following table highlights the *Local County Contractor Workforce* participation for this period:

Local County Contractor Workforce Participation	Workforce Hours	Percentage
*Total Workforce Hours	39,161	100.00%
*Total Local County Workforce Hours	2,279	5.82%
Total Local County Non-Minority Workforce Hours	1,564	3.99%
Total Local County Female Workforce Hours	128	0.33%
Total Local County Minority Workforce Hours	715	1.83%
**Local County Workforce Hours by Ethnicity:		
Black	128	0.33%
Hispanic	587	1.50%
American Indian	0	0.00%
Asian	0	0.00%

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

**Ethnicity breakdown of Total Local County Minority Workforce Hours.

NOTE: Hours worked by female laborers who are minority are included in total number of hours worked by female laborers. Therefore, hours worked by female minority laborers 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, 2023 through January 31, 2023.

SDA Managed Project	Total Workforce Hours	Minority Workforce Hours & Percentage		Local County Workforce Hours & Percentage	
Millville HS	3,452	516	14.95%	66	1.91%
Orange HS	461	152	32.97%	0	0.00%
Perth Amboy HS	29,237	8,464	28.95%	2,341	8.01%
Plainfield ES	5,849	1,022	17.47%	0	0.00%
Emergent Projects	114	16	14.04%	0	0.00%

REGULAR OPERATING DISTRICTS (RODs) ACTIVITY REPORT

MEMORANDUM

TO: Members of the Authority

FROM: Gregory Voronov
Managing Director, Planning and Program Operations

DATE: April 5, 2023

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

This report summarizes the Regular Operating District Grant activity from inception to date and for the month of February 2023. Also included is a detailed list of grants executed and grants offered during the reporting period if applicable.

Monthly Update:

- No grants were offered during the reporting period.
- No grants were executed during the reporting period.
- One grant impacting one district was closed out during the reporting period representing total project costs of \$108k and state share of \$43k.
- 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.

Monthly Regular Operating District Grant Report - Summary
February 2023

ROD Grant Summary Since Program Inception				
	Offered ¹	Executed	Closed-Out	Active
Districts Impacted	-	524	520	50
Number of Grant Projects	-	5,404	5,213	191
Total Project Cost Estimate	\$ -	\$ 8,941,251,460	\$ 8,795,687,069	\$ 145,564,391
Grant Amount	\$ -	\$ 3,000,751,598	\$ 2,930,523,804	\$ 70,227,794
Amount Disbursed	N/A	\$ 2,952,908,476	\$ 2,930,523,804	\$ 22,384,672

Total Funding Offered to School Districts via Grant Program	\$ 3,342,209,450
---	------------------

Total ROD Grant Funding remaining for new Grant Projects	\$ 475,259,978
--	----------------

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	-	1
Total Project Cost Estimate	\$ -	\$ 107,700
Grant Amount	\$ -	\$ 43,080
Amount Disbursed	NA	\$ 43,080

* 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



MEMORANDUM

TO: Members of the Authority

FROM: Sherman Cole, MBA, CPA

DATE: April 5, 2023

RE: Monthly Financial Report – February 2023

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

For February 2023 year to date, Authority operating expenses, **\$2.1M**, are **\$234K** lower than budget for the corresponding period. This variance is attributable to lower personnel costs as compared to budget, **\$435K**, partially offset by a lower payroll and benefits expense allocation to project costs, **\$485K** and other personnel expenses including; professional & other contracted services, **\$187K**.

The full time employee (FTE) headcount is 129 as of February 28, 2023. This total represents a 9 FTE decrease in comparison to the year to date budget.

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

For February 2023 year to date, Authority operating expenses, **\$2.1M**, are **\$28K** higher when compared to the corresponding prior year.

The current number of FTEs, 129, is down 17 FTEs as compared to the corresponding prior year.

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

For February 2023 year to date, project expenditures, **\$75.4M**, are **\$504K** higher than the capital spending forecast for the corresponding period. This variance is due to the acquisition of the former University Heights Charter School in Newark, New Jersey **\$14.7M**, offset by decreased spending in construction activity, **\$6.7M**, grant activity **\$6.6M**, project insurance, **\$661K**, project management, **\$485K**, and CM services, **\$259K**.

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

For February 2023 year to date, project expenditures **\$75.4M**, are lower by **\$5.4M**, when compared to the corresponding prior year. This variance is related to a decrease in spending for, grant activity, **\$8.1M**, school furniture & equipment, **\$6.8M**, and

Members of the Authority

April 5, 2023

Page 2 of 2

construction work, **\$5.2M**, offset by the acquisition of the former University Heights Charter School, in Newark, New Jersey, **\$15M**.

Other

Since program inception, 79.4% of the funds authorized for the SDA Districts have been disbursed. Additionally, since program inception, 96% of all SDA disbursements relate to school facility projects and 4% relate to operating expense.

The estimated value of active school facilities, capital, emergent and ROD grant projects is approximately \$1.2B.

Attachment

 /s/ *Sherman Cole*
Sherman Cole, Controller

New Jersey Schools Development Authority
Monthly Financial Report
February 2023
(Unaudited)

New Jersey Schools Development Authority

Overview of Financial Position

February 28, 2023

To: The Audit Committee

From: Sherman E. Cole, Controller

The information contained in this monthly financial report is for the period as of, and for the year-to-date ending, February 28, 2023.

► Overall **Cash and Cash Equivalents** have decreased by \$75.5 million to \$327.3 million, as follows:

■ Receipt of bond and note proceeds (Issued by EDA)	\$ -
■ Appropriation from State	-
■ Investment earnings	2,493,931
■ Miscellaneous revenue	13,384
■ Project costs	(75,392,170)
■ SDA operating expenses	(2,763,532)
■ SDA capital expenditures	-
■ Deposits (primarily district local shares)	102,124
Net Change in Cash	\$ (75,546,263)

► **Prepaid Expenses** total \$604,571 as follows:

- Prepaid insurance of \$502,515.
- Prepaid security deposit of \$55,798 for the Authority's flexible spending accounts.
- Prepaid MIS maintenance service contracts of \$44,082.
- Other prepaids of \$2,176.

► **Capital Assets** total \$927,811 (net of accumulated depreciation of \$5,234,456), consisting of leasehold improvements (SDA office), and capitalized software, equipment, furniture and fixtures in support of SDA operations. Depreciation on capital assets is generally calculated using the straight-line method over the life of each asset. For the year to date, **Capital Expenditures** are \$0 and **Depreciation Expense** is \$89,837.

► **Accrued Liabilities** total \$88.7 million, as follows:

- Accrued project costs of \$21.4 million consisting of unpaid invoices (\$4.6 million) and retainage (\$16.8 million). Project-related lease liabilities are \$1.0 million.
- Net pension liability of \$25.0 million.
- Annual accrued pension payable of \$2.5 million.
- Other post-employment benefits obligation of \$30.1 million.
- Pollution remediation obligations (PRO) under GASB 49 net to \$2.1 million (PRO liability \$2.1 million, offset by expected cost recoveries of \$0.0 million).
- Estimated liability for loss contingencies totaling \$3.6 million.
- Payroll related liabilities of \$1.4 million.
- Other accrued liabilities of \$.5 million, including non-project lease liabilities of \$1.1 million.

► **Deposits** total \$8.1 million, as follows:

- \$8.1 million is held for local share agreements (pass-through item).

► The Authority's **Net Position** at month end is \$212.8 million.

New Jersey Schools Development Authority

School Facilities Project Expenditures & Funding Allocation

February 28, 2023

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

- During the current year to date, the SDA has received \$0.0 million in bond/note proceeds & \$0.0 million in appropriations. The total amount received since program inception is \$12.2 billion.
- Project expenditures for the month and year-to-date periods total \$43.7 million and \$75.4 million, respectively, as follows:

<u>Category</u>	<u>Current Month</u>	<u>Year-To-Date</u>	<u>Since Inception</u>
Construction	\$ 12,653,040	\$ 21,943,111	\$ 5,685,790,223
Design Services	33,888	584,499	413,539,993
PMF/CM Services	223,188	520,548	480,012,503
SDA Project Management	528,393	1,226,674	132,310,470
Property Acquisition, Relocation & Enviro	15,096,174	15,238,103	600,948,422
School Furniture, Fixtures & Equipment	146,188	188,396	236,416,390
Project Insurance	(205,327)	(194,891)	114,405,077
NJ State Inter-Agency Transfers	274,235	289,570	53,365,969
SDA District Grant & Funding Agreements	11,422,779	25,603,360	963,322,426
Regular Operating District Grant Agreements	3,482,017	9,786,574	2,996,079,210
Real-Time Project Audits	16,570	39,296	1,103,973
Property Management, Maintenance & Utils	23,250	68,689	19,201,716
Outside Legal & Claims Resolution Services	26,637	27,357	12,271,637
Temporary Staffing	-	8,930	10,735,369
Other Project Costs	22,274	61,954	62,502,481
Project Credits	-	-	(54,902,944)
Total Project Expenditures	43,743,306	75,392,170	11,727,102,915
Less: Local Share Contributions	-	-	(185,112,439)
Project Expenditures (State Share)	\$ 43,743,306	\$ 75,392,170	\$ 11,541,990,476
 2023 Capital Spending Forecast	 \$ 37,512,006	 \$ 74,888,086	

Allocations Since Program Inception

► **All Funding Sources & Expenditures**

- SDA Districts
- RODs Incl Vo-Tech Schools
- Total - State Share

	<u>All Sources</u> ¹	<u>Total Funding</u> ²	<u>Paid to Date</u> ³
SDA Districts	\$ 10,750,000,000	\$ 10,880,720,745	\$ 8,642,619,863
RODs Incl Vo-Tech Schools	4,000,000,000	4,053,288,480	3,424,140,418
Total - State Share	\$ 14,750,000,000	\$ 14,934,009,225	\$ 12,066,760,281

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

- SDA Districts 79.4%
- RODs Incl Vo-Tech Schools 84.5%
- Total - State Share 80.8%

1 Of the \$14.8 billion authorized for the school construction program (including bond funds & appropriations), \$12,197,702,648 has been received to date.

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

3 These amounts include the allocation of SDA operating expenses and capital expenditures totaling \$524,769,805.

New Jersey Schools Development Authority

Funding Allocation

February 28, 2023

Allocations Since Program Inception

► **Authorized Bond/Note Funding & Expenditures**

- SDA Districts
- Regular Operating Districts
- Vocational Schools
- Total - State Share

	<u>Bonding Caps</u> ¹	<u>Total Funding</u> ²	<u>Paid to Date</u> ³
\$	8,900,000,000	\$ 9,028,012,160	\$ 8,475,571,119
	3,450,000,000	3,500,677,598	3,277,198,067
	150,000,000	152,025,242	122,394,167
\$	12,500,000,000	\$ 12,680,715,000	\$ 11,875,163,353

Allocations Since Program Inception

► **Authorized Appropriations & Expenditures**

- SDA Districts
- Regular Operating Districts
- Vocational Schools
- Total - State Share

	<u>Appropriations</u>	<u>Total Funding</u>	<u>Paid to Date</u>
\$	1,850,000,000	\$ 1,852,708,585	\$ 167,048,744
	398,030,764	398,613,521	24,011,950
	1,969,236	1,972,119	536,234
\$	2,250,000,000	\$ 2,253,294,225	\$ 191,596,928

Allocations Since Program Inception

► **Total All Funding Sources & Expenditures**

- SDA Districts
- RODs Incl Vo-Tech Schools
- Total - State Share

	<u>All Sources</u>	<u>Total Funding</u>	<u>Paid to Date</u>
\$	10,750,000,000	\$ 10,880,720,745	\$ 8,642,619,863
	4,000,000,000	4,053,288,480	3,424,140,418
\$	14,750,000,000	\$ 14,934,009,225	\$ 12,066,760,281

Interest Income From State Appropriations:

From Inception Through End of Prior Year	\$	2,175,946
YTD 2022		1,118,279
TOTAL Since Inception	\$	3,294,225

CHECK:

Total Funding (including interest) Per Above Table	\$	14,934,009,225
Total Bonding Caps & Appropriations Per Above Table		14,750,000,000
		184,009,225
Per Cash Flow Report		188,254,223
Difference	\$	(4,244,998)

ITEMS PAID IN SIMS THAT ARE NOT PROJECT COSTS:

Liab Portion of Rent Pmt	\$	608,074
Prepaid Security Deposits		53,848
TOTAL	\$	661,922

New Jersey Schools Development Authority
Fund Reporting Operating Expenses vs Budget
February 28, 2023

<u>Category</u>	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>Over/</u> <u>(Under)</u>
Personnel Expenses:			
Employee Salaries	\$ 1,975,934	\$ 2,302,148	\$ (326,214)
Employee Benefits	536,626	638,472	(101,846)
Direct Hire Temporary Employee Costs	1,503	8,074	(6,571)
Total Employee Salaries & Benefits Costs	2,514,063	2,948,694	(434,631)
Less: Employee Salaries & Benefits Costs			
Charged to Projects	1,226,674	1,711,932	(485,258)
Salaries & Benefits Charged to Operating Expense	1,287,389	1,236,762	50,627
Temporary Staffing Services	-	25,000	(25,000)
Travel & Expense Reimbursements	935	5,150	(4,215)
Training & Professional Development	9,910	15,800	(5,890)
Total Personnel Expenses	1,298,234	1,282,712	15,522
Non-Personnel Operating Expenses:			
Facilities & General Office Expenses	354,805	390,416	(35,611)
Information Systems	372,485	381,798	(9,313)
Professional & Other Contracted Services	9,411	196,350	(186,939)
Property & Casualty Insurance	86,220	92,230	(6,010)
SDA-Owned Automobiles	10,955	13,334	(2,379)
Communications & Outreach	-	666	(666)
Reserve for Unforeseen Events & New Initiatives	-	8,334	(8,334)
Total Authority Operating Expenses	\$ 2,132,110	\$ 2,365,840	\$ (233,730)

2023 Annual Operating Budget

\$ 15,910,844

New Jersey Schools Development Authority

Fund Reporting Operating Expenses vs Prior Year

February 28, 2023

<u>Category</u>	<u>Actual</u> <u>Year-To-Date</u>	<u>2022</u> <u>Year-To-Date</u>	<u>Over/</u> <u>(Under)</u>
Personnel Expenses:			
Employee Salaries	\$ 1,975,934	\$ 2,184,002	\$ (208,068)
Employee Benefits	536,626	569,441	(32,815)
Direct Hire Temporary Employee Costs	1,503	-	1,503
Total Employee Salaries & Benefits Costs	2,514,063	2,753,443	(239,380)
Less: Employee Salaries & Benefits Costs			
Charged to Projects	1,226,674	1,487,535	(260,861)
Salaries & Benefits Charged to Operating Expense	1,287,389	1,265,908	21,481
Temporary Staffing Services	-	-	-
Travel & Expense Reimbursements	935	2,272	(1,337)
Training & Professional Development	9,910	9,191	719
Total Personnel Expenses	1,298,234	1,277,371	20,863
Non-Personnel Operating Expenses:			
Facilities & General Office Expenses	354,805	356,983	(2,178)
Information Systems	372,485	336,858	35,627
Professional & Other Contracted Services	9,411	44,435	(35,024)
Property & Casualty Insurance	86,220	79,549	6,671
SDA-Owned Automobiles	10,955	9,080	1,875
Communications & Outreach	-	-	-
Reserve for Unforeseen Events & New Initiatives	-	-	-
Total Authority Operating Expenses	\$ 2,132,110	\$ 2,104,276	\$ 27,834

New Jersey Schools Development Authority

Employee Headcount

February 28, 2023

	<u>Current</u> <u>Month End</u>	<u>Budget</u>	<u>Over/</u> <u>(Under)</u>
Office of Chief Executive Officer	2	2	-
Human Resources	3	4	(1)
Vacant Positions	0	0	-
Communications	3	3	-
Legislative Affairs	1	1	-
EEO/AA & Vendor Services	4	4	-
Office of Program Operations & Strategic Planning	1	1	-
Capital Planning & Program Operations	10	10	-
Design Studio	10	12	(2)
Grants Administration	6	7	(1)
Real Estate Services & Predevelopment	2	2	-
Office of Construction Operations	0	0	-
Project Teams	20	22	(2)
Office of Corporate Governance & Legal Affairs	4	4	-
Chief Counsel	7	7	-
Information Systems	11	12	(1)
Central Records Management	3	3	-
Safety	4	5	(1)
Internal Audit	2	2	-
Office of Chief Financial Officer	1	1	-
Financial Operations	7	7	-
Financial Accounting & Disbursements	11	11	-
Procurement	10	10	-
Risk Management	2	3	(1)
Facilities	5	5	-
Total Full-Time Employees at Month End	<u>129</u>	<u>138</u>	<u>(9)</u>
 Total Full-Time Employees at Year End		<u>150</u>	

New Jersey Schools Development Authority
Statement of Net Position
February 28, 2023

EXCLUDES GASB 49, 68, 75 & 87

	<u>Current</u> <u>Month End</u>	<u>2022</u> <u>Year End</u>	<u>Over/</u> <u>(Under)</u>
ASSETS			
Cash and Cash Equivalents	\$ 327,285,126	\$ 402,831,389	\$ (75,546,263)
Receivables	779	739	40
Prepaid Expenses	604,571	127,272	477,299
Lease Assets, net of accumulated amortization	2,112,266	2,112,267	(1)
Capital Assets, net of accumulated depreciation	927,811	1,017,648	(89,837)
Total Assets	330,930,553	406,089,315	(75,158,762)
DEFERRED OUTFLOWS OF RESOURCES			
Deferred Amount for Pensions & OPEB	10,349,164	10,349,164	-
TOTAL ASSETS & DEFERRED OUTFLOWS OF RESOURCES	\$ 341,279,717	\$ 416,438,479	\$ (75,158,762)
LIABILITIES			
Accrued Project Costs	\$ 28,216,553	\$ 48,288,080	\$ (20,071,527)
Net Pension Liability	25,006,500	25,006,500	-
Accrued Other Post-Employment Benefits	30,259,324	30,107,704	151,620
Other Accrued Liabilities	5,206,272	5,360,355	(154,083)
Deposits	8,088,536	7,986,412	102,124
Total Liabilities	96,777,185	116,749,051	(19,971,866)
DEFERRED INFLOWS OF RESOURCES			
Deferred Amount for Pensions & OPEB	31,718,760	31,718,760	-
NET POSITION			
Invested in Capital and Lease Assets	3,040,077	3,129,915	(89,838)
Restricted for Schools Construction:			
Special Revenue Fund	209,743,695	264,840,753	(55,097,058)
Net Position	212,783,772	267,970,668	(55,186,896)
TOTAL LIABILITIES, DEFERRED INFLOWS OF RESOURCES & NET POSITION	\$ 341,279,717	\$ 416,438,479	\$ (75,158,762)

New Jersey Schools Development Authority
Statement of Activities
February 28, 2023

EXCLUDES GASB 49, 68, 75 & 87

	<u>Current</u> <u>Year-To Date</u>	<u>2022</u> <u>Year-To Date</u>	<u>Over/</u> <u>(Under)</u>
REVENUES			
Program Revenues:			
Bond and Note Proceeds (Issued by EDA)	\$ -	\$ -	-
Appropriation from State	-	-	-
Bidding Fees-Plans & Specs	-	-	-
General Revenues:			
Investment Earnings	2,493,931	69,270	2,424,661
Rental Income	2,400	1,000	1,400
Other Revenue-OPRA	10,984	915	10,069
Total Revenues	2,507,315	71,185	2,436,130
EXPENSES			
Administrative & General Expenses	2,283,730	2,258,402	25,328
Capital Depreciation	89,837	91,655	(1,818)
School Facilities Project Costs	55,320,644	58,302,672	(2,982,028)
Total Expenses	57,694,211	60,652,729	(2,958,518)
CHANGE IN NET POSITION	(55,186,896)	(60,581,544)	5,394,648
Beginning of Period Net Position	267,970,668	483,103,647	(215,132,979)
NET POSITION END OF PERIOD	\$ 212,783,772	\$ 422,522,103	\$ (209,738,331)

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