

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #8

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WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: School Building Authority of WV TITLE NUMBER: 164

DATE EMERGENCY RULE WAS ORIGINALLY FILED: September 27, 2007

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: _____

SERIES NUMBER OF RULE: 5

TITLE OF RULE: School Building Authority Contracts and Agreements

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

The SBA grant contract is a fluid document and often requires changes and project specific language. As a result, we have contacted counsel from the Legislative Oversight Commission on Educational Accountability (LOCEA) regarding the possibility of removing the grant contract from the SBA Legislative Rule. After reviewing our request, the LOCEA counsel agreed with our proposal and recommended removing the reference to Appendix H from the legislative rule.

Use additional sheets if necessary


Authorized Signature

**TITLE 164
LEGISLATIVE RULE
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA**

**SERIES 5
SCHOOL BUILDING AUTHORITY CONTRACTS AND AGREEMENTS**

§164-5-1 General

- 1.1. Scope – This legislative rule establishes the guidelines and procedures related to requirements for School Building Authority contracts and agreements.
- 1.2. Authority - §18-9D-20.
- 1.3. Filing Date – July 24, 2007
- 1.4. Effective Date –

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§164-5-2 Incorporation by Reference

- 2.1. A copy of Appendix H and J from the School Building Authority Policies and Procedures Manual is attached and incorporated by reference into this policy. Copies may be obtained in the Office of the Secretary of State and in the office of the School Building Authority of WV.

§164-5-3 School Building Authority Contracts and Agreements

- 3.1 Grant Agreement
 - 3.1.A In order for SBA funds to be utilized for any project, a grant agreement between the educational agency and the SBA must be enacted. (~~Appendix H~~)
 - 3.1.B New school designs in West Virginia shall comply with applicable codes and standards as adopted by the State of West Virginia in accordance with 18-9E-3.
 - 3.1.C Qualified contractors bidding on SBA projects will present acceptable liability insurance levels and a completed "Contractor's Qualification Statement" to the SBA for review prior to the award of the construction contracts. These documents are to be treated in highest confidentiality and are to be reviewed only by those involved with the selection of the contractor. A financial statement shall be required of the lowest qualified bidder(s) being considered for award of the contract. The "Contractor Qualification Statements" including subcontractors shall be submitted to the

School Building Authority office by low bid contractors within 72 hours of the completion of the bid opening. (SBA 105)

- 3.1.D All bid documents prepared shall require that the lowest qualified bidder(s) submit a completed form SBA 123, List of Subcontractors and Major Equipment and Material Suppliers. This information must be submitted by the lowest qualified bidder(s) to the SBA office within two hours after the completion of the bid opening. Bid openings shall not occur after 2:00 p.m. local prevailing time. Failure to submit the list of subcontractors and major material suppliers within the two hour limit will result in the rejection of the bid.
- 3.1.E Work Based Learning Opportunities – To the extent practical, the constructing contractor on projects involving the new construction and renovations of Vocational, Technical and Adult Education facilities should work cooperatively with the county board of education or Administrative Council to establish work based learning experienced to introduce county vocational students to construction work practices as outlined in Appendix J.

APPENDIX H

SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

GRANT CONTRACT UP TO

THE AMOUNT OF \$ _____

~~WITH THE BOARD OF EDUCATION OF THE COUNTY OF _____~~

~~This Grant Contract (the "Contract") is entered into by and between the School Building Authority of West Virginia (the "Authority") and The Board of Education of the County of _____ (the "County Board") this _____ day of _____, 20____.~~

~~RECITALS~~

~~A. The Authority was established pursuant to the Constitution and laws of the State of West Virginia, including, particularly, Chapter 18, Article 9D of the Code of West Virginia, 1931, as amended (the "Code") (the "Act") to provide available funds (as described in Section 18-9D-6 of the Act) to finance the costs of acquisition, construction, renovation, repair and safety upgrading of facilities for public school purposes in the State of West Virginia (the "State").~~

~~B. In accordance with the Act and the Program Guidelines of the Authority, and at the request of the County Board, the Authority has determined to grant funds to the County Board for the purpose of financing the costs of the projects described in Exhibit A-1 attached hereto.~~

~~C. This Contract provides the terms and conditions upon which the Authority agrees to make and the County Board agrees to accept such grant.~~

~~Section 1. Subject to the terms and conditions described herein, the Authority hereby grants to the County Board, funds up to \$ _____ (the "Grant"). The expiration date of this funding grant shall be _____, 20____.~~

~~Section 2. The Authority shall be granted the privilege to act as co-owner of properties during construction or renovation of the facility without the liability of ownership.~~

~~Section 3. Upon receipt of evidence satisfactory to the Authority that the County Board is prepared to commence expenditures of the proceeds of the Grant during the then current fiscal year, the proceeds of the Grant shall be transferred from the Authority's School Construction Fund held by the West Virginia State Treasurer to United National Bank (the "Depository") and deposited in a fund to be known as the "School Building Authority of West Virginia Project Fund" (the "Project Fund"). The proceeds of the Grant shall be held in a separate subaccount of the Project Fund in the name of the County Board (the "County Account"). The County Board hereby authorizes the Depository to invest amounts on deposit in the County Account in investment securities at the direction of the Authority. All interest earned on such will inure to the benefit of the Authority and will not be available for withdrawal by the County Board.~~

~~Section 4. Amounts in the County Account (not including investment earnings therein), may be withdrawn by the County Board at any time upon submitting a Requisition in the form attached hereto as Exhibit B to the Depository, with a copy submitted at the same time to the Authority. The Authority shall have the right to request additional information and/or documentation from the County Board with respect to any such Requisition. Disbursement shall not be made until the Authority approves such Requisition.~~

~~Section 5. The County Board hereby covenants and agrees to use the proceeds of the Grant only for approved expenditures with respect to the specific projects described on Exhibit A 1 unless it receives the prior written consent of the Authority. The County Board agrees not to submit a requisition for expenditures which will not be incurred with respect to the project. The County Board agrees to cause said project to be constructed within the total sums available to it, including said grant, in accordance with the plan submitted by the county to the Authority for funding as described in Exhibit A 1 and in accordance with the regulations, guidelines and direction of the Authority.~~

~~Section 6. The County Board agrees that the funds it receives as a Grant will not be used by the maintenance department of the County Board for the purpose of purchasing materials and equipment needed to improve and maintain existing facilities.~~

~~Section 7. In accordance with the mandates of the Act and regulations promulgated thereunder (the "Code"), the County Board covenants and agrees to expend all of the proceeds of the Grant by it's designated expiration date as set forth in Paragraph C., Section 1. of this Contract. If the County Board fails to expend the entire Grant by such date, the County Board hereby authorizes and directs the Authority to withdraw and the Depository to pay to the Authority any amounts remaining on deposit in the County Account five business days after the above referenced expiration dates.~~

~~Section 8. The County Board hereby covenants and agrees that it shall not proceed with the building design for the school without first securing a clear and free title to the property where the SBA funded facility is to be constructed, or without securing a right of entry as result of a condemnation proceeding initiated to secure the site where the SBA funded school is to be constructed.~~

~~Section 9. The County Board hereby covenants and agrees that it will submit the educational specifications, as well as design plans and specifications as per the State Board of Education Policy 6200 and the Authority's Guidelines and Procedures Handbook for the erection and/or renovation of school buildings to the Authority for approval. Such plans and specifications shall comply with all requirements set forth in the Program Guidelines. Approval of plans and specifications for final construction will be subject to evaluation of the plan and the proposed site by the Authority.~~

~~Section 10. The County Board shall award bids only to properly licensed contractors as per the state Tax Department regulations. The County Board of Education shall require written evidence from all prime contractors that all sub-contractors and all sub-sub-contractors performing work on the approved project shall be covered by all required bonding.~~

~~Section 11. The County Board agrees to include in its contracts relating to projects receiving funds from the Authority items set forth in Appendice K of the School Building Authority Policy and Regulations Manual.~~

~~Section 12. Should the desired building design costs exceed the total construction funds available, the county must reduce the scope of the project and/or value engineer the facility to the satisfaction of the Authority prior to proceeding to the next project development phase. Failure to do so may be interpreted by the SBA as a Breach of Contract resulting in negation of the grant agreement between the local board and the SBA.~~

~~Section 13. The County Board shall employ a "Clerk of the Works" to monitor all construction projects, unless otherwise waived by the Authority. The "Clerk of the Works" shall not be a regular employee of the county board. The County Board shall use its best efforts to provide funds for the payment of such "Clerk of the Works" by negotiating a reduction in architectural fees relating to such project. The grant recipient may, at the discretion of the Authority's Construction Committee, be required to proceed with the construction project using an Authority approved design, construction schedule and construction management method. Requirement of a Clerk of the Works will be waived for counties using construction management.~~

~~Section 14. The County Board shall retain an architect for renovations, additions and/or new construction projects as required by Chapter 5G of the WV Code or as required by the School Building Authority.~~

~~(i) The County Board agrees to retain architectural services using AIA B151, Standard Form of Contract between Owner and Architect, latest Edition or the approved School Building Authority Architectural/ Engineering Service Agreement. The County Board agrees that any percentage architectural fees shall be based upon the bid cost of the project, excluding cost overruns and change orders in accordance with Section K of the SBA Guidelines.~~

~~(ii) Should the bids received exceed the established project budget, the architect shall be required to revise the contract documents and re-bid the project at no additional cost or fee to the County Board.~~

~~(iii) The County Board agrees to contractually require the architectural firm to revise plans without additional cost to the County Board when the preliminary plans provided for review do not meet the requirements of the Authority, State Fire Marshal or any other regulatory agency.~~

~~(iv) All construction change proposal requests, change directives or construction change orders shall be submitted to the Authority for review and approval. Changes shall be submitted to the Authority in an AIA document format. Any project change that is not approved by the Authority which results in an encumbrance of additional project funds regardless of the source, may at the option of the Authority, cause termination of this grant. The County Board, at the demand of the Authority, will assume responsibility of existing contracts, forfeit~~

~~the remaining grant funds and repay the Authority the full amount of grant funds expended at the time of termination with interest accruing from the date of termination at the rate of six percent per annum.~~

~~(v) The project budget shall be amended to reflect any and all increases or decreases in the project finance plan. Funds from any and all sources shall be submitted in the form attached hereto as Exhibit C for review and approval by the Authority. No construction contract or change order may be executed by the Grantee until all sources of financing are identified and an updated Exhibit C is submitted and approved by the Authority.~~

~~Section 15. No educational facility shall be occupied without prior approval from the Authority and the appropriate state and county regulatory agencies. Because construction completion dates do not always coincide with educational schedules, the county agrees to complete and submit to the SBA with design development drawings, a viable contingency plan addressing how all affected students and staff will be housed should the new, additional or renovated facility not be available for occupation within the proposed time schedule.~~

~~Section 16. Should the possibility exist that the scheduled construction completion date negatively impact the county's ability to occupy the facility for the start of school, the county board agrees to develop and implement a contingency plan. This plan must address how all affected students and staff will be housed should the new or renovated facility be unavailable at the beginning of the school term. Upon request by the SBA, the contingency plan must be submitted for review and approval along with the design development submission requirements.~~

~~Section 17. The county board hereby covenants and agrees to have county maintenance and custodial staff trained on site by the State Department of Education HVAC technicians on all new HVAC equipment and controls. The county board shall contact the Department of Education Office of School Facilities immediately following the installation of new HVAC equipment for training and for follow up training six months after the initial training to insure proper maintenance and operation of the new HVAC equipment and controls during heating and cooling seasons in the first year of operation. This training shall be in addition to the contractor training provided at the conclusion of the project. The SBA shall be notified of the initial training schedule. If in the opinion of the SBA, additional training is required in order for all key maintenance and custodial personnel to become efficient in the maintenance and operation of the new HVAC equipment and controls, the county agrees to schedule additional training with the office of School Facilities.~~

~~Section 18. The County Board agrees to keep the project in good repair and working order after completion and execution of this grant and accepts the terms and conditions identified in Exhibit D of this agreement. The County Board acknowledges that the Authority may inspect any project from time to time after completion, and if the Authority determines that a project is not being maintained in such condition, the State Board of Education may require that state aid monies be used to provide improvements or repairs to such Project.~~

~~Section 19. Any funds designated in this contract are provided in accordance to the details of the project as presented in the Comprehensive Educational Facilities Plan approved by the State Board of Education and the School Building Authority for the County Board. Failure to develop the project in accordance with the approved plan entails a misrepresentation that may, at the discretion of the Authority, void this contract. These details include designated utilization of the facility, instructional improvements, cost savings measures, health and safety improvements, and the initiation of any student/teacher services so indicated in the plan.~~

~~Section 20. The County Board of Education understands that it must conduct any school closure hearings that may be required by this project and obtain State Board of Education approval of such closures prior to submitting any invoice to the SBA for consideration of payment and that the SBA will not recognize any invoice prior to such action by the County and State Boards of Education.~~

~~Section 21. The County Board agrees that the Authority will maintain a 5% retainage based on the total construction cost of the project until all construction contracts are complete and an approved Certificate of Project Completion is executed. To avoid placing the County at risk, it is recommended that the County withhold final payment on this project until such time.~~

~~Section 22. The County Board agrees that funds for payment of all requisitions shall be made available from this grant in the proportion of state to local or other funds dedicated to this project. Initial payments shall be made based on the following schedule based on the estimated percentage of State to local funds shown on Exhibit A 1:~~

<u>Responsible Party</u>	<u>Percentage of Funds Submitted for Payment</u>
Authority	00.00%
County Board	00.00%
	<u>100.00%</u>

~~Section 23. In order to utilize state funds expeditiously in accordance with The Code and to avoid extraneous costs associated with inflation that occurs in extraordinary design and/or finance planning and construction delays, this grant is conditioned upon the representation of the County Board, by the affixed signature of their President, that they will meet the planning and construction schedule outlined in Exhibit A 2 of this contract. Upon failure to comply with such schedule made in Exhibit A 2 of this agreement, the County Board shall be in default of this agreement and subject to the default provision set forth in this instrument.~~

~~Section 24. Upon any default under its representations of the agreements set forth in this instrument, or in the instruments incident to the awarding of the grant, Grantee, at the option and demand of Grantor, will repay to grantor forthwith the original amount of the grant received with the interest accruing thereon from the date of default at yield rate of the bonds from which the grant was made or at the current prime interest rate for grants made from Pay-As-You-Go funds. Default by the Grantee will constitute termination of the grant thereby causing cancellation of financial assistance by the School Building Authority under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulation under which this grant is made.~~

~~Section 25. This Grant Contract shall become effective as of the date first written and upon your mutual acceptance thereof.~~

~~FOR THE SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA~~

By _____

Executive Director

Accepted and agreed to as of the date first above written:

THE BOARD OF EDUCATION OF THE COUNTY OF

By _____ By _____

Superintendent President, County Board of Education

SBA 125

Revised 9/05/07

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**BUILDING MAINTENANCE AND UPKEEP AGREEMENT
BETWEEN THE**

AND
**THE SCHOOL BUILDING AUTHORITY
OF WEST VIRGINIA**
FOR

SCHOOL
EXHIBIT D

~~West Virginia Code §18-9D-16 requires all county boards of education to implement a plan of regularly scheduled maintenance and preventive maintenance for all facilities within the county. School Building Authority (SBA) "Needs" based and "Major Improvement Plan" funding is contingent upon the implementation of this countywide plan. As a condition of this grant _____ County Board of Education (the County Board) must agree to the following in regards to this SBA funded project.~~

- ~~— The County Board will assign sufficient custodial personnel to this facility in order to provide a clean and healthful environment for students and staff.~~
- ~~— Custodial staff members will be provided sufficient training required to perform tasks assigned.~~
- ~~— Building maintenance staff members whose job responsibilities require them to perform maintenance on this facility will have sufficient training to allow them to successfully complete their duties assigned regarding building maintenance. The State Board of Education Office of Facilities (SDEOF) will provide technical training and support for the Heating/Ventilating and Air Conditioning (HVAC) Maintenance Plan.~~
- ~~— Annual funding will be provided from the county budget to support the maintenance and preventive maintenance plan for this facility. The SDEOF technical support staff will be utilized to assist with the creation of the HVAC preventive maintenance plan and its implementation.~~

~~Acceptance of SBA funding for this project represents a commitment by the county board of education to perform or cause to be performed the above maintenance and custodial duties for this project. An on-site inspection of this facility will be conducted annually by the SDE in accordance with West Virginia Code §18-9D-16h. Compliant and non-compliant standards will be identified and reported to the county and the SBA. The SBA will conduct follow-up visits and in cooperation with the county board of education initiate a plan of improvement. Failure to implement the maintenance and custodial care plan of improvement required to keep this facility clean and in good repair may cause a redirection of state aid funding by the SDEOF in an amount sufficient to cause this work to be contractually performed until such time as the county board staff has been properly trained to successfully perform the work.~~