

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

Form #3

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WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: School Building Authority of WV TITLE NUMBER: 164

CITE AUTHORITY: §18-9D-20

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: School Building Authority Contracts and Agreements

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

**Brief Summary of the rule entitled
School Building Authority Contracts and Agreements**

This rule provides instruction regarding grant and construction contract as well as requirements for school designs to comply with applicable building codes. References are included for construction regulations (found Appendix H & J) as well as instructions regarding submission of subcontractors list by the lowest qualified bidder(s). The rule also includes instructions regarding work based learning opportunities for vocational students.

**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 –

2007 SEP 27 PM 3:48
FILED
OFFICE OF THE SECRETARY OF STATE

§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 its 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 J 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. 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 J 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 and the schedule for its implementation 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	<u>00.00%</u>
	<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 _____
Superintendent

By _____
President, County Board of Education

SBA 125
Revised 09/05/07
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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.

Appendix J

SBA SUPPLEMENTAL, GENERAL AND SPECIAL CONDITIONS

The following School Building Authority Regulations change, delete from or add to the AIA Supplemental, General and Special Conditions relating to bidding documents where SBA funding is being used in whole or in part for the construction of schools and school related facilities. This information shall be included in the bidding documents for all projects funded in whole or in part by the SBA. The SBA also requires all referenced documents to be bound within the contract documents. The SBA encourages the use of standard AIA forms when possible including but not limited to the following:

I. **CONTRACT DOCUMENT REQUIREMENTS**

GENERAL REQUIREMENTS

- Construction Drawings
- Construction Specification
- General and Special Conditions
- Invitation to Bid
- Instructions to Bidders
- Bid Proposal Form
- Bid Bond (A310)
- Insurance Requirements
- Performance Bond and Payment Bond
- Contractor's Qualification Statement (Specimen)
- Standard Form and Agreement Between Owner and Contractor

CONTRACT FORMS

- General Conditions of the Contract for Construction (AIA 201)
- Standard Form of Agreement Between Owner and Contractor (AIA A101)
- Performance Bond and Payment Bond (AIA A312)
- Change Order (AIA G701)
- Application and Certificate for Payment (AIA G702)
- Continuation Sheet (AIA G703)
- Certificate of Substantial Completion (AIA G704)
- Certificate of Insurance (G715) (Acord Form 25)
- Contractor's Affidavit of Payment of Debts and Claims (AIA G706)
- Contractor's Affidavit of Release of Liens (AIA G706A)
- Consent of Surety to Final Payment (AIA G707)
- Proposal Request (AIA G709)
- Architect's Supplemental Instructions (AIA G710)
- Construction Change Authorization (AIA G714)
- Certificate for In-State Contractor Preference (if preference given)
- Contractor's Qualification Statement and Contractor Financial Statement (SBA 105 and 105A)
- List of Subcontractors and Major Equipment/Materials Suppliers (SBA 123)
- Certificate of Project Completion (BP-13A)
- Certificate of Project Completion – Multiple Prime Projects (SBA 139)

II. CONTRACTOR REGISTRATION CERTIFICATE AND TAX RELEASES

- A. Each Bidder must be registered with the West Virginia Department of Tax and Revenue prior to the time and date for Receipt of Bids in order for his Bid to be considered.
- B. If any Bidder is not registered with the Tax and Revenue Department, application should be made to West Virginia Department of Tax and Revenue, Capitol Complex, Charleston, WV 25305, and complete Form 801, so that a registration number may be assigned prior to the time and date for receipt of Bids.
- C. A State Tax release form will be filed with the West Virginia Department of Tax and Revenue by the local board of education upon receipt of the final payment request from the contractor. Final payment will only be processed after the local board of education has received evidence from the Department of Tax and Revenue indicating appropriate state taxes has been paid on completed construction projects in West Virginia.

III. CONTRACTOR LICENSING

All contractors doing business in West Virginia must be licensed to perform work in the state as required by the West Virginia Contractor Licensing Act. The ACT requires but is not limited to the following:

- A contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts.
- Any plan, specification and invitation to bid prepared by any architect or engineer shall make reference to the West Virginia Contractor Licensing Act informing any prospective bidder that a contractor's license number must be included on any bid submission.
- All approved subcontractors must be licensed and a copy of their current license number must be submitted with all quotations to the general contractor. Pursuant to the ACT, general contractors are required to only accept quotations from subcontractors licensed to perform work in West Virginia. Additionally, the SBA Form 123 requires the subcontractor's name, address and license number to be submitted to the SBA office within two hours of the close of bids and a copy of all general and subcontractors licensing certificates must be submitted to the agency receiving bids for review prior to the award of construction contracts.

IV. BID BOND

- A. Each Bid shall be accompanied by a Bid Bond payable to the Owner for five percent (5%) of the total Bid issued by a solvent surety company with a rating of A.M. Best, A- or better rated and listed on the most current Federal Register, Circular 570, and authorized to do business in the State of West Virginia. Should the Bidder refuse to enter into a contract with the Owner on the terms stated in the Bidding Document or fail to furnish bonds covering faithful performance of the Contract and all obligations arising there under, the full amount of the Bid Security shall be forfeited to the Owner as liquidated damages, not as a penalty. No Bid Bond is required for projects of \$25,000 or less.
- B. Irrevocable Letter of Credit is not acceptable as a Bid Bond.
- C. A certified cashiers' check is not acceptable as a Bid Bond.
- D. Personal securities are not acceptable as a Bid Bond.

V. PERFORMANCE BOND

- A. The contractor to whom any contract is awarded, shall pay for, execute and deliver to the Owner via the Architect, within ten (10) days after award of contract by Owner and before signing the contract a corporate surety Performance and Labor and Material Payment Bond on AIA Document A311 (or equivalent form), to be executed by an A.M. Best, A- or better rated surety company listed on the most current Federal Register, Circular 570, and which is authorized to do business in the State of West Virginia and which is satisfactory to and approved by the Owner and the SBA in the sum of one hundred percent (100%) of the amount of the contract, insuring the full and faithful performance of the work and payment in full for all materials, machinery, equipment and labor, and covering all the guarantees called for in the specifications and all other obligations arising there under. The Labor and Material Payment Bond shall be in the sum of one hundred percent (100%) of the contract amount. All contractors performing work on SBA projects must be covered by a performance bond and must be included on the list of subcontractors submitted to the SBA (Form 123). The Owner will not accept responsibility for direct payments to subcontractors performing work on projects by way of consignment. No Performance Bond is required for projects of \$25,000 or less.
- B. Should the successful Bidder fail or refuse to deliver the required bond and all other Contract Documents, properly executed within ten (10) days after receipt of the Owner's letter of intent to award a Contract, the

successful Bidder shall forfeit the security deposited with his Bid as liquidated damages, not as a penalty.

- C. Irrevocable Letter of Credit is not acceptable as a Performance Bond.
- D. A certified cashiers' check is not acceptable as a Performance Bond.
- E. Personal securities are not acceptable as a Performance Bond.
- F. Failure of a construction firm to satisfactorily perform the work specified in the contract documents will result in the owner executing their rights, pursuant to the conditions of the contract documents, to declare a construction contract default under the provisions of the AIA General Conditions of the Contract for Construction established for this project. If the construction firm's surety company is notified of their responsibility for the completion or remediation of incomplete or non-compliant work, said firm will no longer be eligible to bid future projects funded by the School Building Authority of West Virginia.

VI. CONTRACTOR INSURANCE

- A. In furtherance of Article 11 of the General Conditions, each contractor furnishing labor and materials shall furnish insurance in the following categories and for the stated minimum amounts. All insurance shall be written to show evidence of the following: The Architect and the Owner shall be **ADDITIONALLY INSURED** on the contractor's policy. The Contractor shall be the **NAMED INSURED**.

(1) Worker's Compensation/Employer's Liability
Statutory – State of West Virginia – Compensation thru State Fund.
Employer's Liability – Limits Required:
\$500,000 – each employee
\$500,000 – each accident
\$500,000 – aggregate

Coverage must include legal liability brought under WV Code Annot. (1978) Section 23-4-2.

(2) Contractor's Public Liability Insurance Limits Required:
\$2,000,000 – General Aggregate
\$1,000,000 – Products Complete Operations Aggregate
\$1,000,000 – Personal & Advertising Injury Limit
\$1,000,000 – Each Occurrence Limit

Commercial General Liability must include:

Explosion, Collapse and Underground Property Damage. Coverage required if contractor's operations warrant such coverage. Also, if blasting operations, separate blasting coverage is required.

(3) Automobile Liability Insurance

Limits Required:

\$1,000,000 – Per Accident

Provide "Any Auto" Coverage

(4) Excess Liability Insurance

Limits Required:

\$2,000,000 – Combined Single Limit Occurrence

\$2,000,000 – Aggregate

(5) Builders Risk and Property Insurance

100% Completed Value Form

Coverage Format:

All Risk including theft

Coverage shall include transit and off-site storage/secondary location limit amount that exceeds any shipment or off-site storage material value before payments to contractor for off-site stored materials are approved. Proof of coverage limits exceeding accumulated value of materials stored is required.

Names Insured shall be Owner, Contractor and all Subcontractors ATIMA.

Deductibles shall be stated in the Certificate of Insurance. Payment of deductible shall be the responsibility of the contractor.

The Owner will provide Builders Risk and Property Insurance coverage for renovation projects during construction by adding the contractor and all subcontractors, ATIMA to the permanent property policy unless otherwise stated in the bidding documents.

B. Certificate of Insurance

The Certificate of Insurance shall be provided by the Contractor to the Owner and Architect at the current address of said parties with a transmittal cover indicating the project name, location of project, type of work to be performed and the nature of the documents transmitted.

The Certificate of Insurance shall contain a provision that coverage afforded will not be canceled until at least sixty (60) days prior written notice has been given to the Owner and Architect.

The Owner shall be the Certificate Holder.

The Certificate shall be prepared on "Acord" Form 25-5 (7/90) or an equivalent form.

The Certificate shall indicate that the Owner and Architect are ADDITIONAL INSUREDS under the Contractor's policy.

The Certificate of Insurance shall indicate the carrier's financial rating. The rating must be an A.M. Best, A- or better rated surety company listed on the most current Federal Register, Circular 570 and is authorized to do business in the State of West Virginia and approved by the owner and the SBA.

VII. PERMITS AND LICENSES

For the Owner's records, submit copies of permits, licenses, certifications, inspection reports, releases, notices, receipt for fee payments, correspondence and records established in conjunction with compliance with standards and regulations bearing upon performance of the work.

VIII. SEMI-PROPRIETARY SPECIFICATIONS

- A. To encourage competitive bidding, the project specifications shall specify not less than three products, materials or equipment. The product, material or equipment used shall comply with the contract requirements.
- B. In certain instances, a single product may be the only one that will comply with the specific design/function requirement.

IX. WAGE RATES AND CERTIFIED PAYROLL

All contractors and subcontractors shall pay West Virginia Department of Labor fair minimum rate of wages for the county in which the work of this contract is performed. The SBA requires that a certified payroll be submitted with each contractor's pay-application using the U.S. Department of Labor Form WH-347 or SBA other approved document. Certified payrolls must include names, addresses and social security numbers of all workers, including those of any subcontractors, in order to assure compliance with West Virginia's Prevailing Wage laws and the SBA's Supplemental, General and Special Conditions. Upon request, counties will be required to submit the certified payroll report to the SBA for review.

Each contractor shall be responsible to obtain correct and fair minimum rate of wages as established by the West Virginia Department of Labor.

X. PROCESSING OF PAYMENT APPLICATIONS

Applications for payments from the SBA must be accompanied by an SBA Exhibit B Requisition Form, SBA 104A and a copy of the invoice and a description of work completed including materials/equipment used for the project. Requisitions must be received by the depository and the SBA by the 5th day of the month in which payment is being requested. Payments will be processed and mailed to the grant recipient on the 15th day of the same month. The SBA reserves the right to review requests for payment and make adjustments when they deem necessary.

XI. RETAINAGES

- A. A 5% retainage will be maintained throughout the construction period. The Owner will pay 95% of the portion of the Contract Sum properly allocable to labor, material and equipment incorporated in the work, and of materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the most current submitted Application for Payment, less the aggregate of previous payments.
- B. The Owner will pay upon Substantial Completion of the Contracted Work, a sum sufficient to increase the total payments to 95% of the Contract Sum, less such amounts as the Architect and the Owner shall determine for all incomplete work, rejected work and unsettled claims as provided in the contract documents. The final 5% retainage shall not be released until the Grant Recipient, Architect/Engineer and the School Building Authority have received satisfactory evidence of the completion of all work required by the contract documents, including all rejected work and the resolution of all unsettled claims.

XII. LIQUIDATED DAMAGES

The contractor agrees that from the compensation otherwise to be paid, the Owner may retain a sum in accordance with the following schedule for each day thereafter, Sundays and holidays, included, that the work remains uncompleted, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the contractor to complete the work at the stipulated time, and the sum is not to be construed in any sense a penalty. Liquidated damages will be assessed as follows:

<u>Project Cost</u>	<u>Liquidated Damage</u>
Up to \$1,000,000	\$ 500.00/per day
\$1,000,000 to \$5,000,000	\$ 750.00/per day
Over \$5,000,000	\$1,000.00/per day

XIII. STANDARD OF QUALITY AND CODES

A. All work, labor, materials and equipment specified, constructed and installed are to be of first-class quality. To help insure this occurs, all work and equipment designed and specified shall conform to the latest applicable codes and standards including but not limited to the following:

- (1) West Virginia State Building Code
- (2) International Building Code (IBC) approved by the State of West Virginia
- (3) American Society for Testing Materials (ASTM)
- (4) American National Standards Institute (ANSI)
- (5) National Fire Protection Association (NFPA)
- (6) National Electrical Code (NEC)
- (7) American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)

B. All work must also have the approval of all West Virginia governmental authorities and agencies having jurisdiction over the project including but not limited to the following:

- (1) West Virginia State Fire Marshal
- (2) West Virginia Department of Health
- (3) West Virginia Department of Natural Resources
- (4) West Virginia Department of Highways
- (5) West Virginia Department of Education
- (6) School Building Authority of West Virginia

XIV. BID CERTIFICATION

In accordance with West Virginia Code 5-22-1, Article 22, the lowest qualified responsible bidder submitting bid on SBA funded projects must certify that all provisions within this code and SBA provisions that supercede this code have or will be met prior to execution of the construction contract. Failure to comply with these provisions will result in the disqualification of the bidder. The Bid Certification Form (SBA 157) must be submitted within 72 hours of the close of the bid.

XV. BIDS WITHDRAWAL

Bids may not be withdrawn for a period of thirty (30) days following the date of receipt of Bids without forfeiture of bid security as liquidated damages, not as a penalty.

XVI. REJECTION OF BIDS

The Owner shall have the right to reject any or all Bids and to reject a Bid not accompanied by the required bid security, or by other data required by the Bidding Documents, or to reject a Bid which is in any way incomplete or irregular.

XVII. SUBMITTAL OF SUBCONTRACTORS AND MAJOR EQUIPMENT AND MATERIAL SUPPLIERS

- A. The bidder(s) submitting the lowest qualified bid(s) as determined by the results of the bid opening shall submit a listing of all subcontractors and all major equipment and material suppliers proposed for each major branch of work itemized and described in the contract documents for the project. This information shall be provided to the SBA office on SBA Form #123 within two hours after the completion of the bid opening. If the apparent low bidder is not evident at the close of bidding, all prime contractors must submit the completed SBA Form 123 to the SBA office within two hours of the completion of bids if they feel under any bidding combination their bid may be considered as the low bid. Bidding contractors are required to be present at the bid opening or obtain bid results from the owner in order to determine the bid results and the apparent low bidder(s).

- B. Each bidder is required to establish the reliability and responsibility of all subcontracts and equipment/material suppliers being proposed to perform the work. Contractors, Subcontractors and/or equipment/material suppliers on SBA Probationary Status are prohibited from bidding any SBA project for a period of at least one year from the date the contractor is notified. It is the responsibility of any contractor soliciting bids or quotes from subcontractors to verify the eligibility of all proposed subcontractors and equipment/material suppliers being proposed to perform the work. Additionally, the list of SBA probationary contractors will be provided to the owner by the SBA and this information will be communicated by the owner to the contractors, when applicable. A review of the proposed subcontractors and equipment/material suppliers shall be conducted by the Architect/Engineer, Owner and representatives of the School Building Authority. The bidder may be requested to change an unsatisfactory subcontractor or equipment/material supplier. Proposed subcontractors or equipment/material suppliers found to be unsatisfactory jointly by the Owner, Architect/Engineer or School Building Authority and the contractor, shall be changed to an acceptable subcontractor or equipment/material supplier at no additional cost to the Owner, as the contractor has full responsibility for execution of the work.

- C. Failure to submit a list of subcontractors and major equipment and material suppliers to the SBA office as described on the SBA Form #123 within two hours after the completion of the bid shall result in disqualification of the bid.
- D. A copy of all contractors and subcontractors licensing certificate must be submitted to the agency receiving bids for review prior to the award of construction contracts.
- E. Prior to the award of the contract, the Architect/Engineer will make a preliminary review of the major equipment and materials lists submitted and advise the bidder through the Owner, of the acceptance thereof, and of such other actions as may be necessary in order to meet the requirements of the contract documents. Should it develop that any of the materials or equipment named in the list do not meet the requirements and intent of the specifications, the contractor shall be required to furnish to the Owner other materials or equipment acceptable and fully complying with the specifications at no change in contract price. Preliminary review and acceptance of the listing provided shall not relieve the Contractor from furnishing equipment and materials in complete accordance with the specifications.
- F. Written approval shall be obtained from the Architect/Engineer covering any substitution of equipment or materials. Substitutions are permitted in the following instances:
 - (1) Failure to meet quality and intent of specification and/or
 - (2) Failure of the supplier or manufacturer to meet delivery schedules or other conditions of the contract.
- G. The Owner reserves the right to reject the proposal of any bidder who fails to furnish all required major equipment and material information.
- H. A financial statement shall be included in the contractor's qualification statement submitted to the SBA by the lowest qualified bidder(s) within 72 hours of the close of the bid opening and prior to the execution of contracts or agreements between the local board of education and the contractor(s). The latest available financial information must be used. Minimum requirements for financial statements are:
 - (1) Accountants compilation report;
 - (2) Balance sheet;
 - (3) Income statement;
 - (4) Statement of changes in retained earnings;
 - (5) Statement of cash flows; and
 - (6) Notes to the financial statement.

- I. The SBA recommends that all general contractors receiving quotations for bids require a scope of work letter from all subcontractors be sent to the general contractor receiving the quotation at least 24 hours before submission of the bid. The letter should identify the items being quoted and, most importantly, the scope of work included or not included in the price quotation that will be provided. The SBA will not allow a subcontractor to change or alter the bid after the bid opening as a result of miscommunication between the general contractor and subcontractors or supplier quoting the project.

Payroll Certification and Employment Reporting:

- J. In preparation of bids, contractors are reminded that all SBA projects are subject to state laws regarding payment of prevailing wage rates as in Chapter 21 of the West Virginia Code.
- K. All contractors and subcontractors shall pay West Virginia Department of Labor fair minimum rate of wages for the county in which the work of this contract is performed. The term "fair minimum rate of wages" shall be set forth in 21-5A-3 of the West Virginia Code. The SBA's requirement for submission of certified payrolls, supercedes the requirements of current state law. The SBA requires that a certified payroll be submitted with each contractor's pay application using U.S. Department of Labor Form WH-347 (formerly SOL 184). Contractors may provide this information in an alternative format provided all required information on the WH-347 is included on the alternative document. Each certified payroll must include names, addresses and social security numbers of all workers, including those of any subcontractors, in order to assure compliance with West Virginia's prevailing wage laws and the SBA's Supplemental, General and Special Conditions. Upon request, counties will be required to submit the certified payroll report to the SBA for review.
- L. All contractors and subcontractors must comply with the "West Virginia Jobs Act" requirements found in Chapter 21, Article 1C of the West Virginia Code and all Department of Labor regulations.
- M. In accordance with West Virginia Code 18-5-15c, contractors or their employees may not make direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors or employees have not previously been convicted of a qualifying child abuse, child neglect or child assault offense, as defined in section two, article twelve, chapter fifteen of WV Code. A contractor is defined as any vendor, individual or entity under contract with a county school board for services. County school boards may require contractors and service providers to verify the criminal records of their employees before granting the above mentioned contact or access to the construction site. If the county board requires the

verification of previous convictions for qualifying offenses, this requirement will be delineated within the bidding documents. Where prior written consent is obtained, county school boards may obtain information from the Central Abuse Registry regarding contractors and service providers. Where a contractor or service provider gives his or her prior written consent, the county school board also may share information provided by the Central Abuse Registry with other county school boards of education.

XVIII. CONTRACTOR QUALIFICATION AND FINANCIAL STATEMENT

A completed Contractor Qualification Statement will be required of any Contractor and/or subcontractor to be submitted to the School Building Authority for review. This confidential information will be used by the SBA for evaluation of the low bid contractors on the project. The contractor qualification statement will only be required once annually and updated documents will be required from low bid contractors once the current contractor qualification statement has expired. The Qualification Statement must be submitted 72 hours after the close of the bid opening and prior to the award of bids and will be used in the bid review process by the owner and SBA.

The confidential reviewed financial statement section of this document shall be required of the lowest qualified bidder(s) being considered for award of the contract.

Construction contractors or subcontractors or equipment/material suppliers whose demonstrated pattern of poor and/or non-compliant work performance has been documented by the SBA, project administrators and/or designers, or whose infractions of the State Prevailing Wage Rate codes has been documented by multiple citations from the West Virginia Department of Labor or whose contract has been terminated for just cause as described in the AIA Document A201 or A201/CMA General Conditions, Article 14, Section 14.2 will be placed on probation and prohibited from bidding any additional projects funded by the SBA for a minimum period of one year beginning at the time of probationary status. Such contractor may be removed from probationary status pending review of their continued work history performance by the SBA at the conclusion of their probationary period.

In order to provide opportunity for any contracting, subcontracting or equipment/material firm cited for poor or non-compliant work to appreciably improve the quality of their performance prior to being placed on probation, the SBA staff will utilize the following procedure:

- a. The cited firm shall be noticed in writing of the SBA's concern, with appropriate documentation to illustrate the poor or non-compliant work, and advise the firm as to the possibility of being placed on probation.
- b. Upon continued poor/non-compliant work performance, the firm cited shall appear before the Executive Director of the SBA to present his reasons for failure to respond positively with improved performance after the initial notice.
- c. Continued failure to improve poor or non-compliant performance will result in the probation. The contractor will be invited to appear at the SBA meeting to discuss the citations and justify his uninterrupted participation.
- d. Probationary status of a firm may be revoked or continued by the SBA's Construction Committee upon review and deliberation of any SBA staff recommendation at the conclusion of the probationary period.

XIX. AWARD OF CONTRACT

- A. It is the intent of the Owner to award a Contract to the lowest responsible Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to accept the Bid or Bids which, in his judgment, is in his own best interest.
- B. The Bidder will note that Bids consist of the Base Bid and several related add or deduct Alternate items, all comprising items entering into the project and forming the contract as a whole.
- C. These several parts of the Proposal furnish the basis of arriving at the awarding of the contract. The Owner may award the contract on the basis of the Base Bid alone, or if and when conditions warrant, accept such Alternate items appearing on the proposal, thereby reducing or increasing the amount of the Base Bid.
- D. The contract shall be deemed as having been awarded when formal notice of award has been duly served upon the intended awardee (i.e., the bidder to whom the Owner contemplates awarding the contract) by an authorized individual representing the agency receiving bids. Terms of the contract shall not be deemed to have been perfected until a satisfactory surety bond equal to 100% of the contract sum has been furnished to the owner by the successful bidder, at his own expense as a guarantee of contract performance.

XX. PROJECT JOB SIGNS & BUILDING PLAQUES

All SBA funded projects and major improvement funded projects shall have project job signs erected at the construction site. Project signs must be visible and readable from highways. Specific information will be provided by the SBA to be

included on the sign. Additional project information may be required or desirable. A sample of a typical project sign is provided within this document for both "Needs" (SBA 168) and "MIP" (SBA 169) funded projects. Construction details are provided within the contract documents.

Upon completion of any major SBA funded project of \$1 million or more, the architect shall design a building plaque for display in a prominent public area of the school. This plaque shall minimally include:

- (1) The name of the Governor;
- (2) The names of the President of the Senate and the Speaker of the House;
- (3) The members of the SBA;
- (4) The superintendent of schools, and
- (5) The members of the local board.

The SBA will be contacted for appropriate information to be included and final approval of the plaque design before its production. An example of a typical project plaque is included within this document. (SBA 170)

XXI. SBA PROJECT OBSERVATION

- A. The School Building Authority reserves the right to visit projects at intervals deemed necessary to observe the progress of the construction. The SBA field representative shall have such responsibilities as the SBA may delegate.
- B. The responsible contractor shall notify the SBA office two weeks in advance of:
 1. The Testing, Adjusting & Balancing of the HVAC system.
 2. The training of the county maintenance and custodial personnel on new building components and
 3. The scheduled punch list walk-thru of the new or renovated school.
- C. The School Building Authority reserves the right to review all Contractors Applications for Payment and request additional documentation to substantiate the request and in cooperation with the owner make adjustments as deemed appropriate.

XXII. CONTRACTOR PROJECT CLOSE-OUT

- A. Immediately prior to final Application for Payment, the Contractor shall submit the following documents:
 - (1) Contractor's Affidavit of Payment of Debts and Claims (AIA Document G706)
 - (2) Contractor's Affidavit of Release of Liens (AIA Document G706A)

- (3) Consent of Surety Company to Final Payment (AIA Document G707) with effectively dated powers of attorney attached.
 - (4) Bound and indexed Operation and Maintenance Manuals
 - (5) Certificate of Insurance (AIA Document G705) covering required/specified products and completed operation
 - (6) One complete set of reproducible as built drawings; specifications and change orders in good order and clearly marked to show installation of work where the actual installation varies substantially from the work as originally shown
 - (7) Certificate of Release from the Department of Tax and Revenue stating all appropriate taxes have been paid
 - (8) Submittal of SBA Form 158 "Verification of HVAC Training" with all appropriate signatures
- B. County boards of education, before accepting the HVAC contractor's work, shall receive complete training regarding the operation and maintenance of the mechanical equipment and building controls. Training shall be completed prior to occupying the building. There shall also be a one (1) day follow-up training in six months or during the succeeding heating/cooling season after the facility has been occupied to insure training on both heating and cooling operations of the system. The State Department of Education's HVAC Technicians shall be notified of the date and location of any and all training sessions in order to assure its ability to fulfill their responsibilities as delineated in WV Code 18-9E-3(F) & (G). At the conclusion of the training, the grant recipient shall submit the verification of HVAC Training Form (SBA Form 158).
- C. The SBA shall be notified of the dates and time of substantial and final completion walk-through inspections by the grant recipient. An SBA representative will participate in the walk-thru and will accept or reject the contract as completed. A completed WVDE BP-13-A or when required and SBA Form 139 will be forwarded to the State Department of Education and the SBA when all punch list items have been satisfactorily addressed and the contract is complete. The local board project representative shall also submit a completed Contractor and Architect Evaluation Forms (SBA Form 124). Final payment for the contract will then be processed.

XXIII. ASBESTOS ABATEMENT REQUIREMENTS (If Required)

- A. Contractor/vendors must show proof of having successfully completed an EPA approved training course. All certification must be current.
- B. Contractor/workers must be licensed by the State of West Virginia to perform any or all types of asbestos inspection, project designing, management planning, contracting, abatement, supervision of abatement and air monitoring.

- C. All contractors/vendors performing work using School Building Authority funding shall comply with all applicable codes including but not limited to the requirement of:

Environmental Protection Agency (EPA)
Occupational Safety and Health Administration (OSHA)
Environmental Protection Agency Worker Protection Laws
National Emission Standards for Hazardous Air Pollutants (NESHAP)
Asbestos Hazard Emergency Response Act (AHERA)
West Virginia Department of Health
West Virginia Department of Natural Resources
West Virginia Air Pollution Control Commission

- D. At the completion of all asbestos abatement projects and before final payment will be processed by the SBA, the local board of education, the abatement designer and abatement contractor must provide written assurances that all abatement work has been performed in accordance with all applicable codes. All AHERA required close-out documentation must be on file at the owner's office and must be made available to the SBA for review.

XXIV. HEAT, VENTILATING AND AIR-CONDITIONING TEST, ADJUSTING AND BALANCING REQUIREMENT

The HVAC Testing, Adjusting and Balancing (TAB) agent shall be certified according to the procedures contained in the Associated Air Balance Council national standards, the National Environmental Balancing Bureau procedural standards and the Environmental Engineering Consultants standards for testing, adjusting and balancing. The TAB agent shall be under direct contract with and directly represent the building owner. The TAB contractor shall coordinate the earliest start date as well as partial and final completion schedule for each area of the building with the mechanical contractor and provide this information to the owner, architect and SBA. The TAB contractor shall complete the testing, adjusting and balancing in each area of the building within 30 days of the earliest start date. The owner will consider the start and completion dates prior to the award of the contract and award the contract based on the cost proposal and completion schedule. The successful TAB contractor shall provide two weeks advance notice to the mechanical contractor, owner, architect and SBA prior to each area being tested.

SBA Criteria for Selection of Lowest Qualified Bidders Award of Bids

Pursuant to the laws of the State of West Virginia, the School Building Authority of West Virginia must award bids only to the lowest qualified bidder. Therefore, when utilizing any portion of state funds for a project, county boards of education must consider the following factors, and the information from the Contractors Qualification Statement, when making a determination as to whether a contractor's bid is not only the lowest, but the most qualified.

1. The years of experience the bidder has in the construction, renovation or building repair business.
2. The bidder's participation in a drug program that meets the objectives, applicable laws and regulations for a drug free workplace including the use of tobacco and alcohol on school properties.
3. The continuity, experience and skill of the bidder's work force and that of the bidder's designated subcontractors.
4. The bidder's performance on similar construction projects.
5. The bidder's ability to successfully complete projects within the proposed schedules and deadlines.
6. The bidder's participation in a bonafide joint apprenticeship program that is approved by the US Department of Labor, US Bureau of Apprenticeship Training and is administered in compliance with the rules and regulations of the WV Department of Labor. [See DOL 42-7-3.1(i)]
7. The bidder's history of compliance with Worker's Compensation and Unemployment Compensation laws.
8. The bidder's history of compliance with OSHA requirements.
9. The bidder's history of compliance with Federal and State Prevailing Wage as well as Fair Labor Standards and Wage Payment laws.
10. The bidder's subcontractors compliance with state regulatory agencies.
11. The bidder's history of compliance with fringe benefit contributions, i.e., health insurance and pension benefits.
12. The bidder's local hiring plan and history of compliance with the WV Jobs Act, (WV Code, Chapter 21, Article 1C) regarding use of the local labor market.

13. The bonding record of the bidder.
14. The bidder's participation as a party in any legal action where an awarded liability could negatively impact the ability of the bidder to complete this project.
15. The bidder's financial stability and its impact on the company's ability to complete the project.
16. The bidder can demonstrate it is not in default on a debt to the State or its political subdivision in aggregate more than \$1,000.
17. The bidder's history of change order requests.
18. Response from bidder's references and recommendations of other owners for whom the bidder has worked.

All of the above factors, as supported by the accompanying Contractors Qualification Statement, will be considered by the county board of education in determining the "best" most qualified bid. No single criteria will be considered the controlling factor in determining whether a bid is, or is not the "best" bid.

awardofbids

APENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: School Building Authority Contracts and Agreements

Type of Rule: Legislative Interpretive Procedural

Agency: School Building Authority of WV

Address: 2300 Kanawha Boulevard, East
Charleston, WV 25311

Phone Number: (304) 558-2541 Email: stella@wvsba.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The School Building Authority (SBA) is already operating under an existing procedural rule. Due to a provision of the School Access Safety Act, which was passed in the recent 2007 Legislative Session, all SBA policies, both current and new, must be filed with LOCEA and sent through the legislative review process. The approval of this legislative rule will have no impact on the costs and revenues of the state.

Fiscal Note Details

Show over-all effect in Item 1 and 2 and, in Item 3, give an example of Breakdown by fiscal year, including long-rang effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: School Building Authority Contracts and Agreements

Rule Title: School Building Authority Contracts and Agreements

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

The SBA does not anticipate any fiscal impact in either the immediate or long-range future as a result of the passage of this rule.

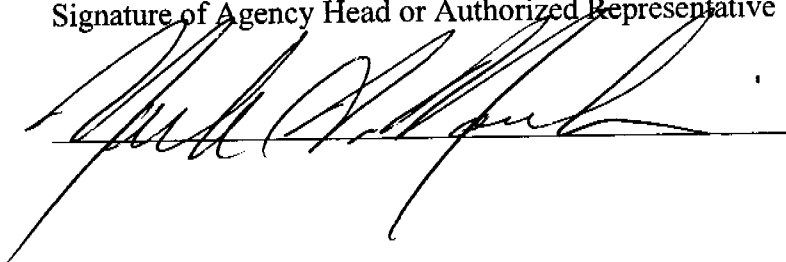
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The SBA will not need any additional staff, office space, equipment or material to facilitate the requirements of the attached rule.

Date: September 27, 2007

Signature of Agency Head or Authorized Representative



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: September 27, 2007

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* School Building Authority of West Virginia
2300 Kanawha Blvd. East
Charleston, WV 25311

Phone - (304) 558-2541

LEGISLATIVE RULE TITLE: School Building Authority Contracts and Agreements

1. Authorizing statute(s) citation §18-9D-20

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 23, 2007 for Public Comment Period

b. What other notice, including advertising, did you give of the hearing?
A memo was forwarded to all county superintendents and the WV Department of Education
to advise them that the SBA had filed this rule with the Secretary of States office for a Public
Comment Period.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 24, 2007 - Public Comment Period Ended

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 27, 2007

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Stella Gill - Executive Secretary, School Building Authority of West Virginia

2300 Kanawha Blvd. East, Charleston, WV 25311

Phone (304) 558-2541 Fax (304) 558-2539

e-mail stella@wvsba.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Dr. Mark A. Manchin - Executive Director - School Building Authority of WV

2300 Kanawha Blvd. East, Charleston, WV 25311

Phone (304) 558-2541 Fax (304) 558-2539

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

Stella Gill

From: Bill Elswick [cwelswic@access.k12.wv.us]

Sent: Thursday, August 23, 2007 11:23 AM

To: Stella Gill

Cc: Dr. Jack McClanahan; pcain@access.k12.wv.us; Steve Paine; Mark Manchin; David Sneed

Stella,

Attached are the WVDE comments for the SBA Policy sections out for review. I believe most of these items were covered in the meeting with David Sneed earlier, which was a most useful and collaborative process. I fully appreciated the dialogue with this procedure.

If you should have questions, please contact me.

Bill Elswick
Executive Director, Office of School Facilities
West Virginia Department of Education
Phone: (304) 558-2969

SBA Policy Review
SBA Policy Reference in Bold

- **SBA 1.6B Budget Amendments to CEFPP:** require the counties to update the CEFPP if the instructional square footage of a facility is altered or the work exceeds \$25,000.00 regardless of the funding source. The language in Policy 6200 indicates \$50,000.00. These dollar values should be aligned to avoid confusion at the county level.
- **SBA 2.31 HVAC Engineering Studies:** requires an engineering study and complete estimate of probable costs for the HVAC system being considered. This section of the policy should include language that allows the SBA, WVDE OSFAC, and WV State Fire Marshal to review and approve the studies.
- **2.4D4 CEFPP Planning Grants & 5.1.D3:** indicates the SBA will determine the effective dates of the new CEFPP's. Policy 6200 states that the CEFPP's are to be re-written every 10 years thereafter with plan submitted in 1990. The CEFPP effective date should require the approval of both the WVBOE and SBA. In addition the WVDE OSFAC only requires yearly updates to the CEFPP if there are changes. This reduces unnecessary paper work at the county level. The new CEFPP's should also include a narrative. The WVDE OSFAC should be included in the CEFPP review process. CEFPP's should also be submitted electronically in a format that is agreed upon by the SBA & WVDE. The electronic copies are to be accompanied by a hard copy of the document to accommodate reviews and amendments.
- **2.4E4 Awarding of Funds:** list the SBA in an advisory role during the review. A member representative of the WVDE should be included in the review process.
- **4.112 Occupancy of New Educational Facilities:** it appears that the SBA is the only approval agency. Policy 6200 requires SBA, WVDE, and State Fire Marshal to approve occupancy.
- **3.1B Building Gross Area:** This section should include language that a waiver from the WV SBOE is required to deviate from square footage allotments.
- **3.4 D Allowable Construction Costs for New Construction:** New elementary schools with design enrollments less than 400 students will be provided a combined art/music classroom. Policy 6200 has language that states art/music rooms are optional if design enrollment is below 400 students.
- **3.4 E Allowable New Const. Costs:** Auxiliary gyms are to be included as allowable construction costs in high schools that meet the minimum SBA efficiency enrollments of 800 students in grades 9-12 (max 6000ft²). Policy 6200 has conflicting language. Policy 6200 states auxiliary gyms are permitted if student population exceeds 1000 students. Policy 6200 also has the maximum allowable square footage of 5400ft². These two policies should be aligned so the student population and square footage requirements are the same.
- **4.110 Occupancy of New Educational Facilities & 4.113 Training of Custodians & Maint:** At the conclusion of all construction projects, the contractor shall be responsible for providing pertinent product information including warranty and maintenance instruction to county officials, as well as provide training for county staff regarding the operation and maintenance of the building system and materials. Policy 6200 & WV Code 18-9E-3-e7 require for major mechanical and electrical equipment and systems (including HVAC control systems) there shall be a minimum of 1 day of follow-up

training at 6 months after facility turnover. All training shall be videotaped and turned over to the county board of education. Designers shall specify the time duration of each specific training session required. Designers will be required to ensure that the integrated training of all manufacturers' components as a single HVAC system is provided.

- **6.1 C SBA Report Procedures:** this section should include the following language; Copies of educational specifications for any new facility shall be submitted to the WVDE and the SBA for review with the schematic design submission. The SBA educational specification guidelines and the WVDE Policies 6200 and 2510 must be used for all projects regardless of funding sources
- **Procedures for Design Build Project:** The WVDE should be included in this process.
- **Architectural & Const. Regulations D1:** Quality HVAC systems must be installed in all schools. These systems must be capable of providing efficient long term climate control, complying with the minimum standards established by the SBA performance criteria. There are design requirements more specific included in Policy 6200. A reference to Policy 6200 should be included in the SBA policy including the performance criteria. Policy 6200 also has language that indicates where there are conflicts between standards AHRAE will be the default standard.
- **Architectural & Const. Regulations D2:** The TAB agent shall directly represent and is under direct contract with the building owner and shall coordinate scheduling of TAB start up and completion work with the mechanical contractor, mechanical engineer, SBA, architect and construction manager. During the WVDE review process TAB work is often a source of problems. The WVDE, HVAC technicians should be involved in this process
- **Architectural & Const. Regulations F:** The SBA, County BOE, facilities planning team, and architect should be in agreement before proceeding from one phase to the next. The WVDE is a stake holder in this process. WVDE acceptance is required at the final stages of the project. It would be beneficial to have a WVDE representative involved in the phase to phase acceptance procedure.
- **Appendix I-G:** This section should include language to require Policy 6200 to be followed. The current language indicates it is optional.
- **Construction Project Submission:** The WVDE should be included in this review process. The components of this process should also comply with policy 6200
- **Standard of Quality and Codes:** This section should include a reference to Policy 6200 and the WV State Energy Code.
- **Project Job Signs & Bldg Signs:** These should include the State Superintendent of Schools
- **XXII SBA Project Observation:** This section should include language that allows the SBA and WVDE to observe the construction process/progress.
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Note: any deviation from WVBOE Policy 6200, "*Handbook on Planning School Facilities*" must be approved by the Board.



School Building Authority of West Virginia
Dr. Mark A. Manchin, Executive Director

2300 Kanawha Boulevard, East • Charleston, West Virginia 25311-2306 • Office Number (304) 558-2541 • FAX Number (304) 558-2539

MEMORANDUM

TO: Bill Elswick, Executive Director
FROM: Dr. Mark A. Manchin, Executive Director
SUBJECT: WVDE Comments on SBA Policy Revision
DATE: September 13, 2007

We appreciate the WVDE comments on our revised Guidelines and Procedures Handbook. I felt the meeting of July 30, 2007 with David Sneed was very productive and based on the comments provided we feel a simple resolution can be provided for all of the recommendations you presented. We offer the following comments relative to your July 30, 2007 comments.

SBA Policy 1.6B – Budget Amendments to CEFP

Suggestion was made to increase the minimum of \$25,000 to \$50,000 as the threshold requiring an amendment. This change would match current Policy 6200 language.

We will recommend this change to the Authority in the final version of the Handbook. We have maintained this level in the past due to small roof projects being funded through our MIP program.

SBA Policy 2.31 – HVAC Engineering Studies

Suggestion was made that WVDE and SBA approve HVAC system types selected by the design engineer based on the engineer's study of various systems and each county board's preference for new HVAC systems.

The purpose of this policy is actually to require the use of design professionals by county boards when selecting HVAC system types and also to require professional estimates prior to submission of projects for SBA funding consideration. Before this policy was inserted into our Policy and

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Procedures Handbook, county boards were using HVAC contractors for system selections and cost estimates. This created the possibility that the systems may not meet current ASHRAE standards and the estimates were not comprehensive covering all project costs. As we discussed at the meeting on July 30, 2007, we will be addressing this issue by way of our upcoming meetings scheduled this fall with a committee we are organizing to formulate SBA Building Component Quality Standards. Heating, Ventilating and Air Conditioning systems will be one of the main focuses of the committee. This effort will also address commitments made by the SBA regarding the development of building component performance criteria as a part of the prototypical school design effort suggested by the WV Senate in 2007.

SBA Policy 2.4 D-4 – CEFPP Planning Grants

Suggestion was made that annual updates only be required if changes were made at the WVDE and that the CEFPPs should be submitted electronically to the SBA and the WVDE. The question was also asked during our July 30 meeting regarding our opinion of previous 10 year CEFPPs.

The requirements for annual updates are defined in West Virginia Code 18-9D-2(5). A report is required annually that provides a summary of completed and proposed projects. Based on this and SBA Policy, we feel we need to continue our current procedure regarding annual updates. Additionally, the annual update information is used to prepare a report to the legislature regarding the short and long term needs of each county and the state regarding educational facilities. Regarding the submission of the CEFPPs in electronic format, this is already being considered for the 2010 CEFPP submission. We appreciate your suggestion. As we discussed in our meeting, previous CEFPPs prior to 1990 were not organized and did not always reflect consistent planning practices. Long term planning strategies were not followed and plans addressed only short term goals. SBA involvement and the funding provided by the SBA to counties for assistance from professional school planners and architect/engineers significantly improved the plans. The 2000 CEFPPs were improved from the 1990 plans and we are hopeful the 2010 CEFPPs will continue the trend. A well thought out plan allows for more SBA financial involvement and provides clear planning and funding strategies for local boards and the SBA.

SBA Policy 2.4 E-4 – Awarding of Funding

Suggestion was made that a WVDE representative be included on the review team for the awarding of needs funding.

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Since 1989, a statewide review team has assisted the Authority with the review of needs projects annually. The review team is made up of superintendents and other school officials from all regions of the state and a representative from the Department of Education. We anticipate restructuring the committee's role with regards to needs project selection in the future based on our legislative audit recommendations. However, the make-up of the committee may continue as before. Mr. Ben Shew has served on the committee in the past.

Policy 2.7 A-8 and 4.11.2 – Occupancy of Educational Facilities

This policy was enacted in response to local boards attempting to occupy buildings prior to their completion and in some incidences counties were occupying buildings that were not safe for students and staff to occupy. We have encouraged the Department of Education to participate in the initial walk thru of the building at substantial completion to assist with the mechanical, electrical and plumbing reviews. To effectuate this procedure, we will require A/E firms and construction contractors to schedule the walk-thru 2 weeks in advance and we will notify the WVDE HVAC technicians of the dates and time of the punch-list walk-thru to allow participation. At the conclusion of the joint walk-thru, the A/E firm will compile the official walk-thru punch-list made up of owner, SBA/WVDE and contractor items and the list will be forwarded to the contractor for completion. This will provide input from the HVAC technicians during the latter stages of construction prior to the closeout of the construction contract. It will eliminate the 11th month punch list currently being compiled by the WVDE as there is no contractor's obligation to address punch list items identified after the official punch list has been compiled. The 11th month walk thru is used to address warranty issues. The 11th month walk thru will then become the warrantee review as it is contractually required to be.

Policy 3.1-B – Building Gross Areas

Suggestion was made that WVDE provide a waiver if square footage allotments are deviated from.

By practice we do not deviate from classroom square footage allotments suggested in State Board Policy 6200. Recently, two very small schools were planned with the involvement of the Department of Education. We will continue this practice in the future if significant changes to room sizes are being considered. We would, however, suggest that classroom areas not

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be so rigid that county boards do not have flexibility to offer programs in larger or smaller spaces depending on their scheduling needs. We recommend continuing with our current cooperative process and not requiring State Board waiver approval every time counties desire to alter classroom sizes to accommodate curricular needs. Classroom sizes should be flexible and Policy 6200 should be considered to be recommended sizes as they have been since this document was originally approved. Additionally, the SBA will not allow inequity in room sizes based on special education enrollments.

Policy 3.4-D – Art/Music Spaces

We have established policy regarding space for art and music in elementary schools. The SBA has taken the position that art and music space should be provided and we have increased our building square foot allowance to allow for this space. Policy 6200 identifies this space as optional. Perhaps, the best option would be to review Policy 6200 and make revisions to reflect SBA Policy or leave Policy 6200 alone and we will continue to fund these spaces as per county requests and our current policy.

Policy 3.4E – Allowable New Construction Costs

We have established policy regarding space for auxiliary gyms in high schools. The SBA has taken the position that auxiliary gyms should be provided in new schools with enrollments of 800 students or greater. We have increased our building square foot allowance to allow for this space. Policy 6200 identifies this space as optional. Perhaps, the best option would be to review Policy 6200 make revisions to reflect SBA Policy or leave Policy 6200 alone and we will continue to fund these spaces as per county requests and our current policy.

Policy 4.110 – Contractor Training of Maintenance and Custodial Staff on New Building Equipment

This requirement is already in place under construction regulations in SBA Policy. We currently require verification from county boards that this training has occurred at the conclusion of every project. We will require by construction contract and grant contract that the WVDE be notified of the training dates to allow participation and follow up training of the maintenance and custodial staff as needed in the future by the HVAC technicians. Project specifications will require two weeks notice of the training dates to allow participation in the contractor training.

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Policy 5.1-B – Design Standards

SBA projects are currently being designed by professional architects and engineers charged with the responsibility of designing buildings within codes and standards. Currently, ASHRAE design standards are applied to school HVAC systems and when codes and standards conflict we are defaulting to ASHRAE 62 Ventilation Standards as the governing standard. The International Building Code reference language in our policy will be changed to read school designs will be performed using applicable codes and standards. Design professionals will be responsible for designing buildings using appropriate codes and standards as defined in WV Code 18-9E-3 or future code adoptions, when applicable.

Policy 6.1-C – Grant Agreement – Educational Specifications Submission to WVDE

This practice is already in place. We will provide assurance that the educational specifications will be included in the schematic design submission.

Procedure for Review of Construction Fund Project

This item was covered in previous comments. (2.4 E-4) Also, please understand that four members of the School Building Authority represent the State Department of Education and State Board of Education.

Procedures for Design/Build Projects

Suggestion is made that WVDE be included in this process.

Current code allows county boards to use this method of project delivery and the SBA has provided a policy to help counties navigate through the design-build process including oversight from the design-build board. The Department of Education will be a part of the project review process in the same manner you currently participate. Given the nature of design-build, we anticipate the need for some flexibility on the part of the WVDE and the SBA regarding the review process should a county board decide to use the design-build project delivery method.

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Procedures for Defining Quality HVAC Systems – Appendix D1

Current SBA policy requires that quality HVAC systems be provided in all schools that meet ASHRAE standards. We have increased our new school square foot cost allowance over \$20 per square foot in the past ten years to accommodate improved HVAC systems. We will continue to adjust our system design standards as new standards are adopted. We anticipate defining the quality standards further with the performance criteria development committee previously discussed.

Procedures for Testing, Adjusting and Balancing of HVAC Systems – Appendix D2

Suggestion is made to have an HVAC technician from the WVDE Office of School Facilities involved in this process.

We agree with this suggestion and will provide language in the bidding documents that requires notification of the SBA office as to the scheduled start date of testing, adjusting and balancing.

Architectural and Construction Regulations – Appendix J

Suggestion was made that a WVDE representative be involved in all phases of project acceptance procedures.

Given the SBA is by grant contract a co-owner in the facility we must use caution when we direct work or construction methods and means to limit our liabilities and work within the contractual agreements. We are by WV Code given the responsibility of oversight on the state construction program. We are willing to partner with the Department of Education in regards to design and construction reviews with the understanding that WVDE participation be organized through the SBA to prevent unnecessary liabilities that are always present during the school design review and construction process. We will be partnering with WVDE in areas of design reviews, HVAC training, testing, adjusting and balancing of HVAC systems, project closeout walk-thru, observing contractor training, providing follow up training and participating in the statewide review team reviews for needs projects submitted. This process will be periodically reviewed and adjustments made as required to insure appropriate participation during these, and future phases of the design and construction process.

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Construction Project Submission

Suggestion was made that WVDE be included in this process.

Our current procedures provide for involvement by the WVDE in the project submission process. Construction specifications will also provide for notification to allow further participation in the areas identified in Appendix F. The School Construction Project Development Flow Chart reflects WVDE involvement in the design and construction process where appropriate. Hopefully, this revised language will address your revised comment for Section I-G received August 23, 2007.

Standard of Quality and Codes

This design standards and codes issue is discussed in 5.1B. We will also clarify this further with the performance criteria development committee.

Project Job Signs

Suggestion was made that the State Superintendent of Schools name should be added to the project job signs and building plaque.

The State Superintendent is an ex-officio member of the Authority. As such his name is included on the job signs and building plaques.

SBA Project Observation

Suggestion was made that the WVDE also be allowed to observe construction.

The legislative intent in WV Code 18-9D-15 empowers the School Building Authority to facilitate and provide state funds and to administer all federal funds for the construction and major improvement of school facilities in the state. Additionally, in WV Code 18-9D-16, the legislature provided that the SBA establish guidelines and procedures to promote the intent and purpose of this program to assure the resourceful expenditure of state funds for projects and to provide guidelines and procedures for facility plans, and the manner, timeline and process for the submission of each plan, school major improvement plans and projects submitted in the furtherance of the plans. The School Building Authority is by grant contract a co-owner in each project. As such, we have certain contractual rights to observe construction and to approve plans, construction change directives and reserve the right to

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review and approve all contractor pay applications. WV Code 18-9D-16C also provides for the School Building Authority to prepare guidelines and procedures for project specifications and therefore contractually providing supplemental instruction to the construction contract and to require construction contractors to comply with SBA Supplemental instructions.

We have traditionally involved the HVAC technicians at the WVDE in various stages of the planning and construction of the school projects. Assuming we can cooperatively work together, we are proposing the use of the HVAC technicians in the areas of HVAC testing, adjusting and balancing observation, participation in contractor training of maintenance and custodial personnel and we would like to have the HVAC technicians participate in the project walk-thru punch list at the substantial completion stage of construction. This cooperative effort must be coordinated through the SBA office due to the contractual and legal liabilities we have accepted as co-owners of the buildings. We will require proper notification of the SBA in the construction contract documents and the SBA will notify the HVAC technicians when this involvement is scheduled.

We have attempted to address the comments raised by the WVDE regarding our revised Policy and Procedure Handbook. We feel we can work cooperatively through the school planning and construction process. We are hopeful the HVAC technicians at the Department of Education will continue their legislative mandate of training county maintenance staff and custodians on their new HVAC systems and controls as their first priority. We feel this HVAC training is extremely important to the overall health of students and staff in our schools and we will be mindful of the time you will need for training when we schedule our on-site reviews. Our new policy will be approved September 24, 2007. If you have any further questions or comments, please contact our office prior to this meeting. Thank you for your comments and continued cooperation.

DS:sg

cc: Dr. Steve Paine, State Superintendent of Schools
Dr. Pam Caine, Assistant State Superintendent
Dr. Jack McClanahan, Deputy State Superintendent

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