



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of 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-SERIES: 164-05
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 164-05 School Building Authority Contracts and Agreements

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 18-9D-20

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§18-9D-20 Authority to Promulgate rules; legislative authorization; effective date of rules; technical deficiencies waived.

(a) The authority is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with the provisions of article three-a[§§ 29A-3A--1 et seq.]. chapter twenty-nine-a of this code.

§18-9D-21. Authorizing rules of School Building Authority

§18-9D-21(e) The legislative rule filed in the State Register on the twenty-seventh day of September two thousand seven and amended by the School Building Authority and refiled on the tenth day of December two thousand seven, relating to the School Building Authority (School Building Authority contract and agreements rule) is authorized.

The intent of the proposed changes to the Legislative Rules is to reflect industry standards, changes to WVBE Policy 6200 and directives for localized decision-making.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/26/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/23/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The intent of the proposed changes to the Legislative Rules is to reflect industry standards, changes to WVBE Policy 6200 and directives for localized decision-making.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

School Building Authority Contracts and Agreements

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

NA

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

NA

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 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 and 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

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Benjamin Ashley -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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. -- W. Va. Code §18-9D-20.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of ten years from its effective date.

~~§164-5-2. Incorporation by Reference.~~

~~2.1. A copy of Appendix 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.~~

§164-5-32. School Building Authority Contracts and Agreements.

~~32.1. Grant Agreement.~~

~~32.1.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.~~

~~32.1.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.~~

2.2. Construction Agreement

~~31.C2.2.A. 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. These documents are to be treated in highest confidentiality and are to be reviewed only by those involved with the selection of the contractor. 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)~~

~~31.D2.2.B. 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.E2.2.C.~~ 3.1.E2.2.C. 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 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 W. Va. Code Annot. (1978) Section 23-4-2.~~

~~(2) Contractor's Public Liability Insurance Limits Required:~~

164CSR5

~~\$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 W. Va. 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 W. Va. 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 W. Va. Code. The SBA's requirement for submission of certified payrolls, supersedes 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 W. Va. Code and all Department of Labor regulations.~~

~~M. In accordance with W. Va. Code §18-5-15e, 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 W. Va. 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 W. Va. 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, (W. Va. 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.~~

~~awards/bids~~