

THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND THE EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT

Six Month Progress Report

I. INTRODUCTION

The focus of the New Jersey Economic Development Authority (“Authority”) over the past six months has been to establish the foundation for well-run \$12 billion school construction program. A comprehensive system is now in place, and the Authority is moving forward with construction projects in the Abbott school districts and the funding of non-Abbott school construction projects. This six-month progress report outlines the steps that the Authority has taken to lay the groundwork for the school construction program.

II. BACKGROUND

The “Educational Facilities Construction and Financing Act,” P.L. 2000, c.72 enacted on July 18, 2000 (the “Law”), establishes a comprehensive program (the “School Construction Program” or “Program”) for the design, renovation, repair and new construction of primary and secondary schools throughout the State. The Program anticipates the expenditure of up to \$12 billion over the next ten or more years. Of that amount \$8.6 billion will be bonded State debt issued by the Authority, and the balance will be raised through local school district voter approval. The Program is the largest public construction program undertaken by the State of New Jersey and represents one of the largest school construction programs ever undertaken in the nation.

The Law was adopted by the Legislature in response to the New Jersey Supreme Court’s decision in Raymond Abbott et al. v. Fred G. Burke, 153 N.J. 480 (1998), which requires the State to provide certain educational infrastructure improvements in the poor, urban school districts known as the “Abbott Districts.” The Legislature has provided for a program that covers not only the Abbott Districts, but also all school districts in the State.

The Authority shares responsibility for the School Construction Program with the New Jersey Department of Education (“DOE”) and the recently created Unit of Fiscal Integrity within the Office of the Attorney General (“Inspector General”). The DOE is responsible for reviewing and approving school district construction plans to ensure that they are in compliance with State building standards, referred to as “facility efficiency standards” and for conformity with educational requirements.

The Inspector General's role is to prevent fraud and corruption from occurring in the Program. It is involved with the Authority in the development and review of the pre-qualification procedures of all contractor and professional services. Accordingly, the Inspector General will be reviewing all professional pre-qualification submissions to the Authority for moral responsibility, accuracy and truth of statement.

The Authority is responsible under the Law with financing, designing and constructing all of the school facilities projects in the Abbott Districts, in districts which receive 55% or more in State funding for education and in districts that are in level II State monitoring. In addition, the Authority is responsible for providing grants to fund the State share of school facilities projects approved by the DOE in districts with a district aid percentage of less than 55%. Those districts, which receive less than 55% funding, may elect to have the Authority undertake the construction of their school facilities projects.

The financing and construction responsibilities under the program were assigned to the Authority as a result of the Authority's financial experience and its successful track record providing construction oversight services for both commercial and public projects. In its 26-year history, the Authority has generated over \$14 billion in financing for capital investment, growth and job creation for business and non-profit organizations in New Jersey. The Authority's track record includes the execution of a previous \$250 million school financing program.

III. IMPLEMENTATION OF THE SCHOOL CONSTRUCTION PROGRAM

The Authority has been entrusted with one of the largest public investments ever made by our state. It is a program that in large measure will determine the economic future of New Jersey and will significantly impact on the quality of education experienced by this and future generations of New Jersey's children.

Since the School Construction Program was enacted into law in July 2000, the Authority has been hard at work implementing its responsibilities under the Act. As the policies and procedures adopted now will lay the groundwork for all the work the Authority plans to accomplish over the next decade or more, careful, deliberative planning has gone into their development. In some cases, new school construction will even support community development.

A. The Philosophy of the New Jersey Economic Development Authority

The Authority plans to build a program that is highly productive, yet easy to use. Special emphasis is being placed on three key points: fiscal integrity, moral integrity and open communications with school districts. The moral integrity of school facilities projects will be ensured through a carefully developed procurement policy, and fiscal integrity will be maintained through careful financial oversight. Each school district is viewed as a client of the Authority and, therefore, open communication is an important part of all Authority policies and procedures. Open communication will ensure that the Authority

has a clear understanding of a school district's needs and visions and, therefore, can build to this vision while at the same time meeting the Act's educational and fiscal requirements.

B. Creation of the School Finance and Construction Division

Once the School Construction Program was enacted into law, the Authority moved quickly to create the structure, add the staff, and draft the policies and procedures that were necessary to get the Program off to a quick start. The Authority created a Division of School Financing and Construction to set up the appropriate processes, procedures and systems and integrate its new responsibilities with the Authority's overall economic development function.

The Division is currently divided into three Units: Policy and Communications, Contract Procurement and Design and Construction. The Policy and Communications Unit is responsible for development of the policy agenda, and for providing information about the Program to school districts, the Governor's Office, the Legislature, the news media, municipal government, community groups and taxpayers. The Contract Procurement Unit is responsible for devising and implementing the procurement processes and procedures for school construction projects. The Design and Construction Unit will have monitoring and oversight responsibilities during the design and construction of school facilities projects.

C. Selection of Program Manager

Given the complexity and magnitude of the school construction program, the Authority retained the services of a program management firm with substantial experience in large, multi-site school construction programs. The program management firm is assisting the Authority in the creation of an organizational structure for the new Department, the design and implementation of an interactive communication network, the development of a strategic plan to organize, procure and implement the services required to undertake the school facilities projects, and the management of the Program for certain time frames.

In order to secure the very best team for the job, the Authority used a qualifications-based selection procedure, as follows:

1. Selection Process

A request for proposals ("RFP") was published in early August and attracted nine extensive proposals from major firms.

The firms were evaluated based on a broad range of criteria such as quality, creativity, depth and thoroughness of the proposal and experience and qualifications of the firm and identified key personnel.

A selection committee reviewed the proposals and chose three firms to proceed to interviews. Following the interview process, the firms received a final technical ranking.

The Authority's Board of Directors on October 10 selected Heery International, Inc., a leading manager of major school construction programs. Heery's contract with the Authority began on November 1, 2000. Heery, with offices throughout the United States, including Newark, and overseas, has significant experience and competence in developing and managing large, complex K-12 school projects.

D. Policies and Procedures for Engagement of Design and Construction Professionals

An essential first step in undertaking construction and renovation is for the Authority to engage the services of professional services consultants such as, architects, engineers, construction managers and contractors. Only professional services consultants who have been pre-qualified by the Authority are authorized to submit responses to the Authority's request for proposals.

1. Pre-Qualification Procedures

General Contractors

At its September 12, 2000 meeting, the Authority's board of directors approved an interim procedure for the classification of contractors. The Law provides that if a contractor has a current, valid classification from the NJ Department of Treasury's Division of Property Management and Construction (DPMC), it may obtain pre-qualified status based upon the same trade or work classification and aggregate rating limit issued by DPMC.

The Authority corresponded with the 3,000 contractors presently classified by DPMC to explain the opportunities for business afforded by the new school construction program and to invite them to apply for interim classification with the Authority and bid for school facilities projects. A short-form application for Authority classification was included with this correspondence.

The Authority is currently working with the Inspector General to establish permanent pre-qualification standards to prevent vendor fraud.

Architects, Engineers and Construction Managers

Also at their September meeting, the Authority's board of directors adopted the list of pre-qualified professional consultants that had been previously approved by the New Jersey Building Authority. These consultants are now pre-qualified for Authority school construction projects.

The entire list of pre-qualified professional consultants, together with their addresses, contact information and classification are listed on the Authority's website at www.njeda.com. The list is updated on a weekly basis and is searchable according to company name, locality, profession, and work classifications.

2. Consultant Selection Procedures

Policies and procedures were developed and approved by the Board of Directors at their November meeting that govern how projects will be advertised, proposals evaluated and consultants selected. The procedures will vary depending on the size of the project and the extent to which the project has progressed.

Category 1 Contracts—By law, projects having a design fee less than \$25,000 need not be publicly advertised; however, wherever practicable the Authority will use a competitive selection process described below for Category 2 contracts.

Category 2 Contracts--Consultants for projects having design and construction administration fees up to \$300,000 will be advertised on the Authority's website. The advertisement will state the date that a short list of firms, 3 to 6, will be selected using a computer generated random selection process. In addition, those firms having an in-depth knowledge of the project and the work to be done may, at the request of the school district, be added to the list.

All proposals will be evaluated by a selection committee, which is comprised of two individuals from the school district and three representatives from the Authority. The contract will be awarded to the consultant having the best qualifications for the project, price and other factors considered.

Category 3 Contracts—Projects having a design fee over \$300,000 will be publicly advertised in three newspapers and the Authority website. Firms meeting the required professional area and classification level will receive direct notification of the project via e-mail or the US Postal Service.

Firms responding to the Request for Proposal (RFP) will be short listed by the selection committee. Short listed firms will be requested to then submit a detailed technical proposal based upon the extent of the project. The selection committee will review and rank the technical proposals. The finalists will be interviewed and a minimum of three top ranked firms will be invited to submit fee proposals. After negotiations the number one ranked firm will be awarded the contract based upon qualifications and reasonable compensation.

Projects having a design fee in excess of \$500,000 will be presented to the Authority's board of directors for approval.

Category 4 (Waivered) Contracts—When the design fee for a contract is in excess of \$25,000 and it is not possible, feasible or prudent to advertise, the Authority may directly award a contract to a design consultant. This may only happen if the contract is to be awarded to the Federal or any state government or agency or political subdivision (e.g.: if the Authority is contracted to construct a school facility on a military base); for reasons of public exigency (e.g.: an emergency involving health or life safety exists); or if only one source of supply is available (e.g.: if the school

construction project involves the extension of a water, sewage or power supply owned by a municipality or authority). When a contract is to be awarded for reasons of public exigency, the Authority must use a competitive selection process similar to the process described in the Category 2 Contract section above.

Category 5 Contracts (Assumption of Existing Agreements)—During the initial phase of the school construction program it may be beneficial for the Authority to assume control of an existing agreement between a design consultant and a school district which is receiving 55% or more state funding. This will allow a design consultant who is already deeply involved with a school district in the design documents of a project to remain involved in the project as the Authority's consultant for the remainder of the project. This will only occur if the following conditions are met:

- (1) the school district requests in writing that the Authority assume the contract;
- (2) the consultant agrees in writing to the assumption;
- (3) the existing contract and the design documents prepared at the time of the request are submitted to the Authority for review;
- (4) the design documents have progressed beyond the phase required to obtain educational specification approval;
- (5) the Scope Of Work for the project clearly defines the services to be performed by the consultant;
- (6) the consultant is pre-qualified by the Authority;
- (7) the existing agreement is acceptable and assignable to the Authority; and
- (8) the assumption will be in the best interest of the project.

3. Abbott District Selection Committees

Recognizing the need to expedite the health and safety projects in the Abbott districts, the Authority contacted the Abbott districts' superintendents in November to enlist their active participation in the creation of a selection committee in each of their districts. Authority procedures provide that the membership of these selection committees shall consist of two representatives from the school district and three representatives from the Authority. The proposals that are received will be reviewed by the selection committee, which will evaluate the proposals and make recommendations to the Executive Director of the Authority.

Abbott district superintendents were asked to submit to the Authority by December 8, 2000 the names and contact information for two individuals to represent the Abbott district on the selection committee, as well as two alternates. A Selection Committee Designation Form was enclosed. The Abbott districts were also asked to designate a liaison to the Authority in order to ensure that the health and safety projects could be completed as efficiently and quickly as possible. A Liaison Designation Form

was also provided. As of late December, all Abbott selection committees had been formed, and facility liaisons identified.

4. Development of Procedures Manual for Design Consultants

A “Procedures Manual for Design Consultants” has been published to cover areas of special interest and concern to architects, engineers, construction managers, client school districts and government staff. This manual explains the procedures and services required of design consultants and the monitoring and oversight that will be provided by the Authority. The manual is divided into eleven chapters, each providing details on the administrative processes associated with a typical project or the particular tasks of a specific phase of a project. The manual has also been put on NJEDA’s website.

E. Abbott Health and Safety Projects

In late October, the DOE approved over 400 health and safety projects in the Abbott districts totaling \$600 million and forwarded these approved projects to the Authority. The Authority reviewed and analyzed these health and safety “scopes of work” and divided the projects into several packages that will be initiated with staggered start dates over the coming months.

1. Request for Proposals on Health and Safety Projects

A milestone was achieved in December when the Authority issued its first request for proposals for architectural, engineering services and construction management professionals to plan and undertake **the abatement of approximately 30 health and safety projects, estimated at \$13 million**. These health and safety projects are in six Abbott Districts: Asbury Park, Garfield City, Harrison Town, Keansburg Boro, Neptune Township and New Brunswick. The projects were selected on the basis that they (1) were identified by the districts as a top priority; (2) could be completed by September 1, 2001; and (3) included as many school districts as possible. Architects will be selected for the initial projects by the end of January.

The Authority expects to immediately initiate an additional two groups of projects for another **12 school districts involving 60 projects valued at \$40 million**.

The Authority is using these initial health and safety projects for a “pilot program” to evaluate existing and proposed program management procedures.

2. Projects Valued at \$500,000 or Less

Under the Law, the Authority has the discretion to authorize a school district to advance a school construction project directly if the project is valued at \$500,000 or less. In such cases the Authority will enter into a “grant agreement” with the school district for payment of the State’s share of the project.

As part of its review of the Abbott districts’ health and safety projects, the Authority identified 150 projects, each valued at \$500,000 or less that could be

immediately advanced. Abbott district superintendents were notified in December that they would be receiving by mid-January the list of eligible projects in their districts, along with a grant agreement, which outlines the terms and conditions for the district to advance its project(s) and details the method of payment. **The aggregate value of these projects is approximately \$36 million.**

F. Non-Abbott School Construction Projects

Under the Law, school districts were required to file a long-range facilities plan with the DOE by December 15, 2000. These plans project enrollment figures and assess a district's ability to house its projected student enrollment. They also include a school building inventory and report facility needs for capital improvement, new construction and maintenance. As such, the long-range plan is intended to be a complete and accurate facility-needs assessment and a useful planning device. Once the DOE approves its long-range plan, the district can file an application with the DOE for approval of a school facilities project.

1. Grant Funding

Under the Law, the Authority is responsible for providing grants to fund the State share of school facilities projects approved by the DOE in districts with a district aid percentage of less than 55%. The Authority is working with the DOE and the Attorney General's office on developing regulations for the provision of these grants. In the event a district elects to receive a grant, the Authority, upon notification from the DOE, will enter into a grant agreement with the school district which will set forth the terms and conditions for receiving the grant from the Authority. Included in the grant agreement will be, among other items, a checklist to ensure that all appropriate procedures were followed in securing professionals and contractors for the design and construction of the project and the procedure for release of the grant. A draft form of agreement is under review by the Attorney General's Office.

2. Waiver Projects

In certain circumstances, the DOE prior to the approval of long-range facilities plans has approved certain school facilities projects. Such projects are referred to as "waiver projects" and involve circumstances in which a project is far along or significant health and safety or overcrowding concerns exist. The DOE has notified effected school districts of approved waiver projects, and the Authority has corresponded with these districts to inform them of their right to receive a grant for the state share of approved project costs. So far, the DOE has approved 24 projects worth an estimated \$200 million. The Authority has received no approved waiver projects yet.

G. Financing

In November, an RFP was issued for underwriters and bond counsel to assist in the issuance of bonds for the Program. In December, the Treasurer selected Lehman Brothers to be lead underwriter and approved Wolff and Samson as bond counsel.

H. Communications

Throughout the months of September and October, Authority officials met with representatives in each Abbott school district to discuss their priority capital projects and update them on the progress of the Authority's implementation of the Law. The Authority has begun to identify their "works in progress"—projects which have completed the design phase and are ready for construction. We have also participated in the promotion of the "Smart Growth" planning grant application process for many Abbott districts. This process will lead to the development of community support features (i.e. public libraries, meeting halls or medical centers) within school facilities.

Questions about the school construction program are submitted to the Authority through e-mail at schools@njeda.com or by calling Mark Lohbauer, Director, Division of Policy and Communications at (609) 292-9783.

Some of the other significant communications activities included:

1. Affirmative Action

The Authority has written to all MBE and WBE firms in the construction field in N.J. and encouraged them to pre-qualify with our program.

2. Public Presentations

Presentations were made at numerous conferences and workshops held by the education community, including:

- The New Jersey School Boards Association's (NJSBA) annual workshop in Atlantic City
- NJSBA's Regional School Facilities Panels
- NJSBA's "Planning and Implementing School Construction Projects" conference in East Windsor
- The New Jersey Association of School Business Officials panels on school construction The Association of School Administrators School Facilities Conference in Edison
- The Garden State Coalition of Schools December board of directors meeting
- The Consulting Engineers Council of New Jersey September meeting in Woodbridge
- The New York Chapter of the Society of Marketing Professional Services "What's happening in New Jersey" in Rutherford
- The Building Contractors Association of New Jersey Joint Luncheon at the Atlantic City Tropicana
- The New Jersey Department of Labor Prevailing Wage Conference at the Atlantic City Tropicana
- American Institute of Architects, NJ Institute of Technology

3. Publications

The Authority submits a monthly column for publication in the New Jersey School Boards Association's *School Board Notes* and been featured in other publications.

4. School Construction web page (www.njedaschools.com)

A home page for the school construction program has been added to the Authority's web site and is frequently updated. Plans are underway for a separate resource area for school officials, including a list of commonly asked questions and answers.