

CHAPTER 35**DISPOSITION OF SURPLUS REAL AND PERSONAL
PROPERTY OF THE NEW JERSEY SCHOOLS
DEVELOPMENT AUTHORITY****Authority**

P.L. 2007, c.137, specifically §§4f, 4l and 4k.

Source and Effective Date

R.2007 d.312, effective October 15, 2007.
See: 39 N.J.R. 1647(a), 39 N.J.R. 4443(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 35, Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority, expires on October 15, 2014. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Unless otherwise expressly noted, all provisions of Subchapter 1 were adopted pursuant to authority of N.J.S.A. 48:23-1 et seq. and were filed and became effective May 6, 1975, as R.1975 d.118. See: 7 N.J.R. 285(a).

Chapter 35, FM Radio Stations, expired on July 1, 2006.

Chapter 35, Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority, was adopted as new rules by R.2007 d.312, effective October 15, 2007. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**19:35-1.1 Applicability**

This chapter applies to the sale, lease, grant of easement, license or other use or disposition by the New Jersey Schools Development Authority (SDA) of any real or personal property owned by the SDA or in which the SDA has a legal interest. No disposition of property proposed to be undertaken in accordance with this chapter shall be authorized or enforceable if it would violate the tax-exempt status of the inter-

est paid on bonds sold to finance said property, pursuant to the United States Internal Revenue Code of 1986, 26 U.S.C. §§1 et seq., as amended from time to time, and all Federal Department of the Treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

19:35-1.2 Definitions

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

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, and P.L. 2007 c. 137.

“Authority” or “SDA” means the New Jersey Schools Development Authority established, pursuant to section 3 of P.L. 2007, c. 137, the successor entity to the New Jersey Schools Construction Corporation.

“Board” means the members of the Authority.

“Contract” means the entire and integrated agreement between an individual or firm and the Authority, in such form as is required by the transaction for the disposition of the surplus property.

“Department” means the New Jersey Department of Education.

“Disposition” or “dispose” means the sale, lease, grant of easement, license or other transfer of SDA’s legal rights in and/or to any real or personal property.

“Estimated market value” means the value of the personal property established by its book value or other valuation methodology appropriate to the type of personal property being valued.

“Fair market value” means that amount of compensation a disposition of SDA real property would command in a competitive market between a willing seller and buyer under the same terms and conditions of the transaction, as determined by one or more appraisals that take into account relevant factors and conditions impacting upon the highest and best use of the subject property. Compensation may, in whole or in part, take the form of money, exchanged property, contractual commitments, acts of forbearance or such other conditions, as are deemed by the SDA to be of the greatest value to the school construction program.

“Firm” means any association, company, contractor, corporation, joint stock company, limited liability company, partnership, sole proprietorship, or other business entity, including its successors, assignees, lessees, receivers or trustees.

“Nonpublic party” means a private individual or firm that is eligible to enter into an agreement or otherwise contract with the SDA for the disposition of property.

“Operating Authority” means the Authority’s designation of individual directors, officers, employees or combinations thereof who are authorized, either generally or in specific transactions, to approve contracts and to execute documents legally binding on the Authority, or sign checks and disbursements on behalf of the Authority, and which can found on the Authority’s website at www.njsda.gov.

“Personal property” means furnishings, equipment, computers, temporary classroom units, automobiles, and any other tangible or intangible property owned by the SDA, with the exception of real property.

“Property” means real property and personal property, either individually or in combination.

“Public party” means the State or any political subdivision of the State or any agency or subsidiary thereof.

“Real property” means any land in which title is held by the Authority, or in which the SDA has a legal interest, whether improved or unimproved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment.

“School construction program” means the overall program mandated by the Act for the design, renovation, repair and new construction of early childhood, primary and secondary public schools throughout the State, through the implementation of school facilities projects.

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

“Surplus property” means real and personal property that, pursuant to N.J.A.C. 19:35-2.1, has been determined not to be necessary, on a temporary or permanent basis, for the undertaking or management of a school facilities project and not used or useful in the business operations of the SDA.

“Surplus temporary classroom unit” means a TCU owned by the SDA, which has been deemed to be surplus property.

“Temporary classroom unit or “TCU” is an educational unit comprised of one or more trailers joined together, title to which is held by the SDA, which was approved by the Department of Education, Office of School Facilities, after July 18, 2000, as a temporary facility necessary to advance a school facilities project until the substantial completion of that school facilities project.

“Use and/or occupancy agreement” means an agreement between the SDA and a public or nonpublic party providing for the use and/or occupancy of all or any part of surplus real property, but does not serve to transfer ownership to such party.

19:35-1.3 Purpose and scope

The purpose of this chapter is to establish and prescribe uniform rules and procedures for the sale, lease, or other use or disposition of surplus real and personal property by the Authority at its estimated or fair market value, as applicable, or its transfer or disposal at the least possible cost. Proceeds from the disposition of property shall be used to fund school facilities projects. No property disposition shall be made by the Authority except in accordance with this subchapter.

SUBCHAPTER 2. DISPOSITION OF SURPLUS PROPERTY

19:35-2.1 Determination of property as surplus property

(a) Whenever the SDA’s Chief Executive Officer, or his or her designee, determines that property is surplus property, in accordance with (b) or (c) below, such property shall be disposed of in the manner and upon the terms and conditions set forth in this subchapter and approved in accordance with the Operating Authority.

(b) In the case of personal property, the determination that the property is surplus shall be based upon the following considerations:

1. The purpose for, and the cost at which, the property was originally acquired, and the cost and nature of any improvements;
2. The date when, and the circumstances under which, it ceased to be useful for its original purpose;
3. The present use and the possible prospective use(s), if any; and
4. The property’s estimated market value.

(c) In the case of real property, the determination that the property is surplus shall be based upon the following considerations:

1. The information pursuant to (b)1 through 3 above; and
2. If the property is income producing, its assessed valuation and details concerning the expenses of the property, such as carrying charges and taxes.

(d) A determination that property is surplus property shall be in writing and set forth the factual information that supports such a determination, in accordance with (b) or (c) above, as applicable.

19:35-2.2 Manner of property disposition

(a) Whenever the Authority's Chief Executive Officer, or his or her designee, determines that disposition of surplus property would be advantageous to the schools construction program or the Authority, he or she may enter into a contract with a public party or a nonpublic party, upon the terms and conditions established in this chapter, and as approved in accordance with the Operating Authority.

(b) Personal property that has been determined to be surplus property in accordance with N.J.A.C. 19:35-2.1(b) may be disposed of in one of the following manners:

1. If the estimated market value of the personal property to be sold exceeds \$29,000, or the amount determined pursuant to the N.J.S.A. 52:34-7 et seq., in any one sale, it shall be sold at public sale to the highest bidder, in accordance with N.J.A.C. 19:35-2.3;

2. If the estimated market value of the personal property to be sold does not exceed \$29,000, or a value determined in accordance with (b)1 above, or if a public sale did not elicit a viable offer for the personal property, the Authority may undertake a negotiated direct sale of the property for the highest possible price, upon terms and conditions acceptable to the Authority provided the Authority solicits three quotes; or

3. If the personal property could not be disposed of in accordance with (b)2 above, it shall be disposed of through the Department of Treasury, Surplus Property Unit, or in the most economically feasible manner.

(c) Notwithstanding (b)1 through 3 above, the relocation or disposition of a surplus TCU shall be made in accordance with the following:

1. Upon the approval by the Department of an application by a district or the SDA for temporary facilities pending the completion of a school facilities project, in accordance with N.J.A.C. 6A:26-3.14(a), the SDA may undertake, manage and fund the relocation of a surplus TCU for that facilities project, contingent on available funding, and the Authority's determination, based on a feasibility analysis, that such relocation would be more advantageous in terms of cost and schedule than the lease or acquisition of other temporary facilities. The feasibility analysis shall also consider whether a TCU, funded by the SDA pursuant to N.J.A.C. 19:34-4.2(e), but which is owned by the school district, within the attendance area to be served by the facilities project, would be suitable and available to be utilized as temporary facilities;

2. If the Department does not approve the relocation of a surplus TCU, or the SDA determines that the conditions

have not been met, in accordance with (c)1 above, upon the approval by the Department, in accordance with the Department's Facilities Regulations, N.J.A.C. 6A:26-1, the SDA may:

- i. Allow the surplus TCU to remain in its current location, provided the district enters into a lease with the Authority governing the terms and conditions of the district's use of the surplus TCU. The terms and conditions of the lease shall, at a minimum, impose on the district all responsibility for the surplus TCU, inclusive of any costs associated with retrofit, utility infrastructure, site conditions, insurance and maintenance; or

- ii. Convey title of the surplus TCU to a school district that will locally fund all costs associated with the relocation, installation and final disposition of the surplus TCU and relieve SDA of all responsibility for the surplus TCU;

3. If no school district enters into a lease or accepts title to a surplus TCU, subject to the conditions in (c)2 above, the SDA may undertake, by open or closed bid auction, the sale of a surplus TCU(s) to the highest bidder on an "as is, where is" basis, in accordance with N.J.A.C. 19:35-2.3;

4. If no viable bid for a surplus TCU results from an auction, the SDA may undertake a negotiated direct sale or lease of a surplus TCU to any public party upon such terms and conditions as are mutually agreed; or

5. If no direct sale or lease can be negotiated by the SDA, the surplus TCU shall be disposed of through the Department of Treasury, Surplus Property Unit, or in the most economically feasible manner.

(d) Real property that has been determined to be surplus property in accordance with N.J.A.C. 19:35-2.1(c) shall be disposed of in accordance with N.J.A.C. 19:35-2.3, except those dispositions set forth in (d)1 and 2 below, which shall be exempt from public bidding.

1. A use and/or occupancy agreement between the SDA and a public or nonpublic party wherein the real property has a fair market value not in excess of \$100,000, or the use and/or occupancy agreement provides for revenues of not more than \$50,000 per annum payable to the SDA.

2. The disposition of surplus real property, or any interest therein, having a fair market value not in excess of \$100,000, provided the disposition is for fair market value.

(e) Nothing in this chapter shall prohibit or prevent the SDA from using or availing itself of any method to dispose of surplus property as may be otherwise permitted by law or rule.

19:35-2.3 Procedures for disposition of surplus property

(a) Property dispositions required to be publicly bid shall be advertised for bid at least twice, one week apart, in a daily

newspaper published or circulated in the county in which the property is located. The advertisement shall contain the following:

1. A description of the property.
 - i. For real property, its location, including street address, if any, municipality and county, any improvements thereon and a metes and bounds description or its lot and block numbers;
 - ii. For personal property, sufficient information to identify the property adequately;
2. The place where the property is located and time frame in which it may be inspected, if applicable, together with the street address, if any;
3. Notice of the place where quotation forms, terms and conditions may be obtained, together with a provision that the SDA may reject any or all bids; and
4. A statement of the place and final date for submitting sealed bids, which shall not be less than 10 days after publication of the second advertisement, together with a statement of the time and place of the opening of the bids.

(b) In the case of real property offered for bid, a prospective bidder shall be responsible for conducting its own due diligence to determine the environmental condition of the property, subject to the terms and conditions set forth in the bid advertisement. The Authority shall make available any back title and environmental reports in its possession with respect to the property at the time, place and location set forth in the bid advertisement, but without any representation by the Authority as to their accuracy or completeness.

(c) In the event that the amendment of any pertinent information supplied to prospective bidders becomes necessary, including a postponement of the time for receipt or the opening of bids, notice of the change(s) shall be advertised in the same manner as the subject disposition was previously advertised, at least seven days prior to the scheduled opening of the bids.

(d) Bidders may withdraw, or withdraw and resubmit, bids at any time prior to the public bid opening. Bids may be withdrawn only on written request received prior to the public opening and signed by the bidder or a duly authorized representative of the bidder upon presentation of appropriate identification.

(e) Any bids received after the bidding has been closed shall be returned unopened.

(f) The SDA Director of Procurement, or his or her designee, shall open and publicly read the bids.

(g) All property publicly bid must be disposed of to the highest bidder who meets all of the terms and conditions for the property disposition.

(h) In the event that no bids are received, or only one bid is received on item(s) offered for disposition, the SDA Director of Procurement shall determine, on a case by case basis, whether the disposition shall be consummated, or the property re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

(i) When the SDA Director of Procurement deems it to be in the best interests of the Authority, one or more items may be withdrawn from the offer for disposition. In such cases, the SDA Director of Procurement shall prepare a memorandum addressed to the SDA Chief Executive Officer, or his or her designee, authorizing the withdrawal. When one or more items are withdrawn from an offer for disposition, the Director of Procurement shall determine whether such items shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

(j) Bids shall be accompanied by a bid deposit in the amount determined by the Authority in its sole discretion. When required, such deposit shall be submitted in the form of a certified check, bank or cashier's check, or executed money order payable to the "New Jersey Schools Development Authority" or its successor entity. Failure to comply with this provision shall result in rejection of the bid.

(k) All bid deposits of unsuccessful bidders shall be returned promptly to the unsuccessful bidder. The deposits furnished by successful bidders shall be retained and applied toward payment of the total accepted bid price.

(l) The balance of the bid price shall be paid by the successful bidder by certified check, bank check, cashier's check, executed money order or such other method of payment as may be approved by the SDA Director of Procurement at the time the bidder executes the contract of sale, as more fully described in N.J.A.C. 19:35-2.4. The payment shall be made payable to the "New Jersey Schools Development Authority," or its successor entity.

1. In the case of the Authority's sale of personal property, failure by the successful bidder to pay the balance of the bid price at the time required for the bidder to execute the contract shall result in a forfeiture of the bid deposit to the Authority, as the amount of damages to the Authority resulting from such breach would be difficult, if not impossible, to determine and the retention of the deposit would be justified and reasonable. Personal property paid for, but not picked up or taken possession of in the manner and within the time specified in the bid advertisement and the contract, shall be considered abandoned and ownership shall default to the Authority, and the Authority may then accept the bid of the next highest qualified bidder or again offer the property for disposition.

2. In the case of the Authority's sale of real property, the contract of sale shall be executed and title to the property shall be transferred to the purchaser when full and final payment of the approved bid price is made, or as

otherwise agreed in writing between the purchaser and the Authority. A purchaser's failure to pay the balance of the purchase price as specified by the SDA or failure to take title or abide by any other term or condition of the contract, shall result in a cancellation of the sale and a forfeiture of the bid deposit to the Authority, as the amount of damages to the Authority resulting from such breach would be difficult, if not impossible, to determine and retention of the deposit would be justified. Upon such cancellation, with the approval of the SDA Chief Executive Officer, or his or her designee, the SDA Director of Procurement may, in his or her discretion, accept the bid of the next highest qualified bidder or again offer the property for disposition.

(m) If no bids are received, the property may then be disposed of for fair market value, in the case of real property, or its estimated market value, in the case of personal property, through a negotiated direct sale to either a public or nonpublic party.

(n) Notwithstanding (a) through (m) above, the disposition of property by Internet auction is authorized, and shall only require one newspaper advertisement, provided the newspaper advertisement of the proposed disposition indicates that the disposition will take place over the Internet, the Internet address where the auction can be found, the date(s) and time for the auction and a description of the property. The requirements for bidding, the terms and conditions of the disposition and the procedures for the transfer of the property shall be set forth on the Internet web site.

19:35-2.4 Contract execution and implementation

(a) The party to a property disposition contract with the SDA shall sign the contract first and such contract shall be contingent on final approval and execution by the Authority, in accordance with this subchapter and the Operating Authority.

(b) In the case of a contract involving real property, unless otherwise provided, the property shall be disposed of "as is." A complete property survey, if available, together with a metes and bounds description will be appended to the contract. The cost of the property survey and description shall be paid by the public party or non-SDA party or parties to the contract. Transfer of title to real property is effective upon the delivery of a deed from the Authority to the purchaser following the full execution of the contract by the parties.

(c) Transfer of title to personal property is effective upon full execution of the contract by the parties and delivery of a bill of sale or other evidence of transfer of ownership has been delivered by the Authority to the purchaser and the balance of the monies due and owing under the contract have been paid to the SDA.

19:35-2.5 Waiver of public advertisement

(a) The Chief Executive Officer, or his designee, in his or her discretion may waive the advertising requirement set out

in N.J.A.C. 19:35-2.3 if he or she determines that any of the following circumstances exist:

1. The subject property is unique and requires an unusual contract or represents an unusual transaction that would not benefit from public advertising or public bidding;
2. The advertising and bidding would not result in a higher price than is being offered or would impair or be detrimental to the disposition of the property; or
3. It is unlikely that other bona fide bidders exist who:
 - i. Could meet the requirements of the proposed disposition; or
 - ii. Would have an interest in the property.

SUBCHAPTER 3. USE AND/OR OCCUPANCY OF PROPERTY

19:35-3.1 Third-party use and/or occupancy of real property

(a) The Authority may authorize third-party use and/or occupancy of all or any part of surplus real property for the period of time during which the property will not be needed for a school facilities project or otherwise is not used or useful in the business operations of the SDA. Such authorization shall be in the form of a written use and/or occupancy agreement, executed by the SDA's Chief Executive Officer, or his or her designee, which incorporates the terms and conditions of the third-party use and/or occupancy, and shall be subject to the following general conditions:

1. The duration of the third-party use and/or occupancy shall not extend beyond the point in time when the surplus real property will become necessary for the implementation of a school facilities project(s) or otherwise necessary for the Authority's execution of its responsibilities under the Act;
2. The unilateral and absolute right of the Authority to terminate the agreement in the following circumstances:
 - i. In the event of a breach of the underlying agreement;
 - ii. Where the SDA, in its sole discretion, determines that termination of the agreement has become necessary to carry out the schools construction program; or
 - iii. The surplus property is to be used or will be useful in the business operations of the SDA; and
3. The use and/or occupancy agreement shall provide that the third-party use(s) shall not alter the real property or the environment in and around the real property in such a way that reasonable disposition by the Authority and/or

subsequent use of the real property for school facilities purposes would be compromised.

(b) If the use and/or occupancy agreement is with a non-public party, the agreement shall, at a minimum:

1. Provide for the payment of consideration in an amount that is not less than the fair market value of such third-party use and/or occupancy, as determined by the Authority's Chief Executive Officer, or his or her designee, pursuant to an independent appraisal or in-house valuation based upon relevant information, as appropriate;

2. Provide that the nonpublic party shall not sublet or otherwise allow another person or entity to use and/or occupy the subject real property without the express written consent of the SDA;

3. Require the nonpublic party to pay all costs associated with its use and/or occupancy of the real property, including but not limited to, operation, maintenance, taxes, security, insurance and utilities allocable to it; and

4. Require the nonpublic party to indemnify, defend and hold the Authority harmless against any personal injury, losses and/or damages that result, either directly or indirectly, from such use and/or occupancy.

(c) If the use and/or occupancy agreement is with a public entity, the agreement, at a minimum:

1. Shall identify the governmental function or program, the legal authorization for such program and certification of the approval of the use and/or occupancy agreement by official action of the public party;

2. May allow the SDA to include in its determination of the real property's fair market value the value of utilizing the property for a public benefit; and

3. Provide for the public party to pay all costs associated with its use and/or occupancy of the real property, including, but not limited to, operation, security, taxes, utilities, insurance and its maintenance.

(d) The Chief Executive Officer, or his or her designee, may approve the short-term post-closing use and/or occupancy by owner occupants or tenants relocating from real property sold to the SDA, when he or she determines that such use and/or occupancy is in the best interests of the SDA or the schools construction program.