

MINUTES
School Building Authority Of West Virginia

Special Meeting
Friday, May 31, 2019
9:00 a.m.

Held at:
2300 Kanawha Boulevard, East
Charleston, West Virginia

I. CALL TO ORDER

Chairman Brian Abraham called the School Building Authority of West Virginia's (SBA) Special Meeting to order at 9:00 a.m. on Friday, May 31, 2019. Members present: Chairman Abraham; Bart Willis; Vice-Chair; Steve Burton; Chris Morris; David Perry; Debra Sullivan with Dr. James Wilson; Dr. Steven Paine; Sandra Hamilton; Victor Gabriel, Secretary; and Robert Holroyd participating via phone. The following SBA staff were also present: David Roach, Executive Director; Ben Ashley; Dana Womack; Mike Hall; Angie Bradley; Emilee Wehrle; Jordan Fritts; and Shannon Driver.

II. ACKNOWLEDGMENTS AND RECOGNITIONS

The following individuals were in attendance: Win Strock; Ryan Quinn, Charleston Gazette-Mail; and Kellie Willis.

III. CONSTRUCTION COMMITTEE

A. Information and Comments

Executive Director Roach introduced Shannon Driver, the SBA's new Executive Assistant, and thanked Mr. Ashley and Mr. Strock for their assistance regarding revisions to the SBA Policy & Procedures Handbook. Executive Director Roach then briefly reviewed the Summary of Proposed Changes Memorandum, and outlined the main reasons for the revisions to the Policy & Procedures Handbook, which are as follows: 1) the clarification and separation of the SBA's Legislative Rules and Procedural Rules; 2) the organizational arrangement of the content to reflect a sequential, user-friendly experience; and 3) the directives to increase accountability of all parties involved in the execution of an SBA-funded project while simultaneously eliminating unnecessary and over-burdensome tasks. The policies and forms included in this document are meant to guide each user through the development, planning, financing, and construction phases with clarity and ease.

B. Policy & Procedures Handbook Revisions

Ben Ashley presented the policy revisions to the Construction Committee on May 23, 2019, and they recommended approval to the Full Authority. The recently approved Legislative Rules and the recent changes to the SBA Policy & Procedures Handbook have been made in accordance with Policy 6200 of the West Virginia Department of Education. Mr. Ashley reviewed the Summary of Proposed Changes, which includes the removal of Legislative Rules, Major Reorganization, Eliminated Policies & Procedures, Revised Policies & Procedures, and New Policies & Procedures. **Attachment A** provided the recommendations of the final revisions for consideration by the Full Authority.

Steve Burton questioned the removal of Appendix J, Part I – SBA Criteria for Selection of Lowest Qualified Bids, commonly referred to as the “18 Points.” Mr. Ashley explained the elimination of this section stems from the governable aspects of WV Code §5-22-1 et seq.– The Fairness and Competitive Bidding Act. Because of the caveat at the end of the section that states “*No single criteria will be considered the controlling factor in determining whether a bid is or is not the ‘best’ bid,*” the SBA Staff and Policy Consultant believe this invites ambiguity in the evaluation process. These points as written could empower the SBA and/or the Grant Recipient to award a contract in a manner that was described by the WV Supreme Court as “irrationally based on an ambiguous ‘requirement’ set forth in the bidding documents that is of no consequence.” This language was used in the 2015 West Virginia Supreme Court Case *Wiseman Constr. Co v. Maynard C. Smith Constr. Co. et al.*, (Case No. 15-0635) to describe the award of the contract to the second-low bidder where the low bidder was determined by the state agency to be unqualified and irresponsible. Because the Agency’s rules were determined to be ambiguous and arbitrary by the Court, the monetary significance of spending additional taxpayer dollars to award the contract to the second-low bidder was determined by the Supreme Court to be in violation of the law; therefore, the “18 Points” section as described is proposed to be removed.

Mr. Ashley further explained the SBA has worked eleven of the eighteen points into the bidding requirements and project evaluation for each Contractor to follow and be aware of on an SBA-funded project. The major difference is that this list will not disqualify a prospective Contractor from bidding unless they have been placed on probation for a minimum of one year by the Authority for displaying an undeniable pattern of non-compliance or non-conformance on a prior SBA project. The SBA Staff’s Policy Consultant has given the advice that the most effective case against a contractor(s) who does not perform acceptably on a job is to have a consistent program of compliance documented by notices and/or reports issued by the project’s Architect of Record. This new program is described in the New Policies & Procedures section. Mr. Ashley discussed the eleven points in detail. Upon closing of the discussion regarding the revisions, Debra Sullivan asked that the economies scale on page 66 of the Policies & Procedures Handbook be double checked. Executive Director Roach advised Attorney John Gray will be reviewing the revisions to ensure the proposed changes are sound.

Chairman Abraham recommended full support for the passage of the amendments. Upon a motion by Victor Gabriel, with a second by Dr. James Wilson, the Full Authority voted to approve the revisions to the Policy and Procedures Handbook, as presented, and for SBA staff to move forward with filing the 30-day Comment Period with the Secretary of State’s Office. Mr. Burton opposed approval of the revisions.

Before adjourning the meeting, Director Roach introduced the SBA’s two interns, Emilee Wehrle and Jordan Fritts, and introduced the SBA’s FEMA employees: Heather Brunton, Mendi Harkins, Andrew Lore, and Mark Miller.

IV.

ADJOURNMENT

There being no further business to come before the Authority, the Authority voted to adjourn the May 31, 2019 Special Meeting of the School Building Authority of West Virginia.

Minutes Approved June 17, 2019



Mr. Brian Abraham, Governor’s Designee
School Building Authority of West Virginia