

School Building Authority of West Virginia
POLICIES & PROCEDURES HANDBOOK
SUMMARY OF REVISIONS

Appendix J (Part 1 - SBA Supplemental Instructions to Bidders)

3.3 Substitutions

Adjusts time frame on request for substitutions from twenty-one (21) days to ten (10) days.

5.2 Rejection of Bids

This language relates to bidder's claims of erroneous bids.

6.3 Submittals of Subcontractors and Major Equipment and Materials Suppliers

.2 All Subcontractors listed on the SBA Form 123, provided by the apparent low bidder, shall provide a separate SBA Form 193 listing any subcontract agreements that the subcontractor may have relating to their work. This SBA form must be reviewed and signed by the Prime Contractor then submitted directly to the SBA office by the Subcontractor within 72 hours immediately following the receipt of bids.

.5 Failure of any Subcontractor to submit their required SBA Form 193 within 72 hours immediately following the bids shall result in disqualification of that Subcontractor. The apparent low bidder will be required to replace the disqualified subcontractor with no additional cost to the owner.

.12 Each bidder further acknowledges that use of any Subcontractors other than those indicated on the SBA Form 123 shall result in the bidder being placed on bidding probation by the SBA for a period of at least one year subject to review and recommendation of reinstatement by the Executive Director.

6.3.3 Payroll Certification and Employment Reporting

Delete paragraph 6.3.3 in its entirety.

6.3.6 Contractor Licensing

.1 b Remove address column on SBA Form 123 and addition of new language regarding two-hour time frame.

Appendix J (Part 2 - Supplemental General Conditions)

Article 4 – Administration of the Contract

4.2 Administration of the Contract

4.2.4 Addition of new language requiring all communications where construction management is utilized, shall be through the Construction Manager.

Article 8 – Time

8.4 Acceleration

.1 Addition of Construction Manager title.

Article 16 – Special Conditions

16.1 – Delete paragraph in its entirety.

Add the following Article 16.1 Special Conditions as follows:

16.1 In order to ensure the proper payment of wages and overtime; that payroll taxes and only legal deductions are being deducted from employees' compensation; and compliance with the WV Jobs Act is followed, all contractors and subcontractors shall keep and retain payroll records in accordance with the Fair Labor Standards Act (29 CFR 516) and the West Virginia Minimum Wage & Maximum Hours Standards Act West Virginia Code 21 5C-5. Payroll records shall be kept by the contractor in accordance with West Virginia Wage Payment and Collection Act West Virginia Code 21-5-1 et seq. including the requirements and remedies regarding construction employer's wage bond for wages and benefits and the West Virginia Code 38-2-39 regarding bonding requirement for the construction of public buildings. 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 other SBA approved document. Certified payrolls must include names, address and social security numbers of all workers, including those of any subcontractors. Upon request, counties will be required to submit the certified payroll report to the SBA for review.

16.4 Payroll Certification and Employment Reporting

16.4.1 – Delete paragraph in its entirety and replace with the following:

16.4 Payroll Records and Retention

16.4.1 All contractors and subcontractors are required to keep and retain payroll records in accordance with the Fair Labor Standards Act (29 CFR 516) and West Virginia Code 21 5C-5, 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 DOL 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. Upon request, counties will be required to submit the certified payroll report these records to the SBA for review.

As required by the FLSA all contractors and subcontractors shall preserve for all payroll records for a minimum of three years. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules and records of additions to or deductions from wages.

SBA Form 120

The addition of Flood Elevation Certification under Project Status section and Description of Existing Facilities #1 and #2.

SBA Form 193

Addition of new form for third-tier Subcontractors to complete.

SBA Form 165

Health and Safety – The addition of language regarding flood damage.

SBA Policy and Procedures
APPENDIX J

(PART 1 – SBA SUPPLEMENTAL INSTRUCTIONS TO BIDDERS)

THE FOLLOWING SBA SUPPLEMENTAL CONDITIONS CHANGE, DELETE FROM OR ADD TO THE AIA A701-1997 INSTRUCTIONS TO BIDDERS AND SHALL BE INCORPORATED INTO THE PROJECT MANUAL UNDER THE INSTRUCTION TO BIDDERS. THIS DOCUMENT SHALL BE PRINTED ON NON-WHITE PAPER TO BE DISTINGUISHED FROM OTHER SPECIFICATION PAGES.

ARTICLE 2 – BIDDER’S REPRESENTATIONS:

Add the following to Article 2 Bidder’s Representation.

Add the following section:

- 2.1.5** Failure to have official representation and official registration of attendance at the pre-bid meeting will disqualify contractors from bidding the project. The representative shall be an employee of the company being represented. Should it be determined that the representative is not employed by the company being represented, that company’s bid proposal shall be rejected.

ARTICLE 3 – BIDDING DOCUMENTS:

Add the following to Article 3 – Bidding Documents

3.3 Substitutions

- 3.3.2** Delete the first sentence and add the following: “No substitutions will be considered prior to the receipt of Bids unless a written request for approval has been received by the Architect at least ten (10) days prior to the date for receipt of Bids.

3.4 Addenda

- 3.4.5** Failure to submit SBA Form 184 Certification of Receipt of Addenda shall result in disqualification of the bid.

ARTICLE 4 – BIDDING PROCEDURES:

Add the following to Article 4 Bidding Procedures.

4.1 Preparation of Bids

- 4.1.5** *Add the following sentence:*
If no Alternate Bid is proposed by the Bidder, write “no bid”

Add the following section:

- 4.1.8** All requested Bid Proposals shall be bid. If Bidder elects not to provide such Bid, write “no bid”

4.2 Bid Security

Add the following section:

- 4.2.4**

- .1 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.
- .2 Irrevocable Letter of Credit is not acceptable as a Bid Bond.
- .3 A certified cashiers' check is not acceptable as a Bid Bond.
- .4 Personal securities are not acceptable as a Bid Bond.

4.3 Submission of Bids

4.3.1 *Delete Paragraph 4.3.1 in its entirety and replace with the following:*

Bids shall be submitted using the three envelope system. Valid bid bond, certification of receipt of addenda (SBA 184), Bid Certification Form (SBA157) and a copy of the bidder's valid WV Contractor's License, a copy of the WV Drug Free Work Place Affidavit (SBA 188) and the State of WV Purchasing Affidavit (SBA 185), shall be sealed in an opaque envelope labeled "Envelope #1". The completed and signed bid form shall be sealed in an opaque envelope labeled "Envelope #2 Bid Form". Envelopes #1 and #2 and the SBA bid checklist (SBA Form 183) shall be sealed inside of an opaque envelope addressed to the party receiving the bids and shall be identified with the project name, the bidder's name and address and the designated portion of the work for which the bid is submitted. If the bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "Sealed Bid Enclosed" on the face thereof. Failure to provide any the required documentation will result in disqualification of the bid being submitted.

4.3.2 *Delete this section in its entirety and replace with the following:*

In accordance with WV Code Section 5-22-2 (a), the public entity accepting bids shall designate the time and place the bids will be received. No public entity may accept or take any bid, including receiving a hand delivered bid, after the time advertised to take bids.

4.4 Modification or Withdrawal of Bid

Add the following section:

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

damages, not as a penalty. Should the actual bid documents indicate additional time for bid withdrawal, the bid documents shall prevail.

ARTICLE 5 – CONSIDERATION OF BIDS:

Add the following to Article 5 – Consideration of Bids.

5.2 Rejection of Bids. Delete paragraph 5.2 in its entirety and replace with the following:

5.2 The Owner shall have the right to reject any or all Bids or to reject a Bid which has been deemed incomplete or irregular, in accordance with Section 5-22-2 (b) of the WV Code. Should the bidder claim their bid to be erroneous, the bidder must provide undisputable evidence of the error. If upon receipt of evidence, the bid is determined to be erroneous, the required bid bond will be returned to the bidder.

5.3 Acceptance of Bid – (Award of Contract)

Revise 5.3.1 to read as follows:

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.

Revise 5.3.2 to read as follows:

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.

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 any such Alternate items appearing on the proposal, in no prioritized order, thereby reducing or increasing the amount of the Base Bid.

Revise 5.3.3 to read as follows:

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.

Add the following:

- 5.3.4** 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 factors in SBA Criteria for Selection of Lowest Qualified Bidders, 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.
- 5.3.5** Any bidder adversely affected by the intended decision of the Owner to award a contract or to reject all bids shall file a notice of protest and bond with the Owner within seventy-two (72) hours after the issuance of the intent to award. A formal written protest shall be filed with the Owner with ten (10) days after filing the notice of protest with the Owner, stating with particularity the facts and law upon which the protest is based.
- 5.3.6** All notices of protest and formal protest shall be filed with the Owner.
- 5.3.7** A protest is not timely filed unless both the notice of protest and the formal protest are received by the Owner within the required time limits. A written notice of protest which is filed by 4:00 p.m. on the date on which the seventy- two (72) hours expires is timely. If such a date is Saturday, Sunday or a legal holiday, the period shall run until 4:00 p.m. of the next day that is not a Saturday, Sunday or a legal holiday.
- 5.3.8** The Owner has the sole authority to review the protest and render a decision. The Director of the County, or his/her designee, shall review the protest and issue a written decision. A hearing may be conducted at the option of the Director or assigned designee.
- 5.3.9** If the bidder is not satisfied with the Owner's decision, they may take appropriate legal action through the West Virginia court system. Any bidder who files a notice of protest with the West Virginia Court System in a bid rejection or an award pursuant to this section shall post with the Owner, at the time of filing the notice of protest, a bond payable to the Owner in an amount equal to one percent (1%) of the lowest bid submitted, or \$5,000, whichever is greater.
- 5.3.10** All protest bonds shall be made payable to the Owner and shall be signed and sealed by the protestor and surety. The bonds shall bind the protestor and surety and be conditioned upon the satisfaction of any cost and charges included in any final order of judgment of appellate proceedings, in the event that the Owner prevails. In lieu of a bond, the protestor may submit a cashier's check or bank money order made payable to the Owner, the monies shall be held in trust by the Owner.
- 5.3.11** If the protesting party prevails after completion of the protest and any appellate court proceedings, it shall be entitled to recover from the Owner all costs and

charges included in the final order or judgment, excluding attorney's fees. If the Owner prevails it shall recover all costs and charges included in the final order or judgment excluding attorney's fees. Upon payment of such costs and charges by the protestor, the bond shall be returned. The entire amount of the bond shall be forfeited if the hearing officer determines that a protest was filed for a frivolous or improper purpose including, but not limited to, the purpose of harassing, causing unnecessary delay or causing needless expense for the Owner or successful bidder.

5.3.12 The Owner shall be considered the prevailing party if the protestor withdraws the protest at any time before the entry of the final order.

ARTICLE 6 – POST BID INFORMATION

Add the following to Article 6 Post Bid Information

6.1 Contractor Qualification Statement. Delete paragraph 6.1 in its entirety and replace with the following:

- 6.1.1** A completed Contractor Qualification Statement (SBA 105) 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. Therefore, the SBA shall determine whether or not the provided information satisfies the intent of the required form. 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.
- 6.1.2** The confidential reviewed financial statement section of this document shall be 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). Review financial statements shall not be required of any subcontractor covered by the Prime Contractor's surety. The latest available financial information must be used. Minimum requirements for financial statements provided by lowest qualified bidder are:
- a. Accountants compilation report;
 - b. Balance sheet;
 - c. Income statement;
 - d. Statement of changes in retained earnings;
 - e. Statement of cash flows; and
 - f. Notes to the financial statement.

- 6.1.3** In addition to the financial statement, the successful low bid contractor(s) shall submit a completed Affidavit of Debt Paid (SBA Form 177) to the owner and SBA within 72 hours of the close of the bid.
- 6.1.4** Construction contractors or subcontractors or equipment/material suppliers who have demonstrated a pattern of poor and/or non-compliant work performance, failure to comply with the construction schedule and phasing plan established in the bidding documents which 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 latest SBA approved AIA Contract Document General Conditions, will be placed on 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.
- 6.1.5** 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 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.
 - b. 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.
 - c. 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.

6.3 Submittals: Delete paragraph 6.3.1 thru 6.3.4 in their entirety and replace with the following:

6.3.1 Submittal of Subcontractors and Major Equipment and Materials Suppliers

- .1 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

- .2 All Subcontractors listed on the SBA Form 123, provided by the apparent low bidder, shall provide a separate SBA Form 193 listing any subcontract agreements that the subcontractor may have relating to their work. This SBA form must be reviewed and signed by the Prime Contractor then submitted directly to the SBA office by the Subcontractor within 72 hours immediately following the receipt of bids.
- .3 Each bidder is required to establish the reliability and responsibility of all subcontractors 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.
- .4 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.
- .5 Failure of any Subcontractor to submit their required SBA Form 193 within 72 hours immediately following the bids shall result in disqualification of that Subcontractor. The apparent low bidder will be required to replace the disqualified subcontractor with no additional cost to the owner.
- .6 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.

- .7 Prior to the award of the contract, the Architect/Engineer will make 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.
- .8 Written approval shall be obtained from the Architect/Engineer covering any substitution of equipment or materials. Substitutions are permitted in the following instances:
 - a. Failure to meet quality and intent of specification and/or
 - b. Failure of the supplier or manufacturer to meet delivery schedules or other conditions of the contract.
- .9 During the 72 hours immediately following the bid opening, the SBA shall review the information provided on the required SBA Form 123 to determine if the provided information satisfies the intent of the form. The Owner/SBA reserves the right to reject the proposal of any bidder who fails to furnish all required equipment and material information necessary to meet the intent of the form.
- .10 The SBA recommends that all prime 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, the scope of work included or not included in the price quotation that will be provided and most importantly, receive confirmation from the subcontractor that they understand the requirements and constraints of the project schedule. The SBA will not allow a prime contractor or 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.
- .11 Each bidder acknowledges responsibilities for each of its subcontractors, thus accepts responsibility of those subcontractors ability to meet the project timelines established. Therefore, failure of the prime bidder to take all available actions with regards to requiring the subcontractor to meet the project schedule may result in disciplinary action on the prime bidder and the subcontractor by the SBA.
- .12 Each bidder further acknowledges that use of any Subcontractors other than

those indicated on the SBA Form 123 without prior written approval of the SBA shall result in the bidder being placed on bidding probation by the SBA for a period of at least one year subject to review and recommendation of reinstatement by the Executive Director.

6.3.2 Bid Certification

1. In accordance with West Virginia Code 5-22-1, Article 22, the lowest qualified responsible bidder submitting bid on SBA funded projects must certify that all provisions within this code and SBA provisions that supersede 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

6.3.4 Taxes: (Contractor Registration Certificate and Tax Releases)

1. 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.
2. 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.

6.3.6 Contractor Licensing:

- .1 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. A contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts.
 - b. 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 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. Failure to submit the properly completed SBA Form 123 to the SBA office within the two-hour time frame will result in disqualification of the bid.

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 subcontractor's compliance with state regulatory agencies.
11. The bidder's history of compliance with fringe benefit contributions, i.e., health insurance and pension benefits.
12. The bidder's local hiring plan and history of compliance with the WV Jobs Act, (WV Code, Chapter 21, Article 1C) regarding use of the local labor market.
13. The bonding record of the bidder.

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

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

SBA Policy and Procedures
APPENDIX J

(PART 2 –SUPPLEMENTAL GENERAL CONDITIONS)

THE FOLLOWING SBA SUPPLEMENTAL CONDITIONS CHANGE, DELETE FROM OR ADD TO THE “GENERAL CONDITIONS” OF THE CONTRACT AIA DOCUMENT A201 AND SHALL BE INCORPORATED INTO THE PROJECT MANUAL. THIS DOCUMENT SHALL BE PRINTED ON NON-WHITE PAPER TO BE DISTINGUISHED FROM OTHER SPECIFICATION PAGES.

ARTICLE 1 – GENERAL PROVISIONS

1.1 Basic Definitions

1.1.1 The Contract Documents

Delete the last sentence and add the following:

The Contract Documents also include Bidding Requirements, (Advertisement to Bid, Instructions to Bidders, Supplemental Instructions to Bidders, sample forms, and the portions of the addenda relating to bidding requirements), the Contractor’s Bid, Bid Bond, Contractor’s Qualification Statement, List of Subcontractors, Equipment/Material Suppliers, and other documents listed in the Agreement.

Add the following Section:

1.1.9 Litigation

Litigation refers to a civil action instituted in the Circuit Court in the County in which the Project is located.

ARTICLE 3 – CONTRACTOR

3.7 Permits, Fees, Notices and Compliances with Laws

Add the following Section:

3.7.6 For the Owner’s records, Contractor shall 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.

3.9 Superintendent

Add the following Section:

3.9.4 The General Trades Contractor’s on site project Superintendent is to provide full-time project supervision and who is not to perform work with tools or equipment.

3.10 Contractor’s Construction Schedules

Delete Section 3.10.1 in its entirety and substitute the following:

3.10.1 The Contractor, prior to submission of the second pay application, shall prepare and submit for the owner’s and architect’s information, a contractor’s construction schedule for the work in accordance with the requirements of SBA Form 187. The schedule shall not exceed the time limits as defined in the contract documents and shall update or revise every 30 days. Thereafter, all Prime Contractors shall review and provide written approval of the construction schedule and each subsequent revision thereof. The schedule shall be related to

the entire project to the extent required by the contract documents, and shall provide for expeditions and practicable execution of the work.

3.18 Indemnification

Delete Section 3.18.1 in its entirety and substitute the following:

3.18.1 The Contractor agrees to indemnify and hold harmless the Owner, the Architect, the Architect's consultants, and the officers, principals, shareholders, agents and employees, of any of them from and against all claims, demands, actions, causes of action, damages, losses, fines, civil penalties, and expenses, including but not limited to attorney's fees, arising or resulting (or alleged to arise or result), in whole or in part, from the performance of the Work or from any act or omission of the Contractor, a Subcontractor, a Sub-subcontractor, or any other person furnishing labor, services, materials or equipment with respect to the Work as well as anyone employed directly or indirectly by them or anyone for whose acts or omissions they may be liable, regardless of whether such claim, demand, action, cause of action, damage, loss, fine, civil penalty or expense may have or is alleged to have arisen or resulted from an act or omission of any party indemnified hereunder; provided, however, Contractor's obligations hereunder shall not be construed to apply to any claim, demand, action, cause of action, damage, loss, fine, civil penalty or expense arising solely from the negligence of any person indemnified hereunder. Contractor's indemnity obligation set forth above shall extend to the claim of any employee of the Contractor, of a Subcontractor, a Sub-subcontractor, or any other person furnishing labor, services, materials, or equipment with respect to the Work, of anyone employed directly or indirectly by them or of anyone for whose acts they may be liable. Contractor's indemnity obligations shall survive termination of this Agreement.

Delete Section 3.18.2 in its entirety and substitute the following:

3.18.2 In claims against any person or entity indemnified under this Section 3.18 made by an employee of the Contractor, a Subcontractor, a Sub-subcontractor, or any other person furnishing labor, services, materials, or equipment with respect to the Work, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section 3.18 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 – ADMINISTRATION OF THE CONTRACT

4.2 Administration of the Contract

Revise the first sentence of Section 4.2.2 to read as follows:

4.2.2 The project Architect/Engineer responsible for the design of the facility shall attend a minimum of one (1) construction progress meeting each month, to become generally familiar with the progress and quality of the portion of the work

completed, to aide and assist with questions or issues that have arisen during construction, and to determine, in general, if the work observed is being performed in a manner indicating that the work, when fully completed, will be in accordance with the contract documents. This person must have authority to render decisions on the project in order to avoid unnecessary delays.

Delete Section 4.2.4 in its entirety and substitute the following:

4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors, Sub-subcontractors and material suppliers shall be through the Contractor. Communications by and with separate Contractors shall be through the Owner on projects where construction management is utilized, all communication shall be through the Construction Manager.

Add the following Section:

4.2.15 The School Building Authority (SBA) of West Virginia reserves the right to visit projects at intervals deemed necessary to observe the progress of construction. The SBA field representative shall have such responsibilities as the SBA may delegate.

ARTICLE 6 – CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS (Only Applicable in Multiple Prime Contractor Situations)

6.1 Owner's Right to Perform Construction and To Award Separate Contracts

Delete Sections 6.1.1. through 6.1.3. in their entirety and add the following Sections:

6.1.1. Multiple Prime Contracts. The Contractor acknowledges that the Owner will contract with other Prime Contractors for other parts of the Project under conditions of the Contract identical or substantially similar to these. The term Contractor in the Contract documents shall in each case mean the Contractor who executes each separate Owner-Contractor Agreement. In preparing its Bid, the Contractor has carefully reviewed those documents made available to it by the Owner or Architect relating to the scheduling and nature of other contracts which may be awarded and has submitted a proposal which takes into account the need to coordinate its Work with that of other Prime Contractors. The Contractor further agrees that time is of the essence in completion of the Work and that the Work will be completed promptly and according to the Project Schedule. It is the express obligation and duty of the Contractor under this Contract to coordinate its Work with the Work of other Prime Contractors to achieve such completion.

6.1.2. Contractor's Duty to Coordinate. The Contractor shall not impede, hinder or delay any other Prime Contractor in the performance of its work. It is the Contractor's duty to communicate with any other Prime Contractor who will be performing work which may connect, compliment, interfere with or otherwise be

dependent upon the Contractor's Work and to resolve any disputes or scheduling or coordination issues with such other Prime Contractor. All Prime Contractors are responsible, jointly and severally, for coordinating their various sections of work as to scheduling, installation procedures, Shop Drawings and installation of related materials. Provided that the Contractor does not thereby assume responsibility for acts or omissions of the other contractors, if required to do so by the Construction Manager, the Contractor shall review the actual progress of other Prime Contractors work on a monthly basis and advise the Owner as to whether the Request for Payment submitted by any other Prime Contractor is in accordance with the actual progress of the corresponding work.

- 6.1.3. Owner's Coordination Duties.** Neither the Owner nor the Architect has any obligation express or implied to coordinate or schedule the Work of Contractor with that of other Prime Contractors.
- 6.1.4. Third Party-Beneficiary.** Each other Prime Contractor has a right to performance of Contractor's obligations under this Article 6. Contractor agrees that such other Prime Contractors are third-party beneficiaries of its obligations under this Article 6 and that Contractor will be a third-party beneficiary of all other Prime Contractors' obligations under the same provisions appearing in their respective Contract Documents.
- 6.1.5. Contractors' Liability to Each Other.** In the event that any other Prime Contractor performing work should hinder, delay or damage the Contractor's Work or should otherwise cause loss (including acceleration costs) or injury to the Contractor, Contractor agrees that it shall look solely to such other Prime Contractor for relief therefore. Neither the Owner nor the Architect shall be responsible for any such hindrance, delay, damage, loss, or injury, and the Contractor will, in no event, attempt to hold the Owner or Architect liable for the costs thereof. The Contractor shall not make: (a) any claim for adjustment of Contract Sum or Contract Time, equitable or otherwise, against the Owner based on any of the foregoing; (b) a claim of any type against the Architect arising from such hindrance, delay, damage, loss or injury. Similarly, the Contractor agrees that it will be legally responsible to any other Prime Contractor performing work related to the Project and will indemnify the Owner and Architect against any claim, suit loss, injury, damage or delay including, but not limited to, acceleration costs incurred as a result of delay, caused, in whole or part, by the Contractor. The Contractor and its Performance Bond surety shall indemnify and hold harmless the Owner, and the Architect from and against any claim brought against any of them by another Prime Contractor including costs, expenses and attorneys' fees incurred by any of them as a result of the Contractors alleged acts or omissions.

6.2 Mutual Responsibility

Delete Section 6.2.3 in its entirety.

ARTICLE 8 – TIME

Add the following Section:

8.4 Acceleration

- .1 If the Contractor is behind the construction schedule to such an extent that the Owner, Architect or Construction Manager reasonably determines that the Contractor will be unable to meet any milestone completion date established by the Contract Documents or to substantially complete the Work in the Contract Time, the Owner may direct the Contractor to accelerate its work. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work to allow contractor to meet future milestone completion dates and achieve substantial completion within the Contract Time. Such acceleration shall be accomplished at the Contractor's own cost. Contractor shall also pay any additional sums which may become due to the Architect as a result of such acceleration. If the Contractor voluntarily accelerates its work to maintain the construction schedule, it shall likewise do so at its own cost. Under Multiple Prime Contracts if the cause of Contractor being behind schedule is another Prime Contractor(s)'s failure to fulfill its obligations under Article 6, Contractor shall make its claim for acceleration costs solely against such Prime Contractor(s) and not against the Owner, Architect or Construction Manager.

ARTICLE 9 – PAYMENTS AND COMPLETION

Add the following to Article 9 Payments and Completion.

9.2 Schedule of Values. *Delete this Section in its' entirety and replace with the following:*

- 9.2.1** Provide a complete, itemized breakdown of the "Schedule of Values" for the work of this Contract. This "Schedule of Values" must be submitted by each prime Contractor prior to the first Application for Payment by the Contractor, and approved by Architect, County and SBA, prior to the first payment. Unless otherwise required, each line item must include its allocable share of the Contractor's overhead and profit. The Prime Contractor is to follow the following guidelines in development of the "Schedule of Values":
 - a) The "Schedule of Value" shall be prepared in such detail and must be supported by such data to substantiate its accuracy as required by Architect, County and SBA.
 - b) The "Schedule of Values" shall be broken down by Specification Section, then Phase, Section and/or Floor, then product, then Material & Labor, as appropriate for the Project, and as required by Architect, County and SBA. See the below example.
 - c) The "Schedule of Values" shall be broken down in such detail where no single activity exceeds \$100,000. In the event a single activity exceeds \$100,000 (i.e. – equipment, pre-assembled unit, etc.) the Contractor must notify the Architect in writing and obtain approval from the Architect, County and SBA.

- d) The “Schedule of Values” shall utilize action words for description of an activity, i.e. install, place, rough-in, etc.
- e) The “Schedule of Values” shall provide a breakdown for labor, material and equipment, as appropriate and as required Architect, County and SBA.

Section 0000 1

Phase/Section/Area/Floor “A”
Product X
Material Cost
Labor Cost
Product Y
Material Cost
Labor Cost
Phase/Section/Area/Floor “B”
Product X
Material Cost
Labor Cost
Product Y
Material Cost
Labor Cost

Section 0000 2

Phase/Section/Area/Floor “A”
Product S
Material Cost
Labor Cost

Section 0000 3

Etc.

9.2.2 At the Owner’s discretion, and approved in advance in writing, the Contractor may invoice for off-site stored materials. The off-site stored materials must be verified by a representative of the County prior the approval for payment. All off-site stored material for which payment is being sought shall be scheduled for three (3) months prior to installation. Off-site stored materials shall be stored within the State of West Virginia, unless otherwise approved. Also, the Contractors must provide the Owner with a proof of cost (i.e.– sales receipt) and certificate of insurance from an approved insurance carrier for the value of full replacement of materials stored off-site; also naming the County and SBA as additionally insured.

9.3 Applications for Payment. *Add the following:*

9.3.1.3 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.

Add the following Section:

9.3.4 The School Building Authority (SBA) of West Virginia 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.

Add the following Section:

9.3.5 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. **Note: An approved construction schedule must be in place prior to the second pay application being requested. All Prime Contractors shall review and provide written approval of construction schedule and each subsequent revision thereof. Failure to comply with this provision will result in delayed processing of this and all future pay applications until the owner and SBA approved schedule is in place.**

9.8.5 Substantial Completion

In the second sentence, change the phrase "make payment of retainage" to read "make partial payment of retainage."

Add the following to the end of Section 9.8.5

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.

Add the following Section:

9.10 Final Completion and Final Payment

9.10.2

- .1 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.
- .2 Affidavit of Debt Paid – In accordance with West Virginia Code 5A-3-10a, contractors are required to submit an Affidavit of Debt Paid SBA Form 177. This form shall be submitted to the county board of education or contracting agency along with other closeout documents.
- .3 Should the Architect determine during the final inspection that the remaining work is not completed in accordance with the terms and conditions of the contract documents, the Contractor shall be responsible for all costs associated with the Architect’s return visits. Costs shall include, but are not limited to, hourly wage, mileage reimbursement, accommodations, and miscellaneous reimbursables.**

Add the following Section:

9.11 Liquidated Damages

9.11.1 It is acknowledged that the Contractor’s failure to achieve substantial completion of the Work within the Contract Time provided by the Contract Documents will cause the Owner to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Owner of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Owner as against Contractor and its Surety, in the event of delayed completion and without the Owner being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Contractor shall be liable to the owner for payment of liquidated damages in the amount indicated below for each day (Sundays and Holidays included) that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to Owner without limiting Owner’s right to terminate this agreement for default as provided elsewhere herein.

Liquidated damages will be assessed as follows:

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

Over \$5,000,000

\$2,000.00/per day

ARTICLE 11 – INSURANCE AND BONDS

11.3 Property Insurance

Add the following Section:

11.3.11

- .1 The General Contractor for Multiple Prime Contracts is responsible for providing Builder's Risk Insurance meeting the requirements of this Section 11.3 for all Prime Contractors. See Section 11.5.1 for values and named insured. Payment of deductibles shall be the responsibility of the Prime Contractors' prorated by percentage among the claimants based on value of claim. General Contractor shall act as the fiduciary for distribution of insurance proceeds to the insured in the manner described in Section 11.3.8.
- .2 The Single Prime Contractor (Including Site Prep) is responsible for providing Builder's Risk Insurance meeting the requirements of this Section 11.3. See Section 11.5.1 for values and named insured. Payment of deductibles shall be the responsibility of the Contractor. Contractor shall act as the fiduciary for distribution of insurance proceeds to the insured in the manner described in Section 11.3.8.

11.4 Performance Bond and Payment Bond

Add the following Section:

11.4.3

- .1 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.

- .2 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.
- .3 Irrevocable Letter of Credit is not acceptable as a Performance Bond.
- .4 A certified cashiers' check is not acceptable as a Performance Bond.
- .5 Personal securities are not acceptable as a Performance Bond.
- .6 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 may no longer be eligible to bid future projects funded by the School Building Authority of West Virginia.

Add the following Section:

11.4.4 Workers Compensation Coverage shall be provided on the project by all Contractors. Proof of continued Workers Compensation coverage throughout the duration of the project shall be provided on the certificate of coverage.

Add the following Section:

11.5 Insurance

11.5.1 In furtherance of Article 11 of General Conditions, each contractor furnishing labor and materials shall provide 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**.

Part One - Worker's Compensation

Contractors shall purchase and maintain workers' compensation insurance from a licensed carrier authorized to provide such coverage in the State of West Virginia.

Part Two - Employer's Liability – Limits Required:

\$1,000,000 – bodily injury by accident/each accident

\$1,000,000 – bodily injury by disease/per policy

\$1,000,000 – bodily injury disease/each employee

Coverage must include broad form employer's liability and a waiver of subrogation from workers' compensation carrier.

Contractor's Public Liability Insurance - Limits Required:

\$2,000,000 – General Aggregate

\$1,000,000 – Products Complete Operations Aggregate

\$1,000,000 – Personal & Advertising Injury Limit

\$1,000,000 – Each Occurrence Limit

Commercial General Liability must include:

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

If blasting operations, separate blasting coverage is required.

Contractual Liability Coverage covering claims involving Contractor's contractual liability including Contractor's indemnity obligations set forth in Section 3.18

Automobile Liability Insurance

Limits Required:

\$1,000,000 – Per Accident

Provide "Any Auto" Coverage

Excess Liability Insurance

Limits Required:

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

\$2,000,000 – Aggregate

Builders Risk and Property Insurance

100% Completed Value Form (refer to Division 1 Section "Allowances" for Multiple Prime Contracts)

Coverage Format:

All Risk including flood, earthquake and 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.

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

Single Prime Contractor (Including Site Prep) is responsible for providing Builder's Risk Insurance. Deductibles shall be stated in the Certificate of Insurance. Payment of Deductibles shall be the responsibility of the Contractor.

The General Contractor for Multiple Prime Contracts is responsible for providing Builder's Risk Insurance for all Prime Contractors. Deductibles are to be a maximum of \$2500 per occurrence and shall be stated in the Certificate of Insurance. Payment of deductibles shall be the responsibility of the Prime Contractors' prorated by percentage among the claimants based upon value of claim.

Names Insured shall be, the Contractor and all Subcontractors ATIMA. The Owner, Construction Analyst or Construction Manager and Architect are to be listed as additionally insured.

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

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.

Certificate of Insurance

The Certificate of Insurance and copy of endorsement of the policy stating that the Owner and Architect are additionally insured 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 thirty (30) 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, Construction Analyst or Construction Manager 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.

ARTICLE 15 – CLAIMS AND DISPUTES

15.1.5 Claims for Additional Time

Add the following to Section 15.1.5.2:

15.1.5.2.1 Contractor shall supply climatological data from either an onsite weather station or from a National Oceanic and Atmospheric Administration (NOAA) or other

approved nearby weather reporting station, to substantiate any claim for lost days due to weather. All documentation, including SBA Form 186, shall be submitted to the Architect prior to the 15th day of the month following the proposed claim for review and consideration. Failure to submit these claims monthly basis shall result in forfeiture of the claim.

15.1.5.2.2 Weather delays shall be substantiation for a cost increase claim for site supervision labor and general site operations costs including direct rental costs (i.e. construction trailer, toilet facilities, fencing, dumpsters). Overhead and profit shall not be applied to the rental costs.

15.1.5.2.3 Claims for days lost due to weather delays, on days which have historically been non-work days on the project (i.e. weekends, holidays, and Fridays when four day work weeks are implemented), shall not be granted, unless work has occurred on these days for two consecutive work weeks immediately prior to the days being claimed.

ARTICLE 16 – SPECIAL CONDITIONS

Add the following Article 16 Special Conditions as follows:

16.1 In order to ensure the proper payment of wages and overtime; that payroll taxes and only legal deductions are being deducted from employees' compensation; and compliance with the WV Jobs Act is followed, all contractors and subcontractors shall keep and retain payroll records in accordance with the Fair Labor Standards Act (29 CFR 516) and the West Virginia Minimum Wage & Maximum Hours Standards Act West Virginia Code 21-5C-5. Payroll records shall be kept by the contractor in accordance with West Virginia Wage Payment and Collection Act West Virginia Code 21-5-1 et seq. including the requirements and remedies regarding construction employer's wage bond for wages and benefits and the West Virginia Code 38-2-39 regarding bonding requirement for the construction of public buildings. 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 other SBA approved document. Certified payrolls must include names, address and last four digits of the social security numbers of all workers, including those of any subcontractors. Upon request, counties will be required to submit the certified payroll report to the SBA for review.

16.2 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.

16.3 Compliance with Codes and Governmental Requirements

16.3.2 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:

- a. West Virginia State Building Code
- b. American Society for Testing Materials (ASTM)
- c. American National Standards Institute (ANSI) to the extent adopted by authorities having jurisdiction at the job site.
- d. West Virginia State Fire Code
- e. National Electrical Code (NEC)
- f. American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE)

16.3.3 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:

- a. West Virginia State Fire Marshal
- b. West Virginia Department of Health
- c. West Virginia Department of Natural Resources
- d. West Virginia Department of Highways
- e. West Virginia Department of Education
- f. West Virginia Division of Labor
- g. School Building Authority of West Virginia
- h. West Virginia Division of Environmental Protection

16.4 Payroll Records and Retention

16.4.1 All contractors and subcontractors are required to keep and retain payroll records in accordance with the Fair Labor Standards Act (29 CFR 516) and West Virginia Code 21 5C-5. 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 DOL 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 last four digits of the social security numbers of all workers, including those of any subcontractors. Upon request, counties will be required to submit the certified payroll records to the SBA for review.

As required by the FLSA all contractors and subcontractors shall preserve for all payroll records for a minimum of three years. Records on which wage computations are based should be retained for two years, i.e., time cards and piece work tickets, wage rate tables, work and time schedules and records of additions to or deductions from wages.

- 16.4.2** All contractors and subcontractors must comply with the “West Virginia Jobs Act” requirements found in Chapter 21, Article 1C of the West Virginia Code and all Department of Labor regulations.
- 16.4.3** County school boards and other grant recipients shall require all contractors and service providers to verify the criminal records of their employees before granting access to the construction site. All prime contractors and their subcontractors that will be present on the construction site or other board property shall provide the County Board or other grant recipient (owner) assurances of compliance with pertinent WV Code and SBA Policy by verifying the eligibility of all workers by providing a completed SBA Forms 181 and 182 to the County Board of Education or other grant recipient (owner). These forms shall be submitted along with the contract for construction and the contract will not be fully executed until this provision has been satisfied.
- 16.4.4** The successful low bid prime contractor and all subcontractors performing work on the project shall verify the legal status of all workers and shall comply with the latest West Virginia Code chapter 21 article 1B. All prime contractors and their subcontractors shall provide assurances to the county boards of education or other grant recipients (owner) by submitting a completed SBA Form 181. This document acknowledges the prime contractor has received assurances from subcontractors (SBA Form 182) that they are in compliance with applicable WV Code and SBA Policy. Contractors shall maintain records verifying the legal status of workers and shall, upon request by the Commissioner of Labor, surrender all employee records, including all records relating to the payment of State and Federal taxes, for verification of their legal status. If upon examination of records, the Commissioner determines that a contractor is in violation of the provisions of this code, the Commissioner may enter and order that imposes disciplinary action as provided for in article 21-1B- 1 thru 7 of the West Virginia Code.
- 16.4.5** Provide at Project Close-out the following documentation, but not limited to:
- a. Contractor’s Affidavit of Payment of Debts and Claims (AIA G706)
 - b. Contractor’s Affidavit of Release of Liens (AIA G706A)
 - c. Consent of Surety Company to Final Payment (AIA G707)
 - d. Certificate of Insurance (Acord Form and AIA G715) Covering required/specified products and completed operation
 - e. Certificate of Release from the Department of Tax and Revenue stating all appropriate taxes have been paid
 - f. Verification from the Owner (county superintendent) that all Owner training required by the contract documents has been conducted (SBA 159)
 - g. Fire Marshall’s Certificate of Occupancy
 - h. Affidavit of Debt Paid (SBA 177)
 - i. Prepare quality training videos

16.5 SBA Project Observation

- 16.5.1** 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.
- 16.5.2** 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.
- 16.5.3** 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.
 - .3 The scheduled punch list walk-thru of the new or renovated school.
- 16.5.2** 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. Where specified, the installation contractor shall provide two-year maintenance and operations for HVAC equipment and other components as described in the bidding documents. The State Department of Education's HVAC Technicians shall be notified of the date and location of any and all training sessions in order to assure its ability to fulfill their responsibilities as delineated in WV Code 18-9E-3(F) & (G). At the conclusion of the training, the grant recipient shall submit the verification of HVAC Training Form (SBA Form 159) to the SBA office.

NEEDS

School Building Authority of West Virginia
CONSTRUCTION FUND PROJECT "NEEDS"
EXECUTIVE SUMMARY
SBA FORM 120

PROJECT _____
COUNTY _____ **PROJECT COST** \$ _____

<u>IMPLEMENTING TOTAL CEFP</u>		<u>FUNDING SOURCE – THIS PROJECT</u>	
SBA NEEDS	\$ _____	SBA	\$ _____
SBA MIP	\$ _____		
LOCAL	\$ _____	LOCAL	\$ _____
FEDERAL	\$ _____	FEDERAL	\$ _____
OTHER	\$ _____	OTHER	\$ _____
TOTAL	\$ _____	TOTAL	\$ _____

Bonding Capacity \$ _____ Available Bonding Capacity \$ _____
Excess Levy Capacity \$ _____ Remaining Levy Capacity \$ _____

If you have an excess levy:
What percentage are you currently collecting? _____ %
What amount of the excess levy is dedicated to capital improvements annually? \$ _____
What is the expiration date of your levy? _____

PROJECT DESCRIPTION:

PROJECT STATUS

Site Selected Yes _____ No _____ New Site _____
Flood Elevation Certification Received Yes _____ No _____
Geotechnical Yes _____ No _____
Existing Board Owned Property Yes _____ No _____
Survey Performed _____
Programming/Preliminary Design Completed – Describe:

SCHOOL CLOSURE STATUS

School Closure Required Yes _____ No _____
County Hearing Done Yes _____ No _____
County BOE Approved Yes _____ No _____

WV BOE Approved Yes _____ No _____
PROTO-TYPE SCHOOL

Has the county board considered using a proto-typical building design for this project? Yes _____ No _____

To the extent possible, will the county board be using A proto-typical design for this project? Yes _____ No _____

COMPLIANCE WITH SBA REQUIREMENTS – PROPOSED NEW PROJECT

HEALTH AND SAFETY

ECONOMIES OF SCALE

Annual Savings \$ _____ Proposed facility will _____ will not _____
Cost Avoidance \$ _____ meet the SBA economies of scale.
Students required _____ Students enrolled _____

IF IMPLEMENTED, WHAT IS THE EFFECT OF THIS PROJECT ON PERSONNEL

- Teacher Present No. _____ Projected No. _____ Difference _____
- Service Personnel Present No. _____ Projected No. _____ Difference _____
- Administrators Present No. _____ Projected No. _____ Difference _____

MULTICOUNTY PROJECT

EDUCATIONAL INNOVATIONS AND IMPROVEMENTS

ADEQUATE SPACE FOR PROJECTED STUDENT ENROLLMENT

TRAVEL TIME

LOCAL BOND HISTORY EFFORTS

COMMENTS

#1 DESCRIPTION OF EXISTING FACILITIES

- _____ School currently houses grades _____
- Constructed on a _____ acre site in 20__ which is adequate____inadequate_____
- _____ major addition(s) in 20__
- Is the existing facility located in the flood plain Yes _____ No _____
- Existing _____ story facility contains _____ sq.ft.
- Current enrollment is _____
- 8th Year Projected Enrollment _____
- Building utilization is _____%
- Utilities: Public Water _____ On-Site Well _____ Public Sewage _____
- Package Plant _____ Other _____
- HVAC: Gas _____ Electric _____ Coal _____ Other _____
- Cost to upgrade to current standard is \$ _____
- Existing facility contains _____ major structural problems
- Health, safety and building accessibility, comments: _____

#2 DESCRIPTION OF EXISTING FACILITIES

- _____ School currently houses grades _____
- Constructed on a _____ acre site in 20__ which is adequate____inadequate_____
- _____ major addition(s) in 20__
- Existing _____ story facility contains _____ sq.ft.
- Is the existing facility located in the flood plain Yes _____ No _____
- Current enrollment is _____
- 8th Year Projected Enrollment _____
- Building utilization is _____%
- Utilities: Public Water _____ On-Site Well _____ Public Sewage _____
- Package Plant _____ Other _____
- HVAC: Gas _____ Electric _____ Coal _____ Other _____
- Cost to upgrade to current standards is \$ _____
- Existing facility contains _____ major structural problems
- Health, safety and building accessibility, comments: _____

Complete one of the above descriptions for each school affected.

School Building Authority of West Virginia
**LIST OF PROPOSED SUBCONTRACTORS
EQUIPMENT/MATERIAL SUPPLIERS
SBA FORM 123**

(This form must be submitted to the SBA within two hours of the close of bid)

*Failure to comply with the two hour submission requirement
will result in disqualification of the bid.*

Phone: (304) 558-2541

Fax: (304) 558-2539

The intent of this form is to establish a list of proposed contractors to be performing work on the project site. Additionally, the list shall be used to ensure that all proposed contractors listed are currently in compliance with the SBA and that those listed are performing work on the project site as indicated on this form.

CLEARLY AND LEGIBLY list below, the Prime Contractor's complete name and WV Contractor's license number for this proposal as required by the "West Virginia Contractor Licensing Act" (WV Code Section 21-11) Additionally, clearly and legibly list each category of work and equipment/material for this proposal and the subcontractor or supplier selected for that category of work, also provide each contractor's complete name and WV Contractor's license number for each subcontractor as required by the "West Virginia Contractor Licensing Act." If the branch of work is to be completed solely by an equipment/material supplier, indicate by notation below in the contractor license number column. If the branch of work is to be completed by the general (or prime) contractor submitting the bid, indicate on each division where this occurs provide the name and contractor license number of the contractor that will be performing the work. If no subcontractors will be used to complete the project indicate on the SBA Form 123 that all work will be self-performed and provide the name and contractor license number of the contractor that will be performing the work. **DO NOT** list multiple contractors for the same category of work. If this occurs, it must be corrected within the two hour submission time frame or the bid will be rejected. The contractor is responsible for selecting subcontractor(s) and/or equipment/material suppliers/contractors. However, the Owner, Architect/Engineer and/or School Building Authority may indicate their concerns about any entity listed which they have reason to believe past experience indicates poor performance may be expected. Therefore, the bidder may be requested to change an unsatisfactory subcontractor or equipment/material supplier should the owner, Architect/Engineer or SBA determine an unsatisfactory subcontractor is listed. The SBA shall be the sole interpreter of this document to ensure that the information provided by the prime contractor meets the intent of the form. Should the SBA determine that the intent of the form has not been met, the forms **SHALL BE RENDERED NULL AND VOID AND WILL RESULT IN REJECTION OF THE PROPOSAL.**

It is the responsibility of any contractor soliciting bids or quotes from the subcontractors to verify the eligibility of all proposed subcontractors and equipment/material suppliers being proposed to perform the work and to verify in writing the scope of work proposed by a subcontractor or supplier. The Contractor has full responsibility for satisfactory execution of all work in accordance with the contract documents. Any proposed change of subcontractors or material suppliers must have prior written approval from the SBA and shall be at no additional cost to the Owner, as the Contractor has full responsibility for execution of the work. Contractors, subcontractors and equipment/material suppliers that are on SBA Probation are prohibited from bidding any school project. List all subcontractors along with their WV contractor license number and each category of work each will perform. Additionally, list the Prime Contractor and their WV contractor license number for each category of work they will perform.

I, _____ representing _____
 (*Signature of Responsible Company*) (*Company Name*)
 on this date _____ submit the following list of subcontractors and major material
 suppliers for your review and comment. This is the final and complete list of companies who will
 be performing work or supplying materials for _____.
 (*Project Name*)

I agree that once the subcontractors and material suppliers listed are submitted to the SBA, no other subcontractors or substitute for any subcontractors listed below, will be used in the performance of the contract without written approval of the Owner and SBA. I further agree that if non-approved subcontractors or suppliers are used my company shall be placed on probation, unless in its reasonable discretion, the SBA determines otherwise. I understand that, as a result of being placed on probation by the SBA, my company shall be prohibited from bidding SBA projects for a minimum of one year.

**Complete Name
of Prime Contractor**

**Contractor
License Number**

**Category of
Work/Material**

**Complete Name
Subcontractor/Supplier**

**Contractor
License Number**

1. _____

2. _____

3. _____

4. _____

5. _____

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- 24. _____
- 25. _____
- 26. _____
- 27. _____
- 28. _____
- 29. _____
- 30. _____

(Use additional pages, if required)

School Building Authority of West Virginia
PROJECT EXECUTIVE SUMMARY
MAJOR IMPROVEMENT PLAN
SBA FORM 165

PROJECT _____

COUNTY _____ **COUNTY PRIORITY** _____

PROJECT COST _____ **DATE** _____ **SBA FUNDING CYCLE** _____

PROJECT DESCRIPTION:

FUNDING SOURCE:

TO IMPLEMENT TOTAL MIP

FUNDING FOR THIS PROJECT

SBA \$ _____ TYPE _____

SBA \$ _____ TYPE _____

LOCAL _____ TYPE _____

LOCAL _____ TYPE _____

OTHER _____

OTHER _____

TOTAL _____

TOTAL _____

Bonding Capacity \$ _____

Available Bonding Capacity \$ _____

Excess Levy Capacity \$ _____

Available Levy Capacity \$ _____

COUNTYWIDE BUDGET INFORMATION

- Are Excess Levy Funds Dedicated Annually to Maintenance? Yes ___ No ___
Amount \$ _____
- Are Excess Levy Funds Dedicated Annually to Building Improvements? Yes ___ No ___
Amount \$ _____
- Percent of Total Building Improvement or Maintenance Budget supported by Levy
_____% (Based on data provided above)
- Percent of Total County Budget dedicated to Facility Maintenance _____%
- Maintenance Budget this Year \$ _____
- Maintenance Expenditures Last Year Total \$ _____
\$/Square Foot _____
- Average Maintenance Budget for lowest three of the past five years \$ _____

Compliance with SBA Requirements Proposed New Project

Briefly describe how this project affects the following:

- **HEALTH AND SAFETY**

Is the facility located in the flood plain Yes _____ No _____

If the facility has previously been damaged by a flooding event, please indicate the year in which the event occurred and the dollar amount of damage sustained.

- **ECONOMIES OF SCALE**

Number of students enrolled in the affected facilities _____

Economies of scale will ___ will not ___ be achieved or will not be altered ___ as a result of the completion of this project.

ANNUAL SAVINGS \$ _____ COST AVOIDANCES \$ _____
(Achieved on this project) (Achieved on this project)

IF IMPLEMENTED, WHAT IS THE AFFECT OF THIS PROJECT ON PERSONNEL?

- TEACHER Present # _____ Projected # _____ Difference _____
- SERVICE PERSONNEL _____
- ADMINISTRATORS _____

- **MULTICOUNTY PROJECT**

- **EDUCATIONAL INNOVATIONS AND IMPROVEMENTS**

- **ADEQUATE SPACE FOR PROJECTED STUDENT ENROLLMENT**
- **TRAVEL TIME**
- **EFFECTIVE AND EFFICIENT USE OF PROPOSED FUNDING**
- **PROVIDING OR IMPROVING A PREVENTIVE MAINTENANCE PLAN**
- **FURTHERANCE OF THE OVERALL GOALS OF THE SBA AND THE COUNTY/AGENCY MAJOR IMPROVEMENT PLAN**

Authority of West Virginia
ARCHITECTURAL/ENGINEER FEE SCHEDULE
SBA FORM 175

CONSTRUCTION COST (NEW)	Max Fee (%)	CONSTRUCTION COST (NEW)	Max Fee(%)
Under \$3,000,000		negotiate	
\$ 3,000,000 up to \$ 4,000,000	7.0	\$16,000,000 up to \$18,000,000	5.25
\$ 4,000,000 up to \$ 5,000,000	6.8	\$18,000,000 up to \$20,000,000	5.1
\$ 5,000,000 up to \$ 6,000,000	6.6	\$20,000,000 up to \$22,000,000	5.0
\$ 6,000,000 up to \$ 8,000,000	6.4	\$22,000,000 up to \$24,000,000	4.9
\$ 8,000,000 up to \$10,000,000	6.2	\$24,000,000 up to \$27,000,000	4.8
\$10,000,000 up to \$12,000,000	6.0	\$27,000,000 up to \$30,000,000	4.7
\$12,000,000 up to \$14,000,000	5.5	\$Over \$30,000,000 up to \$60,000,000	
\$14,000,000 up to \$16,000,000	5.4	and over not to exceed	4.6

NOTE:

1. If multiple prime contracting is required by the SBA on projects where a Construction Manager is not assigned, A&E fees will be adjusted for additional bidding and construction administration services. The additional fee adjustment will be project specific and provided for the project by the SBA before executing the contract for A & E services.
2. Additional fees will not be paid by the SBA for bidding site preparation packages separate from construction packages.

CONSTRUCTION COST (Addition/Renovation)	MAX FEE (%)
Up to \$3,000,000 and under \$4,000,000	8.00
Over \$4,000,000 and under \$10,000,000	<u>7.25</u>
Over \$10,000,000 and under \$16,000,000	<u>7.00</u>
Over \$16,000,000 and under \$20,000,000	<u>6.50</u>
Over \$20,000,000	negotiate

NOTE:

1. Fee schedule is based on 50% of construction cost involving renovations. Projects where renovation costs are less 50% and/or demolitions greater than 50% of the total project cost will be negotiated based on the complexity of the project. However, the fee shall not exceed the maximum fee for the addition/renovation construction cost identified.
2. Fees for projects with construction costs less than \$3 million will be negotiated based on the scope of work.
3. Repetitive design fee for new construction will be .50 x design fee percentage.
4. Fees may only be adjusted with prior approval of the SBA for projects requiring extraordinary design requirements.

School Building Authority of West Virginia
LIST OF PROPOSED THIRD-TIER SUBCONTRACTORS
EQUIPMENT/MATERIAL SUPPLIERS
SBA FORM 193

THIS FORM IS TO BE COMPLETED FOR EACH PROPOSED SUBCONTRACTOR LISTED ON PRIME CONTRACTOR'S SBA FORM 123 AS A PART OF THE SEVENTY-TWO HOUR SUBMISSION REQUIREMENTS. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL RESULT IN DISQUALIFICATION OF THE BID.

The intent of this form is to establish a list of proposed contractors to be performing work on the project site. Additionally, the list shall be used to ensure that all proposed contractors listed are currently in compliance with the SBA and that those listed are performing work on the project site as indicated on this form.

CLEARLY AND LEGIBLY list below, the Third-Tier Contractor's complete name and WV Contractor's license number for this proposal as required by the "West Virginia Contractor Licensing Act" (WV Code Section 21-11). Additionally, clearly and legibly list each category of work for this proposal and the third-tier subcontractor selected for that category of work, also provide each contractor's complete name and WV Contractor's license number as required by the "West Virginia Contractor Licensing Act." If the branch of work is to be completed by the contractor submitting the bid, indicate on each division where this occurs and provide the name and contractor license number of the contractor that will be performing the work. If no third-tier subcontractor will be used to complete the project, indicate on the SBA Form 193 that all work will be self-performed and provide the name and contractor license number of the contractor that will be performing the work. DO NOT list multiple contractors for the same category of work. The contractor is responsible for selecting subcontractor(s) and reviewing and accepting the third-tier contractors listed. However, the Owner, Architect/Engineer and/or School Building Authority may indicate their concerns about any entity listed which they have reason to believe past experience indicates poor performance may be expected. Therefore, the prime and subcontractor may be requested to change an unsatisfactory third-tier subcontractor should the owner, Architect/Engineer or SBA determine an unsatisfactory third-tier sub-contractor is listed. The SBA shall be the sole interpreter of this document to ensure that the information provided by the prime and all subcontractors meets the intent of the form. Should the SBA determine that the intent of the form has not been met, the forms SHALL BE RENDERED NULL AND VOID AND WILL RESULT IN REJECTION OF THE PROPOSAL.

It is the responsibility of any contractor soliciting bids or quotes from the subcontractors and third-tier subcontractors to verify the eligibility of all proposed subcontractors and third-tier subcontractors being proposed to perform the work and to verify in writing the scope of work proposed to be completed. All Contractors have full responsibility for satisfactory execution of all work in accordance with the contract documents. Any proposed change of third-tier subcontractors must have prior written approval from the SBA and shall be at no additional cost to the Owner, as the Prime Contractor has full responsibility for execution of the work. Contractors and subcontractors that are on SBA Probation are prohibited from bidding any school project. List all third-tier subcontractors along with their WV contractor license number and each category of work they will perform.

I, _____ representing _____
 (*Signature of Responsible Company*) (*Company Name*)
 on this date _____ submit the following list of subcontractors for your review and
 comment. This is the final and complete list of companies who will be performing work for
 _____ on _____.

(*Prime Contractor Name*) (*Project Name*)
 I agree that once the subcontractors listed are submitted to the SBA, no other subcontractors or
 substitute for any subcontractors listed below, will be used in the performance of the contract
 without written approval of the Owner and SBA. I further agree that if non-approved
 subcontractors are used my company shall be placed on probation, unless in its reasonable
 discretion, the SBA determines otherwise. I understand that, as a result of being placed on
 probation by the SBA, my company shall be prohibited from bidding SBA projects for a minimum
 of one year.

<u>Complete Name of Subcontractor</u>	<u>Subcontractor License Number</u>

<u>Category of Work</u>	<u>Complete Name Third Tier Subcontractor/Supplier</u>	<u>Third-Tier Contractor License Number</u>
1.		
2.		
3.		
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11.		

- 12. _____

- 13. _____

- 14. _____

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- 17. _____

- 18. _____

- 19. _____

- 20. _____

- 21. _____

- 22. _____

- 23. _____

- 24. _____

- 25. _____

(Use additional pages, if required)

I _____, representing _____ on this date _____
(Prime Contractor) (Company)

acknowledge that I have reviewed and approve of the SBA Form 193 provided by my

Subcontractor _____ on the _____.
(Company) (Project Name)