

MEMORANDUM OF AGREEMENT
For
Consulting Services for Feasibility Analysis in Supplier Agreements

THIS MEMORANDUM OF AGREEMENT is made this ___ Day of ___, 2008, by and between the NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY (the “SDA”), located at 1 West State Street, Trenton, New Jersey 08625, and RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY AT NEW BRUNSWICK, THE DEPARTMENT OF INDUSTRIAL AND SYSTEMS ENGINEERING (“RDISE”), located at 96 Frelinghuysen Road, CoRE Building, Room 201, Piscataway, NJ 08854.

WHEREAS the Legislature enacted the Educational Facilities Construction and Financing Act (the “Act”), P.L. 2000, c. 72, as amended by P.L. 2007, c. 137, N.J.S.A. 52:18A-237, to address inadequacies in the quality, utility and safety of public school facilities throughout the State of New Jersey and to meet the constitutional requirement for a thorough and efficient system of free public schools; and

WHEREAS Pursuant to New Jersey Bill A-2873 (Chapter 39, approved July 09, 2008), “The development authority, in consultation with the commissioner and program stakeholders, shall conduct a study on the potential cost savings in the school construction program in SDA and other school districts that could be realized through the use of standardized design elements, components, and construction materials. The study shall include, but not be limited to, consideration of the opportunities to save design time, facilitate construction inspections, and ensure maintenance protocol ease through:

- a. utilization of standard building details including, but not limited to, gymnasias, media centers, and cafeteria;
- b. use of bulk supply agreements with original manufacturers; and,
- c. use of consistent preventive maintenance protocols to ensure maximum efficiency and lifespan of building components and systems.

The development authority shall submit the report on or before April 1, 2009 to the Governor, the Joint Budget Oversight Committee, the President of the Senate, the Speaker of the General Assembly, and the commissioner.

WHEREAS the SDA has been made responsible for constructing school facilities in SDA-districts; and charged to provide technical assistance to Abbott districts deemed to lack the capacity to manage a school facility project or projects;

WHEREAS RDISE is uniquely situated among educational institutions to provide the SDA with the research capabilities needed in fulfilling and implementing its responsibilities under the Act; and

WHEREAS RDISE shall assume the duties and responsibilities associated with the feasibility analysis; and

WHEREAS the SDA has requested the expertise and assistance of the RDISE in assessing the school construction market and supply chain dynamics as applied to such construction; and

WHEREAS the RDISE has determined that such services are germane and can be done on behalf of the SDA without detriment to the work of the RDISE, subject to reimbursement for the cost thereof; and

WHEREAS the interagency cooperation is permitted by N.J.S.A. 52:14-1 et seq.; and

WHEREAS under Executive Order 24 the SDA is authorized to call upon any department, office, or agency of State government to provide information, resources or other assistance to discharge its responsibilities,

and each department, officer, division and agency of this State is required to cooperate with the SDA and to furnish it with necessary assistance; and

WHEREAS the Members of the Authority, by resolution, has authorized the execution of delivery of this Memorandum of Agreement (hereafter, "MOA"):

NOW, THEREFORE, the SDA and RDISE hereby agree as follows:

Purpose of the MOA. The purpose of this MOA is to conduct a study and to determine the economic cost benefits or process efficiencies of NJSDA engagement in supplier agreements (bulk purchasing, pre-purchasing, fixed cost contracts) in the NJSDA school construction program, where such supplier agreements outweigh the economic costs in their application. The Scope of Work seeks to determine if such supplier agreements provide any material, tangible cost benefit— relative to their detriments—to school construction programs and, if so, to what extent and measurement they could be applicable to NJSDA's upcoming school construction initiative.

Compensation. For the services set forth in Attachment A and in accordance with the estimated budget and timelines provided in Attachment A, the SDA shall pay to the RDISE as due consideration an amount not to exceed \$49,000.00, to be based upon the rates set forth in Attachment B, for the period November 1, 2008 through February 15, 2009. RDISE shall submit an invoice upon final submission of deliverable(s) for services rendered to the SDA on a form approved by the SDA within thirty (30) days of February 28, 2009. The SDA shall make payments to the RDISE within thirty (30) days of such invoice(s) or portions thereof as have been reviewed and approved by the SDA. Invoice approval shall not be withheld unreasonably.

RDISE Scope of Services. For the period November 1, 2008 through February 15, 2009, RDISE shall perform or oversee the specific services described in Attachment A.

Performance Standards. RDISE shall perform all services required under this MOA in a good, skillful, and prompt manner, consistent with the level of care ordinarily exercised by members of their respective professions currently practicing under similar circumstances.

Termination for Convenience. SDA and RDISE may terminate this MOA for convenience on thirty (30) days written notice to the other party. In the event of such termination, RDISE shall be entitled to payment for services rendered as of the effective date of termination, which shall include non-cancellable expenses incurred as of the effective date of the termination."

Termination for Cause. The SDA may terminate this MOA for cause, including, but not limited to, breach of the terms of this MOA, on thirty (30) days written notice to RDISE. In the event of a termination for cause, RDISE shall be entitled to payment for services rendered as of the effective date of termination, which payment shall not include non-cancelable expenses incurred as of the effective date of the termination for cause. RDISE may avoid termination if, within seven (7) days of the notice of termination for cause, it commences action to correct the matter noticed as the cause for the termination, fully curing same within the time prescribed by the SDA in the notice; failure to do so will result in termination of the MOA.

Operation of the RDISE Beyond Expiration or Termination of this MOA. It is the intent of both parties that the RDISE succeed in accomplishing the mission set forth herein, that the RDISE may be enabled to continue to provide such services beyond the term of this MOA. The parties understand and agree that continuation of the Department's efforts beyond the expiration date of this MOA may depend on a mutually written agreement at the relevant time between the SDA and RDISE for further services and funding, and on any outside funding raised by or on behalf of the RDISE for that purpose.

Confidentiality of Certain Information. The parties to this MOA acknowledge that there may be either an intentional or accidental exchange of information that is deemed confidential by one or both parties. This information shall be designated and clearly labeled as “Confidential” by the owner of such information and shall, unless otherwise agreed upon by the parties, remain the sole property of the owner. Neither party shall disclose the other’s confidential information to any third party except as mutually agreed upon by the parties, or as required by N.J.S.A. 47: 1-1 et seq. (Open Public Records Act) or an order of a court of competent jurisdiction, in which latter cases, prior notice of the demand of such compelled disclosure shall be provided to the other party.

Publication. RDISE reserves the right to publish the results of research conducted under the award without prior approval of SDA. However, on request, RDISE will allow opportunity for review and comment by RDISE and, under certain circumstances, will agree to delay publication of work results for a period of no more than thirty (30) days.

If any party receives a notice for documents pursuant to N.J.S.A. 47:1-1 et. seq. and/or court order related to and/or regarding this MOA or the work to be performed hereunder, the party agrees to provide the other party with immediate notice and no documents will be released until the expiration of at least 2 business days from said provision of notice by the receiving party.

Amendment. This MOA may be amended only by mutual consent of the parties. Any amendment shall be memorialized in writing.

Effective Date and Duration. This MOA shall become effective as of November 1, 2008 and shall expire at the close of business on February 15, 2009. The period of performance may be extended by mutual consent of RDISE and the SDA pursuant to Paragraphs 2 and 4 above.

Notices. Any notice given under this MOA shall be a written communication directed by one party to the other party at the following respective addresses:

SDA: New Jersey Schools Development Authority
1 West State Street
P.O. Box 991
Trenton, N.J. 08625-0991
Attn: Janesa Urbano, Chief Counsel

RDISE: Rutgers, The State University of New Jersey at New Brunswick,
The Department of Industrial and Systems Engineering
96 Frelinghuysen Road
CoRE Building, Room 201
Piscataway, NJ 08854
Attn: Hoang Pham, Professor & Chair

Assignment. This MOA may be assigned by the SDA to another department, agency, or authority of the State of New Jersey, in which event, RDISE shall remain bound to the terms of this MOA with respect to such assignee party. RDISE may not assign this MOA to another party except to the extent such assignment may be to another public college or public university of the State of New Jersey, pursuant to the terms of a merger of RDISE with such other public college or public university.

Authority. By execution of this MOA, the parties represent that they are duly authorized and empowered to enter into this MOA and to perform all duties and responsibilities established herein.

Signatures. By execution of this MOA, the undersigned duly authorized representatives of the SDA and RDISE hereby agree that the parties shall in good faith abide by and fulfill both the spirit and letter of this MOA.

For Rutgers, the State University of New Jersey:

_____ Date: _____

Hoang Pham
Professor & Chair

For the New Jersey Schools Development Authority:

_____ Date: _____

Gerald T. Murphy
Chief Operating Officer

Reviewed and approved as to form:

_____ Date: _____

Janesa Urbano
Chief Counsel, NJSDA