

2010

PSCOOTF

Annual

Report



Public School Capital Outlay Oversight Task Force

2010 ANNUAL REPORT

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***PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE***

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**REPORT
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

Introduction

As the "direct descendent" of several task forces that were created as a result of the 1999 *Zuni* lawsuit (*The Zuni Public School District et al. v. The State of New Mexico et al.*, CV-98-14-11), the Public School Capital Outlay Oversight Task Force (PSCOOTF) is the entity charged by statute to monitor the implementation of the standards-based process established in provisions of the Public School Capital Outlay Act, the Public School Capital Improvements Act and the Public School Buildings Act; to monitor the revenue streams that fund the standards-based process; to oversee the work of the Public School Facilities Authority (PSFA); and to make annual recommendations related to the implementation of the standards-based public school capital outlay process to the legislature and the executive before the beginning of each legislative session.

The legislature established the standards-based public school capital outlay process in response to the judge's order in the *Zuni* lawsuit that found the state to be in violation of the New Mexico Constitution's uniformity clause (Article 12, Section 1)¹. Filed by parents on behalf of their children in the Zuni public schools, and later joined by parents in the Gallup-McKinley County and Grants-Cibola County public schools, the *Zuni* lawsuit successfully challenged the constitutionality of New Mexico's process for funding public school capital outlay that was in effect at the time. In 1999, Judge Joseph L. Rich, Eleventh Judicial District, gave the state until July 28, 2000 to correct past inequities and to establish and to implement a uniform system of funding for future public school capital improvements. Later, the court extended the deadline in order to evaluate the legislation recommended by a task force established in 2000 and subsequently created by law in 2001.

The current task force consists of 25 members, including members of the legislature and the executive; certain designated public members, some of whom have expertise in finance and education; and superintendents of school districts or their designees, two of whom must be from districts that receive federal impact aid grants. Appendix A provides a listing of the members who served during the 2010 interim.

Previous reports of the public school capital outlay task forces created by Laws 2001, Chapter 338 and re-created by Laws 2004, Chapter 125 provide details related to the background and development of the statewide standards-based public school capital outlay process that is now in its eighth year of implementation. While this report focuses primarily on the work of the task force during the 2010 interim, the following background information is provided for perspective on the issues before the task force.

¹"A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained." (Article 12, Section 1, Constitution of New Mexico).

Background

The earliest work that addressed public school capital outlay funding discrepancies was performed by a task force established by the State Department of Public Education (now the Public Education Department) in 1998 and co-chaired by Representative Ben Lujan and Senator Linda M. Lopez. This task force contracted with a nationally known consulting firm, MGT of America, Inc., to conduct a comprehensive review of issues concerning New Mexico public school capital outlay, including conducting a sampling assessment of public school facilities in 35 school districts.

The first legislatively created task force was established in 2000 in Senate Joint Memorial 21 by the Forty-Fourth Legislature, Second Special Session, in response to an order by *Zuni* lawsuit Judge Rich giving the state until July 28, 2000 to correct past inequities and establish and implement a uniform system of funding for future public school capital improvements. Many of this first Public School Capital Outlay Task Force's recommendations, issued in December 2000, were adopted in Laws 2001, Chapter 338, including statutory authorization to continue its work.

These recommendations, which were enacted in Laws 2001, Chapter 338, focused on establishment of a transitional three-pronged framework for public school capital outlay that:

- 1) corrected past inequities by providing 100 percent state funding for immediate remediation of health and safety deficiencies identified in a one-time initial assessment of every public school throughout the state;
- 2) continued to fund the substantial backlog of critical capital outlay needs of school districts that had substantially used up their own resources for public school capital improvements; and
- 3) implemented a long-term public school capital improvement process based on the development of adequacy standards.

In addition, this measure increased the Public School Capital Improvements Act (also called "SB 9" or "the two-mill levy") state guarantee from \$35.00 per mill per unit (the first such increase in almost 30 years) to \$50.00 per mill per unit and designated supplemental severance tax bonds as the permanent revenue source for public school capital outlay.

In April 2001, Judge Rich appointed the Honorable Dan McKinnon, former state supreme court justice, as a special master to review the progress the state had made in correcting past inequities and in developing and implementing the new capital outlay process. In his report, Justice McKinnon concluded "that since 1998 the state has made a substantial effort to rectify the disparities..." in funding for school facilities and that "... at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich's previous directions.". Adopting the report of the special master in May 2002, Judge Rich

reserved the right to hold status conferences to monitor and review the state's progress in addressing issues raised by the *Zuni* lawsuit.

The special master's report emphasized the importance of mitigating the disequalizing effect of direct legislative appropriations to individual schools for capital outlay purposes and directed that these appropriations be taken into account in the funding formula that was to go into effect after September 1, 2003. In response to this directive, the 2003 legislature amended the funding formula (Laws 2003, Chapter 147) to provide an offset against state grant awards for public school capital outlay equal to a percentage of any funds received by a school district as a direct legislative appropriation using the local/state-share formula. At the time, the offset provision also applied to legislative appropriations for educational technology, with the reduction credited against the school district's annual distribution under the Education Technology Equipment Act.

Legislation enacted in 2004 made a number of improvements to the capital outlay process and provided \$57 million of additional funding for deficiency correction and continuation projects (Laws 2004, Chapter 125). It enacted many of the recommendations of the task force from the 2003 interim, including a recommendation to extend the life of the task force for an additional year, and added provisions relating to what are called "recalcitrant districts". These provisions would allow the Public School Capital Outlay Council (PSCOC) to bring a court action against a school district if it determines that a school district's facilities are below the minimum standard required by the constitution and that the district has consistently failed to take action. The court action could result in the imposition of a property tax in the school district to pay the district's required share of the costs of bringing the school facilities up to the adequacy standards. The task force considered the enactment of these "recalcitrant district" provisions as another important step for ensuring that the new process will comply with the directives of the court in addressing the *Zuni* remedies.

Legislation enacted in 2005 (Laws 2005, Chapter 274) added a number of refinements to the standards-based awards process as a result of experience gained during the pilot year, including many of the recommendations of the task force from the 2004 interim. Among those recommendations was completion of the deficiencies correction program with specific emphasis on the correction of serious roof deficiencies. In addition, this legislation created a separate two-year roof repair and replacement initiative and allocated up to \$30 million per year for fiscal years 2006 and 2007 for this initiative. The lease assistance program enacted in 2004 was modified to increase the maximum grant award from \$300 per member to \$600 per member and to extend this lease assistance to charter schools in their initial year of operation. In response to the task force's focus on improving maintenance of public school buildings, the SB 9 guarantee amount was increased from \$50.00 per mill per unit to \$60.00 per mill per unit with automatic yearly increases based upon the consumer price index. The legislation also established a framework to allow the PSCOC to waive all or a portion of the local share when funding a project if the district meets certain criteria.

The 2005 legislation also required new charter schools to meet educational occupancy standards before being chartered and established guidelines to assist in the transition of charter schools to public facilities by 2010 (later amended to 2015).

During the 2005 interim, the first full year of the task force's existence in its current iteration, the members reviewed the statewide assessment of school facilities; the deficiencies correction program; the roof deficiency correction program; PSCOC awards; lease payment awards; the development of educational technology adequacy standards as directed by HB 511 from the 2005 legislature; and a number of issues related to charter schools. The task force also explored a number of new subjects, including high-growth districts and schools; issues related to rural and very small schools; alternative capital financing options, including tax increment financing and industrial revenue bonds; and opportunities for energy-efficient school buildings.

Acting on the recommendations of the PSCOOTF, the 2006 legislature passed and the governor signed into law Laws 2006, Chapter 95, p.v., amending the Public School Capital Outlay Act to:

- increase distributions for lease payments owed by schools, including charter schools, from \$600 to \$700;
- provide for partial state funding to school districts for the development of five-year facilities master plans, including full funding for some of the smaller districts;
- allow the use of state funding for demolition of abandoned school buildings;
- create a process to identify and correct serious outstanding deficiencies at the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf if additional funding is provided;
- exempt all PSFA staff from provisions of the Personnel Act; and
- create a program for advancing to a school district the local matching share otherwise required if the money is for a "qualified high priority project", which is defined as a project in a high-growth area (also defined in the legislation). The legislation provides that, once a school district receives an advance of the local share, it is no longer eligible to receive state funding for future projects until the amount advanced is fully recouped by the amounts that would otherwise have been granted by the state.

Additional legislation passed and signed into law:

- requires districts to submit a five-year facilities plan to the PSFA before beginning any PSCOC project;
- eases restrictions on the limits on school district cash balances and allows the balances to be used for the local match required for PSCOC grant awards;
- creates a New School Development Fund to provide funding for school districts for one-time expenditures associated with the opening of new schools;
- amends the Procurement Code to allow the PSFA to be its own central purchasing office;

- appropriates funding to continue the development and implementation of the facility information management system (FIMS) program, a uniform web-based system to manage maintenance for school district facilities; and
- allocates funding to improve the indoor air quality of public schools.

During the 2006 interim, the task force heard testimony about the continuing statewide implementation of the FIMS and school district facilities master plans; revision of current PSFA oversight and review responsibilities, as well as concerns about a perceived PSFA staff focus on regulation rather than assistance; cooperation among school districts, counties and municipalities regarding issues related to growth; energy-efficient school buildings; factors affecting construction costs; an update on development and implementation of educational technology adequacy standards as required in HB 511, passed by the 2005 legislature; and concerns about offsets for direct appropriations.

PSCOOTF endorsements for legislation for the 2007 session addressed testimony that the task force heard during the 2006 interim, particularly the effects and some unintended consequences of legislation enacted over the previous six or seven years. Recommendations in the task force "omnibus" bill that were enacted and signed into law (Laws 2007, Chapter 366, p.v.) included the following:

- exemption from PSFA approval of school construction projects costing \$200,000 or less;
- the following amendments to the Public School Capital Outlay Act:
 - reduction of offsets from future projects awards for special appropriations by 50 percent if the special appropriation is for a project that ranks in the top 150 projects statewide;
 - transfer of the offset against a local school district for special appropriations for state-chartered charter schools from the school district to the state-chartered charter school;
 - allowance of PSCOC grant assistance to purchase a privately owned facility that is already in use by a school district if the facility meets specified requirements;
 - provision for additional time to correct outstanding deficiencies in the remaining deficiencies correction process, including some roofing projects;
 - an increase in lease reimbursement payments from \$600 to \$700 per MEM with yearly increases for inflation; and
 - an extension of time for the lease payments to 2020 and an allowance for limited leased administrative space to qualify for the lease reimbursement;
- an amendment to the Public School Capital Improvements Act (SB 9) to increase the state guarantee from \$60.00 to \$70.00 per mill per unit with additional annual increases for inflation;
- amendments to the Public School Buildings Act (HB 33) to:
 - allow a percentage of revenues to be used for project management;
 - increase the period for which a tax may be imposed from five to six years to track with SB 9 and other school district elections;

- require that future local board bond resolutions contain the capital needs of charter schools based upon the appropriate five-year plans; and
- require that the proportionate revenue from future HB 33 taxes approved by voters be distributed directly to charter schools;
- amendments to state statute to assist with implementation of the constitutional amendment approved by voters in the 2006 general election whereby lease-purchases are not considered debt in the constitutional sense, allowing school districts to enter into lease-purchase agreements without the leases being subject to voter approval; and
- amendments to the Procurement Code to provide for a contractor-at-risk mechanism for construction of education facilities.

Since 2003, when all districts became eligible to apply for public school capital outlay funds and the adequacy standards were made operational, the task force has heard testimony that some students live in school districts that may never have a large enough property tax base to be able to finance the building of facilities that can ever go above adequacy standards. The governor vetoed language in the "omnibus" bill that would have established a process to allow a school district to be eligible for an additional "beyond-adequacy" award if the PSCOC determined that:

1. the school district is otherwise eligible to apply for a grant under the Public School Capital Outlay Act;
2. the state share for existing grants under the act is 70 percent or greater;
3. the district's voters have approved a total school property tax rate of at least nine mills over the past three years;
4. at least 70 percent of the students in the district are eligible for free or reduced-fee lunches; and
5. for the next four years, because any local resources of the school district will be spent as the local match for projects, the school district will have no available resources from the state to exceed statewide adequacy standards.

The vetoed legislation would have equaled an amount from 10 to 25 percent of the original project cost and would have been funded through a five-year reversion of 20 percent of all unreserved, undesignated reverting balances to the Public School Facility Opportunity Fund; and by "shaving" three percent of all special legislative appropriations and depositing the proceeds into the fund. In his veto message, the governor requested further study of the funding sources and selection process.

PSCOOTF recommendations to the 2008 legislature resulted in the passage of an "omnibus" measure (Laws 2008, Chapter 90, p.v.) that proposed to amend the Public School Capital Outlay Act to allow the PSCOC to make awards above adequacy to qualifying school

districts in addition to their standards-based funding. This section of the legislation was vetoed by the executive and did not become law. Other provisions of the bill that managed to avoid the veto pen include provisions to reduce the offset from a PSCOC grant award for direct appropriations made for joint use with another governmental entity; to provide an increased grant award to districts with a demonstrable exemplary record of preventive maintenance; to reauthorize continuation of FIMS funding; and to appropriate funding to the already established New School Development Fund for FY 2009 and subsequent fiscal years for distributions to school districts for equipment and other nonoperating costs unique to the first year of a new school's operation.

Other PSCOOTF recommended legislation did not receive executive messages and therefore were not considered by the 2008 legislature. They included measures (1) to repeal the current statutory requirement for bonding of subcontractors; (2) to allow for out-of-cycle transfer of charter school chartering authority from the local district to the state or vice versa if appropriate and (3) to amend the Public School Insurance Authority Act to provide for limited coverage in certain circumstances such as the community use of a public school building.

PSCOOTF recommendations to the 2009 legislature reflected the task force's focus on an examination of the ramifications of the Charter Schools Act's requirement that charter schools be located in public facilities by 2010 and other charter school facility issues; policies to encourage the joint use of school facilities by other governmental, community and certain private entities; the relationship of funding to provide adequacy and space flexibility; and costs related to revisions to the statewide adequacy standards.

Legislation based on PSCOOTF recommendations that passed the 2009 legislature and were signed into law by the governor include the following in CS/SB 378 (Laws 2009, Chapter 258):

- amendments to the Charter Schools Act to extend to 2015 the deadline for charter schools to be located in public buildings;
- amendments to the Public School Capital Outlay Act to:
 - ▶ provide \$10 million to be awarded for expenditure in FY 2010 through FY 2012 for a roof repair and replacement initiative;
 - ▶ limit lease payment assistance for lease-purchase arrangements to charter school facilities;
 - ▶ remove the limit on the amount of lease payment assistance funds that may be awarded; and
 - ▶ require federal funds received by a school district or charter school for nonoperating costs be included in the district's or charter school's offset; and
- amendments to the Public School Capital Improvements Act to:
 - ▶ expand the definition of "capital improvements";
 - ▶ require bond resolutions to include charter school capital improvements; and
 - ▶ require proportional distributions of bond proceeds and state match dollars to charter schools.

The governor vetoed language in this measure that would have provided Public School Capital Outlay Act funding to pay for lights and bleachers for athletic fields at certain rural high schools and authorized an increase in grant assistance for qualifying rural high schools. The governor vetoed similar legislative language allowing an increase in grant assistance for certain rural high schools that passed in the 2008 session.

In response to testimony heard during the 2008 interim regarding difficulties with implementation of the Public School Lease Purchase Act, the task force endorsed a measure (Laws 2009, Chapter 132) that amended the legislation passed in 2007 including the following:

- amendments to public school general obligation bond statutes to eliminate general obligation bond proceeds as a source of funding for lease-purchase agreements;
- amendments to the Public School Lease Purchase Act to:
 - ▶ extend the lease-purchase time to 30 years;
 - ▶ limit the interest to the amount determined by the Public Securities Act;
 - ▶ allow a school district to require the owner to pay the current market value in excess of the outstanding principal due at the time of termination;
 - ▶ allow property acquired in a lease-purchase to be considered public property;
 - ▶ require a local school board to comply with the Open Meetings Act when it enters into a lease-purchase agreement; and
 - ▶ require a local school board to include the tax revenue needed by a charter school if the charter school's charter has been renewed at least once.

Other legislation that passed the 2009 legislature and was signed into law includes the following:

- amendments to the Public School Insurance Authority Act to allow for insurance for joint use of school buildings (Laws 2009, Chapter 198);
- a measure that appropriates \$575,000 from the Public School Capital Outlay Fund to develop and implement a geographic information system (Laws 2009, Chapter 115);
- amendments to the Public School Capital Outlay Act to add the New Mexico School for the Blind and Visually Impaired and the New Mexico School for the Deaf in the statewide deficiency corrections program (Laws 2009, Chapter 37); and
- new legislation to enact the Qualified School Construction Bonds Act to provide statutory language to implement the "qualified school construction bonds" program included in the federal American Recovery and Reinvestment Act of 2009.

During the 2009 interim, the task force heard testimony about, among other issues, the costs associated with subcontractor bonding, public school capital outlay project planning (development and implementation of education specifications), the effects of the broad economic decline that began in 2008, charter school facility issues and the positive effects of passage of the federal American Recovery and Reinvestment Act of 2009 that have saved the state from

massive budget cuts. Legislation that passed in 2010 and was signed into law includes the following:

- amendments to the Public School Capital Outlay Act (Laws 2010, Chapter 104, p.v.) to:
 - extend the roof repair and replacement initiative sunset date from 2012 to 2015;
 - require that money distributed from the Public School Capital Outlay Fund (PSCOF) to the state fire marshal or the Construction Industries Division of the Regulation and Licensing Department be used to supplement, rather than supplant, appropriations to those agencies;
 - allow the PSFA to manage procurement for certain emergency school projects;
 - require the PSCOOTF to continue the work group studying performance-based procurement issues for public school capital outlay projects and report findings to the legislature and the executive before the 2011 legislative session; and
 - repeal sections of the law passed during the Forty-Ninth Legislature, Second Session, that appropriated \$29.9 million from the PSCOF directly to the Public School Insurance Authority to pay property insurance premiums and charter schools (including Albuquerque Public Schools); and
- amendments to the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority (Laws 2010, Chapter 56).

Work During the 2010 Interim

Responding to the New Mexico Legislative Council's request that interim committees limit meeting time and travel during the 2010 interim because of revenue shortages, the PSCOOTF held four one-day meetings in Santa Fe in addition to its May 19 organizational meeting. Full task force meetings were held on July 7, October 7, November 24 and December 21. The task force also held two meetings of a work group, on August 30 and October 7, pursuant to language in Laws 2010, Chapter 104 (p.v.), which states, in pertinent part, that the task force "shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects".

The task force began its seventh year of overseeing the implementation of the public school capital outlay standards-based process with a brief review of the work of the 2009 interim, a review of the PSCOC 2009 annual report and a summary of the status of PSCOOTF-endorsed legislation.

With passage of the final version of the PSCOOTF-endorsed public school capital outlay "omnibus bill" (Laws 2010, Chapter 104, p.v.), several of the task force's policy recommendations were enacted by the 2010 legislature, including the following amendments to the Public School Capital Outlay Act (PSCOA):

- a requirement that money distributed from the Public School Capital Outlay Fund to the state fire marshal and the Construction Industries Division of the Regulation and Licensing Department be used to supplement, rather than supplant, general appropriations to those agencies;
- language allowing the PSFA to administer procurement for certain emergency projects;
- an extension of time for necessary roof repairs and replacements; and
- repeal of an appropriation enacted during the Forty-Ninth Legislature, Second Special Session, to pay certain insurance premiums for school districts.

In response to testimony heard during the 2009 interim, the task force endorsed legislation to amend the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority. The task force also endorsed a bill that did not receive a message from the governor that would have, among its provisions, amended the Charter Schools Act to require that on or after July 1, 2010, a new charter school cannot open and an existing charter school cannot relocate unless the PSFA finds that the facilities meet or exceed the average rating of schools on the New Mexico Condition Index (NMCI).

The governor once again vetoed language in the "omnibus bill" that would have provided Public School Capital Outlay Act funding to pay for lights and bleachers for athletic fields at certain rural high schools and that authorized an increase in grant assistance for qualifying rural high schools. The governor also vetoed similar legislative language passed in the 2007, 2008 and 2009 legislatures allowing an increase in grant assistance for certain rural or "property-tax poor" high schools.

For the past four years, the task force has endorsed legislation, which did not pass, to eliminate or modify the statutory requirement for the bonding of subcontractors for public school projects. In response to continued concerns and a requirement in the "omnibus bill", the task force continued and expanded the work group to examine the costs and benefits of bonding subcontractors on public school projects. The working group included task force members as well as representatives from the General Services Department, the PSFA and various representative groups from the construction industry. The group met on August 30 and again on October 7 and was facilitated by a contract professional to bring forth recommendations to the task force.

Members who were present at the last meeting of the task force work group agreed upon the following recommendations:

- Legislation: Increase the subcontractor bonding threshold from \$125,000 to \$250,000.
- Rule changes: Make wording changes in the New Mexico Administrative Code to modify proposal submission requirements and the resident preference.
- Process changes for PSFA: (1) develop a standardized template for submission of requests for proposals for construction, with detailed instructions; (2) develop a web-based training module for contractors and subcontractors; and (3) develop a process for web-based training for evaluation committee members and require members to acknowledge completing it.

A complete listing of members, notes from both meetings and recommendations are included in Appendix D.

As has been the case in each interim since the establishment of the original Public School Capital Outlay Task Force (PSCOTF) in 2001 and the PSCOOTF in 2005, charter school facility issues were a topic of discussion at almost every meeting during the 2010 interim. The task force heard testimony that legislation passed in 2006 requires districts to share Public School Buildings Act (HB 33) funds with charter schools and that legislation passed in 2009 with the same requirement for the Public School Capital Improvements Act ("two-mill levy" or "SB 9"). Representatives from charter schools and from the Public Education Department (PED) told the task force that several districts had recently had HB 33 elections that did not include charter schools in the proclamation. PSFA staff presented information regarding a potential "incubator process" for charter school startups. The task force co-chair requested staff to work on the issue during the 2011 interim and to bring a more fully developed plan to both the PSCOC and the PSCOOTF for consideration for legislation for the 2012 session. The task force also spent time at several meetings discussing issues related to PSFA and/or PSCOC approval of leases and lease-purchase agreements.

Other topics on which the task force heard testimony during the 2010 interim included the following:

- a presentation from representatives of the Albuquerque Public Schools (APS) on the district's Capital Master Plan (which has been in place and operational for more than 20 years), as well as a presentation on the APS's current policy regarding charter school facilities;
- a demonstration of the new geographic information system (GIS), developed by the PSFA in collaboration with the University of New Mexico's Earth Data Analysis Center as the result of legislation endorsed by the PSCOOTF for the 2009 session;
- an update from PSFA on implementation of its FIMS and progress on implementation of equipment inventories and school district preventive maintenance plans; and
- PSFA audit reports on state sources of funding.

During the course of the interim, PSCOC and PSFA staff determined that enough funding would be available from supplemental severance tax bonds to allow for the awarding of special short-cycle, standards-based planning grants to qualifying districts among the top 60 in the NMCI rankings. The task force heard a presentation from the PSCOC chair and the PSCOC Awards Subcommittee chair on the funding for grant awards, criteria for making grant awards and potential grant award recipients.

During the remainder of the interim, the PSCOOTF heard testimony about the ongoing implementation of the standards-based process, the adequacy of the current permanent revenue streams, the effect of the current economy on revenues to fund the current round of PSCOC grants and capital outlay funding resources and requirements for charter schools.

Recommendations contained in this PSCOOTF report represent the policy development work of the task force during the 2010 interim and the ongoing monitoring of the standards-based capital outlay program to ensure continued success toward achieving the goal of bringing all schools up to the adequacy standards and working to keep them there. During the 2010 interim, the work of the task force was assisted by a team of professional staff from the Legislative Council Service, the Legislative Education Study Committee, the Legislative Finance Committee, the Department of Finance and Administration, the PED and the PSFA. The task force expresses its appreciation for the assistance of the staff in furthering its work.

Highlights of Recommendations and Proposed Legislation

The 2010 recommendations of the PSCOOTF continued the work of the task force in terms of monitoring the continuing implementation of the standards-based process established in the Public School Capital Outlay Act while continuing to be mindful of the state's commitments related to the *Zuni* lawsuit and the standards-based process for allocating PSCOC funds.

PSCOOTF endorsements for the 2011 legislature included three bills that propose the following:

182974.1 Amends the Procurement Code to increase the subcontractor bonding limit from \$125,000 to \$250,000. Prefiled as SB 35.

180594.3 Amends the Procurement Code to establish the applicability of the prevailing wage law for construction manager at risk procurement.

183685 Amends the Public School Capital Improvements Act (SB 9) and the Public School Buildings Act (HB 33) to require charter schools to report anticipated and actual expenditure of distributions made pursuant to those acts.

182631.2 Amends the Public School Capital Outlay Act to require that, on or after July 1, 2011, a new charter school cannot open or an existing charter school cannot relocate unless the facilities of the new or relocated school have an NMCI rating equal to or better than average for all New Mexico public schools for that year and provides 18 months for charter schools to achieve this rating. The bill also exempts a school district leasing facilities to a charter school from State Board of Finance approval and requires PSFA approval before entering into a lease agreement or lease-purchase agreement for school facilities or before applying for a grant for lease payment.

Task force members also considered proposed legislation to amend the Charter Schools Act to require addition of a dispute resolution mechanism for state-chartered charter schools, as well as locally chartered charter schools. After considerable discussion, members agreed by consensus to ask PSCOOTF staff to work with the Legislative Education Study Committee (LESC) to address task force concerns with the bill and to prepare it for consideration for LESOC endorsement at the final meeting of the LESOC on January 17, 2011.

Brief Time Line of *Zuni* lawsuit

1998	<ul style="list-style-type: none"> • <i>Zuni</i> lawsuit filed by the Zuni Public, Gallup-McKinley County and Grants-Cibola County school districts.^[1]
1999	<ul style="list-style-type: none"> • District court rules that the current public school capital outlay funding system is unconstitutional. • State authorizes \$100 million in bonds for public school capital improvements.
2000	<ul style="list-style-type: none"> • State authorizes \$475 million of bonds for public school capital improvements. • State creates a new Public School Capital Outlay Task Force.
2001	<ul style="list-style-type: none"> • State adopts a new statewide capital outlay system based on adequacy standards. • State appropriates funds for a statewide assessment of all school facilities that is used to rank schools against the adequacy standards. • State establishes a school facilities deficiencies correction program, appropriates \$200 million to fund it and creates a new temporary state agency to administer it. • District court appoints a special master to review the state's progress in developing a uniform system for funding public school capital improvements.
2002	<ul style="list-style-type: none"> • District court special master issues a finding that the <i>state "is in good faith and with substantial resources attempting to comply with the requirements"</i> of the court. • District court adopts the report of the special master and continues to review the state's progress. • Public School Capital Outlay Council (PSCOC) adopts newly developed public school facilities adequacy standards.
2003	<ul style="list-style-type: none"> • PSCOC implements a standards-based funding process for public school capital outlay. • State appropriates up to \$40 million in additional funds for the deficiencies correction program. • Funding for school maintenance increased through the SB 9 program. • Public School Facilities Authority is created as a permanent agency to implement and manage the standards-based school facilities funding process.
2004	<ul style="list-style-type: none"> • State provides \$67 million for projects under the critical capital outlay and deficiencies correction programs. • PSCOC awards \$198.9 million in grants to school facilities projects under the standards-based program.
2005	<ul style="list-style-type: none"> • State provides for a permanent Public School Capital Outlay Oversight Task Force (PSCOOTF). • State provides \$62 million for roof repair/replacement and for deficiencies correction program. • State increases SB 9 guarantee from \$50.00 to \$60.00 per mill per unit. • PSCOC awards \$255.6 million in grants to school facilities projects under the standards-based program.
2006	<ul style="list-style-type: none"> • District court holds status conference. Parties agree to an evidentiary hearing to be held in October 2006. • <i>Zuni</i> plaintiffs present concerns to the PSCOOTF, which sets up a work group to develop responses to those concerns. • PSCOC awards \$137.4 million in grants to school facilities projects under the standards-based program.
2007	<ul style="list-style-type: none"> • State increases school facility lease reimbursement payment from \$600 to \$700 per MEM. • State increases SB 9 guarantee from \$60.00 to \$70.00 per mill per unit. • State adds a house of representatives member and a senate member from impact aid districts to the PSCOOTF. • PSCOC awards \$212.2 million in grants to school facilities projects under the standards-based program. • PSCOOTF recommends an "opportunity fund" for school districts with low property tax values.
2008	<ul style="list-style-type: none"> • State funds and implements the Facility Information Management System (FIMS), a web-hosted, statewide school maintenance management system, and provides the system to school districts at no cost. • PSCOC shifts from an annual to an ongoing funding process to better align funding to shovel-ready projects. • Albuquerque Public Schools reduces funding advances and offsets by \$75.6 million through applications to the standards-based program. • PSCOC awards \$93.4 million in grants to school facilities projects under the standards-based program.
2009	<ul style="list-style-type: none"> • State extends the deadline to 2015 for charter schools to be located in public buildings. • State amends the Public School Capital Outlay Act to remove award limits on lease payment assistance funds. • PSCOC awards \$125.2 million in grants to school facilities projects under the standards-based program.
2010	<ul style="list-style-type: none"> • PSCOC awards \$78.9 million in grants to school facilities projects under the standards-based program.

^[1] The Legislative Council Service maintains a comprehensive time line of events related to the *Zuni* lawsuit. This page is a summary.

Appendix A

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

MEMBERSHIP, 2010 INTERIM

**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
2010 INTERIM MEMBERSHIP**

Representative Rick Miera, Task Force Co-Chair	House Education Committee Chair
Senator Cynthia Nava, Task Force Co-Chair	Senate Education Committee Chair
Senator Timothy Z. Jennings	Senate President Pro Tempore
Representative Ben Lujan	Speaker of the House
Representative Henry "Kiki" Saavedra	House Appropriations and Finance Chair
Senator John Arthur Smith	Senate Finance Committee Chair
Senator Vernon D. Asbill	Senate Minority Member
Senator Lynda M. Lovejoy	"Impact Aid" District Senator
Senator Sander Rue	Senate Minority Member
Representative Keith Gardner	House Minority Member
Representative Larry A. Larrañaga	House Minority Member
Representative W. Ken Martinez	"Impact Aid" District Representative
Representative James Roger Madalena	Indian Affairs Committee Representative
Don Moya/Antonio Ortiz	Designees, Secretary of Public Education
Katherine Miller	Secretary of Finance and Administration
Mike Phipps	Superintendent, Artesia Public Schools
Ernesto Valdez	Superintendent, Peñasco Independent Schools
Kilino Marquez	Superintendent, Grants-Cibola County Schools
Leonard Haskie	Assistant Superintendent, Support Services Gallup-McKinley County Schools
Elizabeth Marrufo	Director of Elementary Instruction, Las Cruces Public Schools
Cecilia Grimes	Retired public school teacher, public member with experience in education and finance
Lisa Grover, PhD	Chief Executive Officer, New Mexico Coalition for Charter Schools
Vacant	Public member with expertise in education & finance
Robbie Heyman	Bond counsel, public member with expertise in education & finance
Dr. John Mondragon	Retired educator

Appendix B

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2010 STATUTORY AUTHORITY AND DUTIES

22-24-7. Public school capital outlay oversight task force; creation; staff.

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-five members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the president pro tempore of the senate or the president pro tempore's designee;
- (5) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (6) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (7) two minority party members of the senate, appointed by the New Mexico legislative council;
- (8) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;
- (9) a member of the house of representatives and a member of the senate who represent districts with school districts receiving federal funds commonly known as "PL 874" funds or "impact aid", appointed by the New Mexico legislative council;
- (10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;
- (11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;
- (12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and
- (13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

History: Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10; 2007, ch. 366, § 11; 2008, ch. 90, § 5.

The 2005 amendment, effective April 6, 2005, changed the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deleted the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; added in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provided in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deleted the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provided in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection B that the task force shall meet no more than four times per calendar year; deleted the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provided in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

Temporary provisions. — Laws 2007, ch. 366, § 24, provided that during the 2007 interim the public school capital outlay oversight task force shall continue to work toward an equitable and fair system that addresses the inequities between public school facilities among various school districts in this state. Toward that end, the task force shall assess the current statewide adequacy standards, the need for changing those standards and the effect upon school districts of any proposed change in the standards.

The 2007 amendment, effective July 1, 2007, changed the number of members of the public school capital outlay oversight task force to twenty-six and added Paragraph (10) of Subsection A to provide new legislative members representing PL 874 school districts.

The 2008 amendment, effective May 14, 2008, in Subsection A, changed the number of members from twenty-six to twenty five and deleted the state investment officer or the state investment officer's designee.

Temporary provisions. — Laws 2010, ch. 104, § 5 provided that during calendar year 2010, the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects, and shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.

22-24-8. Public school capital outlay oversight task force; duties.

The public school capital outlay oversight task force shall:

- A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;
- B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [22-25-1 NMSA 1978];
- C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;
- D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;
- E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and
- F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

History: Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

The 2005 amendment, effective April 6, 2005, added Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deleted the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provided in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provided in Subsection D that the task force oversee the work of the council and the authority; added Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

Temporary provisions. — Laws 2009, ch. 37, § 2 provided that during calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

Appendix C

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

APPROVED 2010 INTERIM WORK PLAN

2010 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

Membership

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Sec. Veronica C. Garcia
Rep. Keith J. Gardner
Cecilia J. Grimes
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Sen. Timothy Z. Jennings
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy

Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Elizabeth Marrufo
Rep. W. Ken Martinez
Sec. Katherine B. Miller
John B. Mondragon
Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Ernesto Valdez

Background

Created by Laws 2005, Chapter 274, Sections 10 and 11, the public school capital outlay oversight task force serves as the permanent entity overseeing the implementation of the work of the public school capital outlay council and the public school facilities authority as they implement the state's standards-based public school capital outlay funding methodology. The task force consists of 25 members, including the secretaries of public education and finance and administration; the speaker of the house of representatives; the president pro tempore of the senate; the chairs of the house appropriations and finance, house education, senate finance and senate education committees; four minority party members, two from each house; a member of the Indian affairs committee, annually alternating between the senate and house; a member of the house and a member of the senate, each of whom represents districts that include federal impact aid districts; seven public members, two appointed by the speaker, two appointed by the president pro tempore and three appointed by the governor; and three superintendents, two of whom must be from federal impact aid districts, appointed by the New Mexico legislative council in consultation with the governor.

Work Plan

Pursuant to statute, the task force will focus on the following activities:

1. monitoring the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act;
2. monitoring the existing permanent revenue streams to ensure that they remain adequate sources of long-term funding for public school capital outlay projects;
3. monitoring the overall progress of continuing to bring all public school facilities, including the New Mexico school for the deaf and the New Mexico school for the blind and visually impaired, to the statewide adequacy standards developed pursuant to provisions in the Public School Capital Outlay Act;

4. overseeing the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they continue to implement the statewide process for making grant awards;
5. examining issues related to charter school facilities, particularly increases in lease assistance from the state; utilization of public school buildings and other public buildings to accommodate them; the use of lease-purchase agreements; and consideration of defining facility needs and cost requirements prior to final approval of a charter; and
6. "continu[ing] the working group studying issues relating to performance-based procurement for public school capital outlay projects" (Laws 2010, Chapter 104).

The task force will report the results of its analyses and oversight, together with any recommendations, to the governor and the legislature before the start of the 2011 regular legislative session.

**Public School Capital Outlay Oversight Task Force
2010 Approved Meeting Schedule**

Full Task Force Meetings

<u>Date</u>	<u>Location</u>
July 7	Santa Fe
August 25	Santa Fe
September 22	Santa Fe
November 24	Santa Fe

Subcommittee Meetings

August TBD	Santa Fe
October TBD	Santa Fe

Appendix D

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2010 MEETING AGENDAS, MINUTES OF MEETINGS AND WORK GROUP NOTES AND HANDOUTS

Revised: May 18, 2010

**TENTATIVE AGENDA
for the
TWENTY-SIXTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**May 19, 2010
Room 307, State Capitol
Santa Fe**

Wednesday, May 19

- 1:30 p.m. **Call to Order**
- 1:35 p.m. **Election of Co-Chairs**
- 1:40 p.m. **Brief Review of 2009 Task Force Work and Summary of 2010 Legislation**
—Paula Tackett, Director, Legislative Council Service (LCS)
—Sharon Ball, LCS
- 2:00 p.m. **Public School Capital Outlay Council/Public School Facilities Authority
(PSFA) Annual Report**
—Robert Gorrell, Director, PSFA
—Pat McMurray, Senior Facilities Manager, PSFA
—Martica Casias, Planning and Design Manager, PSFA
—Mark Williams, Communications and Strategic Planning Manager,
PSFA
- 3:00 p.m. **Discussion of Work Plan, Items for Future Agendas and Other
Organizational Business**
—Task Force Members and Staff
- 4:30 p.m. **Adjourn**

MINUTES
of the
TWENTY-SIXTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

May 19, 2010
State Capitol, Room 307
Santa Fe

The twenty-sixth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Cynthia Nava, co-chair, at approximately 1:45 p.m. on Wednesday, May 19, 2010, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Cecilia Grimes
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Kilino Marquez
Rep. W. Ken Martinez
Sec. Katherine B. Miller
Dr. John Mondragon
Don Moya
Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra

Absent

Sen. Timothy Z. Jennings
Rep. Ben Lujan
Elizabeth Marrufo
Bud Mulcock
Sen. John Arthur Smith
Ernesto Valdez

Staff

Legislative Council Service (LCS)

Paula Tackett
Sharon Ball
Leslie Porter

Public School Facilities Authority (PSFA)

Tim Berry
Martica Casias
Bob Gorrell
Pat McMurray

Mark Williams

Public Education Department (PED)

Willie Brown
Antonio Ortiz
Arlene Strumor

Election of Co-Chairs

Task force members agreed by consensus with the New Mexico Legislative Council's appointment of Representative Miera and Senator Nava to serve as co-chairs for the 2010 interim.

Brief Review of 2009 Task Force Work and Summary of 2010 Legislation

Ms. Tackett and Ms. Ball provided a brief overview of the work of the task force during the 2009 interim and task force-endorsed legislation for the 2010 session. Ms. Ball directed task force members' attention to their respective copies of the PSCOOTF 2009 annual report and summarized some of the activities, including the work of the PSCOOTF on the ongoing implementation of the standards-based process, the adequacy of the current permanent revenue streams, the relationship of current economic conditions to providing funding needed for the implementation of revisions to the standards (if necessary) and capital outlay funding resources and requirements for charter schools. She also reported that the working group on issues related to subcontractor bonding met during the 2009 interim, and while members believed they had made progress in establishing a dialogue, more work needed to be done. Ms. Ball noted that the task force-endorsed "omnibus" bill included language requiring continuation of that task force.

Ms. Tackett directed members' attention to the three bills included in their respective folders, specifically House Education Committee Substitute for House Bill 68, the so-called "omnibus" bill, which was passed and signed into law by the governor. Among its provisions, the bill, as it passed, would have:

1. extended the time period for necessary roof repairs;
2. determined that money distributed from the Public School Capital Outlay Fund to the state fire marshal or the Construction Industries Division of the Regulation and Licensing Department pursuant to the Public School Capital Outlay Act (PSCOA) be used to supplement, rather than supplant, appropriations to those entities;
3. allowed for the Public School Capital Outlay Council (PSCOC) grant adjustments for certain facilities in remote rural areas; and
4. allowed the PSFA to administer the procurement for certain school district emergency projects.

Ms. Tackett noted that, using his line-item veto authority, the governor had vetoed the language related to potential PSCOC grant adjustments for certain facilities in remote rural areas, stating in his message that he believes this particular provision would compromise the integrity of the standards-based process.

Ms. Ball discussed House Education Committee Substitute for House Bill 145, which amended the Qualified School Construction Bonds Act, enacted in 2009, to provide statutory language that would allow school districts to take advantage of provisions of the federal American Recovery and Reinvestment Act of 2009 (ARRA) in a way that would be more cost-effective for those districts wishing to take advantage of provisions allowing for tax-free bonds. In response to a task force question, Ms. Ball stated that this legislation has not and does not have an effect on Albuquerque Public Schools' authorization for ARRA tax-free bonds.

Ms. Tackett reminded task force members that they had also endorsed a bill (Senate Bill 140) that would have, among its provisions, required the application of standards for certain charter school facilities and would have required approval before entering into a lease agreement or lease-purchase agreement for school facilities or before applying for a grant for lease payments. She explained that the bill did not receive a message from the governor and therefore was not germane for the 2010 session.

PSCOC/PSFA Annual Report

Ms. Casias, directed task force members' attention to the PSCOC/PSFA 2009 annual report. She walked members through the report, pointing out that, in 2009, the PSCOC awarded \$188.9 million in total funding to 112 school construction and facilities needs throughout the state, including the following:

- \$131 million for standards-based awards to 24 projects in 15 school districts;
- \$8.1 million for facility leasing assistance to 69 charter schools and eight public schools in 21 districts;
- \$1.2 million from the Charter School Capital Outlay Fund for demolition of facilities in two projects in two districts; and
- \$48.58 million reserved for possible out-of-cycle awards to nine projects in eight districts.

Ms. Casias noted that award funding had increased by 28 percent over the 2008 award funding cycle with 34 new and newly renovated schools opening their doors in 2009. She said that the combined Facility Condition Index, the overall measure of the condition of New Mexico school buildings, continued to improve. Pointing out various graphs in the report, she said that school capital outlay is being deployed rapidly, with 73 percent of award funds now under contract within 15 months — a 300 percent improvement since 2006.

Mr. McMurray discussed the importance of educational specifications in the construction process. He referenced Crownpoint Elementary School in the Gallup-McKinley County School District as an example of the way in which educational specifications are developed, ensuring that the students' needs, the community's values, the instructional strategies and technology-aided classrooms are combined to develop a plan for the construction or renovation of a public school facility.

He noted that the PSFA had developed a two-phase process for ensuring efficiency and adequacy of the design and of the funding request from the legislature. He explained that Phase

I is the planning and design of the space needed for the students, which ensures that the most efficient model is being used for each project. He explained that a significant aspect of Phase I is utilization studies, which ensure that existing public school space is being used most efficiently, and if it is not, solutions are then sought. He offered an example of three wings being taken down in Los Alamos High School in the Los Alamos district. When rebuilt, he said, the facilities are designed to be a more efficient use of space with a smaller footprint.

He said that Phase II is the request for funding. With the education specifications and utilization process having been accomplished, the PSCOC is very confident of the accuracy of the amount of grant funding being requested. Once allocated, he explained, the money starts flowing into the projects within four to six weeks.

Mr. Williams referred to page five of the annual report, which states that "19 percent [of PSCOA grant funds] were transferred out of the fund by the legislature to assist in mitigating the state budget deficit". Mr. Gorrell added that \$125 million will be needed simply to hold public school facilities' conditions where they are now, emphasizing that this estimate does not include what is needed for improvements. He also noted that, because reverted funds can be used to fund other projects in the standards-based process, \$8.7 million has been reverted back from completed projects as a result of the cost being less than anticipated.

Mr. Gorrell discussed using the new geographic information system (GIS), endorsed by the PSCOOTF and approved in the 2009 session. He explained the significance of the colored dots on the maps that members were examining. He used Roswell as an example of a district that, by closing some schools and remodeling others, has achieved a high level of classroom space utilization. Mr. Gorrell stated that his staff would provide a more in-depth demonstration of the GIS at a subsequent task force meeting during the 2010 interim.

Task force members expressed concern that some districts apparently claim to be under the pressure of high growth and appear to have schools that are underutilized. In response, Mr. Gorrell noted that work is continuing on refining the data but that PSFA staff and others working on the project have had difficulty getting student addresses included in the database from some school districts.

Task force members expressed concern that some districts may be building new schools when older ones could be renovated. Mr. Gorrell explained the "60 percent rule", whereby the cost of renovation must exceed 60 percent of the cost of replacement in order to build a new facility using PSCOC grant money.

Some task force members also expressed concern that some districts are building new schools or acquiring old buildings to renovate for new schools when simple redistricting would accommodate all students. Other task force members, many of whom have experienced school-attendance area redistricting firsthand, indicated that moving children from one school to another can be a very emotional issue in a community. Some task force members expressed concern about choices some school districts make when allocating funds within a district, noting that the task force makes difficult decisions and that it is the legislature's constitutional duty to

appropriate funding. The task force has the ability to propose changes to the laws while looking the "big picture", i.e., the state as a whole.

Task force members had a discussion on the importance of safe, quality facilities to help improve student performance. Mr. Gorrell concluded that the PSCOC needs to identify and quantify the numerous variables involved.

Zuni Lawsuit

Ms. Strumor explained that the current *Zuni* lawsuit involves the state's being able to take credit for 75 percent of locally generated funds, including certain Federal Impact Aid funds, particularly the "non-categorical funds" appropriated to provide relief to districts that are highly affected by the presence of federal lands within a school district. She explained that because New Mexico does not use locally generated property taxes to fund school districts, as is the case in most of the United States, New Mexico annually requests permission from the U.S. Department of Education to take the credit as local funds. She said that the current *Zuni* lawsuit seeks injunctive relief from the U.S. Department of Education that would not allow the district to take the credit for the current fiscal year. She indicated that New Mexico continues to meet the U.S. Department of Education disparity standards that allow the state to claim equalized funding and thereby take the credit. In response to a task force question, Mr. Moya stated that the credit usually amounts to between \$50 million and \$60 million in funding relief to the state equalization guarantee. Mr. Brown explained that the Zuni, Gallup-McKinley County and Grants-Cibola County school districts had filed a lawsuit against the U.S. Department of Education in 1999 that was finally resolved in the department's favor by the U.S. Supreme Court in 2007. He said that New Mexico asserts that it continues to meet federal disparity standards that qualify it to take credit for the non-categorical Federal Impact Aid funds. He noted, however, that the state does not take credit for categorical Indian set-aside funds and special education funds for all qualifying districts.

Task force members discussed the importance of maintaining equity among the state's 89 school districts because some districts, particularly those located in oil- and mineral-rich areas, contribute more to the funding formula than do those districts without that advantage. Other task force members noted that other districts also contribute more to the general fund through their local income and gross receipts taxes.

Some task force members expressed concern about the expense of a lawsuit for a school district and wondered how financially strapped districts can afford to fund legal action. Mr. Moya stated that the decision to do so is a local one by statute and that the PED, through its annual budget hearings, does not have the ability to "drill down" to specific line items in each category in a local district.

Discussion of Work Plan, Items for Future Agendas and Other Organizational Business

Ms. Tackett explained the work plan. She noted that, besides its statutory duties of monitoring the progress and effectiveness of programs administered under the PSCOA and maintaining adequate sources of long-term funding for public school capital outlay projects, the task force, along with the working group, will examine issues related to performance-based

procurement for public school capital outlay projects. She also noted that the task force will continue examining issues related to funding charter school facilities.

Task force members discussed the minimum \$125 million that would be required to maintain even current building conditions, a situation that would eventually result in school districts losing ground in their efforts to maintain facilities in difficult fiscal times.

Task force members had an extended discussion about possible implementation of House Joint Memorial 22 from the 2010 session, which was passed by both houses. The memorial requests that the PSFA, under guidance of the PED's Mathematics and Science Bureau, conduct a study for revamping public high school science laboratories in accordance with the recommendations of New Mexico Project 2012, which is a proposal to develop a thorough plan for revamping public high school science laboratories. In response to task force discussions and questions, Mr. Gorrell explained that the PSFA estimated a cost of conducting the study at more than \$1 million in staff time and expenses and that the PSCOC had been concerned about conducting the study before the Mathematics and Science Bureau finishes its revamping of public school science facility standards.

The task force then discussed a number of issues relating to the recent proliferation of legislative memorials, especially simple memorials, and their extraordinary cost for agencies to implement. One task force member expressed concern that while many memorials are quite costly, they almost never get referred to either chamber's respective finance committee, and, therefore, the cost goes unnoticed and memorial requests continue. A task force member noted that it is often tempting in dire financial times to ask for a study of something rather than proposing sometimes costly legislation to move toward accomplishing a goal.

Task force members agreed by consensus to adopt the proposed work plan, allowing staff to make nonsubstantive technical corrections if necessary.

Having no further business, the task force adjourned at approximately 4:15 p.m.

**TENTATIVE AGENDA
for the
TWENTY-SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**July 7, 2010
Room 322, State Capitol
Santa Fe**

Wednesday, July 7

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of May Minutes**
- 9:10 a.m. **Unintended Consequences: School District Capital Outlay Solvency Reversions**
—Antonio Ortiz, Director, Capital Outlay Bureau, Public Education Department
- 10:10 a.m. **Albuquerque Public Schools Facilities Master Plan**
—Brad Winter, Chief Operations Officer, Albuquerque Public Schools (APS)
—Kizito Wijenje, Director, Capital Master Plan, APS
—Joseph Escobedo, Director, Government Affairs, APS
- 12:00 noon **Lunch**
- 1:00 p.m. **Geographic Information System (SB 217, 2009 Session): Implementation and Demonstration**
—Bill Sprick, Facilities Master Planner, Public School Facilities Authority (PSFA)
—Shawn Penman, Ph.D., GIS Specialist, Earth Data Analysis Center, University of New Mexico
- 2:30 p.m. **Public School Facilities Maintenance, 2010 Update: Facilities Information Management System Implementation, Equipment Inventory and Preventive Maintenance Plans**
—Martin Montañaño, Facilities Maintenance and Operations Support Manager, PSFA
—Les Martinez, Maintenance Specialist, PSFA
- 3:45 p.m. **2010 Charter School and School District Lease Assistance**
—Tim Berry, Deputy Director, PSFA
- 4:30 p.m. **Adjourn**

MINUTES
of the
TWENTY-SEVENTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

July 7, 2010
Room 322, State Capitol
Santa Fe

The twenty-seventh meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator Timothy Z. Jennings, temporary chair, at approximately 9:30 a.m. on Wednesday, July 7, 2010, in Room 322 of the State Capitol, Santa Fe.

Present

Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Dr. Lisa Grover
Leonard Haskie
Robbie Heyman
Scott Hughes for Sec. Katherine B. Miller
Sen. Timothy Z. Jennings
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. James Roger Madalena
Kilino Marquez
Dr. John Mondragon
Antonio Ortiz for Sec.-Designate
 Susanna Murphy
Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Ernesto Valdez

Absent

Rep. Rick Miera, Co-Chair
Sen. Cynthia Nava, Co-Chair
Cecilia J. Grimes
Rep. Larry A. Larrañaga
Elizabeth Marrufo
Rep. W. Ken Martinez

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)
Raúl E. Burciaga, Director, LCS
Martica Casias, Planning and Design Manager, PSFA
Robert Gorrell, Director, PSFA
Pat McMurray, Senior Facilities Manager, PSFA
Leslie Porter, Research Assistant, LCS
Mark Williams, Communications and Strategic Planning Manager, PSFA

Guests

A copy of the guest list is in the meeting file.

Handouts

Copies of handouts and written testimony are in the meeting file.

Wednesday, July 7

In the absence of Co-Chairs Miera and Nava, task force members, by consensus, designated Senator Jennings to be the temporary chair.

Unintended Consequences: School District Capital Outlay Solvency Reversions

Antonio Ortiz, director, Capital Outlay Bureau, Public Education Department (PED), whose bureau oversees and accounts for the state and local matches, as well as the offsets, in the computations required for districts applying for Public School Capital Outlay Council (PSCOC) grants, explained that he had requested time on the agenda to bring to the task force members' attention a situation created by the passage of solvency legislation that voided a number of public school capital outlay direct appropriations. By way of background, he explained that the special master's report in the *Zuni* lawsuit, which State District Judge Joseph Rich adopted back in 2000, asserted that direct legislative appropriations to school districts were among the most disqualifying aspects of the previous capital outlay funding formula, against which Judge Rich had ruled. In developing the new, standards-based public school capital outlay funding formula, the current task force's predecessor (the Public School Capital Outlay Task Force) had adopted a sliding scale accounting for local property tax effort and wealth, as well as a system of offsets to account for direct legislative appropriations.

With passage of the solvency legislation in the Forty-Ninth Legislature, First Special Session (SB 29, Laws 2009, 1st S.S., Chapter 7) and the Forty-Ninth Legislature, Second Session (SB 182, Laws 2010, Chapter 105), more than 30 individual school districts had offsets against a current or future PSCOC grant as a result of voided direct legislative appropriations.

Mr. Ortiz directed members' attention to a section of the Public School Capital Outlay Act, Section 22-24-5 NMSA 1978, Subsection B (6)(a), which states, in pertinent part, that a school district's offset total must exclude any appropriation previously made to a school district that has been reauthorized for expenditure by another recipient. In response to task force members' comments and questions on the use of the term "reauthorized" rather than "deauthorized", Mr. Ortiz stated that, in his opinion, statute does not give the PED the specific authority to credit districts with offsets that have already been taken for currently deauthorized appropriations.

In response to additional task force questions and discussion, Mr. Burciaga noted that staff would take a closer look at statutory definitions for "reauthorize" and those definitions' possible relationship to a definition for "deauthorize". In response to additional discussion, Mr. Ortiz noted that in those cases in which a district reverts part of a direct legislative appropriation, the district is not currently credited with the portion of the offset that is based on the unexpended amount.

In response to task force comments and questions about what appear to be negative amounts in the offsets column on Mr. Ortiz's handout and attributed to such districts as Eunice, Gadsden and Grants, Mr. Ortiz explained that the negative offsets are a result of the fact that those districts never used their respective direct legislative appropriations. He noted that if or when those districts receive a new appropriation that they decide to use, the offset would be reduced by that negative amount.

Senator Jennings requested that staff research the vetoes of direct appropriations to evaluate the numbers of vetoes for each chamber. In response to a task force question, Mr. Ortiz noted that appropriations that are vetoed do not incur the offset.

Albuquerque Public Schools Facilities Master Plan

Brad Winter, chief operations officer, Albuquerque Public Schools (APS), thanked the task force for the opportunity to present information on the APS capital master plan (CMP) and its process and implementation. He said that the APS CMP is nationally recognized as a model for state school master planning and that both the master plan process and implementation are based on objective standards, not political pressures.

Kizito Wijenje, director, CMP, APS, said that, as the twenty-eighth largest school district in the country, APS serves more than 95,000 students and employs more than 12,000 total staff members. He said that the APS district includes all or portions of 13 jurisdictions, nine of which pay taxes. He explained that the APS CMP process commits the district's local capital resources in increments of five to nine years and follows state planning guidelines driven by the instructional needs of the students. He explained that all district facilities are evaluated based on a comprehensive, independent physical assessment of all district facilities with respect to APS and state facility standards.

Mr. Wijenje explained that district needs are reviewed and prioritized by the district's CMP review committee, which is composed of citizens, principals, teachers and administrative staff. Review committee recommendations are submitted to the superintendent for approval and then to the district's school board, which must approve the package in its entirety or not at all. Mr. Wijenje noted that since 1990, APS voters have approved \$2.93 billion for capital improvements throughout the district using multiple local revenue sources, including general obligation bonds and the Public School Capital Improvements Act (SB 9) and Public School Buildings Act (HB 33) mill levies. He noted that state funding represents about 10 percent of the district's total capital expenditures. He said that since 2004, the PSCOC has awarded APS \$152 million in matching grants and local match advances. He also said that since 1995, APS has received approximately \$128.6 million in special legislative appropriations.

Mr. Wijenje directed task force members' attention to the handout he provided and noted that in 2005, the district adopted an eight-year plan (2006-2013) that budgets nearly \$1.03 billion in voter-approved revenue to meet district capital outlay needs. He noted that in terms of capital program growth, the number and value of APS capital outlay projects have increased by about 360 percent between 2005 and 2008: from 122 projects in 2005 to 571 projects in 2008, and from a value of \$155.7 million in 2005 to \$715.8 million in 2008.

Mr. Wijenje said that the APS share of Albuquerque-area commercial construction values has grown 68 percent over the three-year period from 2005 to 2008. He added that the capital funding process includes a web-based application that allows the public to access a school project and view the details of the project.

Mr. Wijenje noted that between 2011 and 2016, APS has budgeted for, and has plans for, the following projects:

- \$38.3 million — westside stadium complex;
- \$39.0 million — south K-8 school;
- \$132.0 million — technology (\$30.0 million needed in the first year);
- \$26.4 million — Del Norte High School;
- \$26.1 million — Rio Grande High School;
- \$24.3 million — Atrisco Heritage Academy;
- \$23.0 million — Sandia High School;
- \$20.0 million — district training center;
- \$17.6 million — West Mesa High School;
- \$14.8 million — Chaparral Elementary School;
- \$15.0 million — new technology high school, southwest; and
- \$12.3 million — food services.

In response to comments and questions from the task force, Mr. Wijenje explained that the district has what is called the APS "Enterprise Fund", which was established in the 1930s by then-superintendent John Milne. This fund includes all funds derived from the purchase and sale of real property and remains dedicated to supporting the district's educational mission. He noted that, when necessary, this fund is supplemented by general obligation bonds and mill levy proceeds. He said that voters approved \$35 million for estate acquisition over the next six years as part of the current capital strategy.

In response to questions and comments regarding the possible purchase by APS of the First Baptist Church property in downtown Albuquerque, Mr. Winter said that purchase of the property is a possibility for use as a fine arts magnet school, possibly in conjunction with the Public Academy for Performing Arts charter school. He said that the possible purchase is still under consideration, including an analysis of the market value of the property and possible sale price to the district. He added that the majority of the building could be used immediately. In response to a question on the possible source of funding for the acquisition, Mr. Wijenje explained that this purchase would be a part of the \$35 million approved by taxpayers in the current capital strategy.

In response to a question on the clarification of the location of the district training center, Mr. Wijenje said it is located at a former elementary school at Louisiana Boulevard and Comanche Road, and the funds will be used to retrofit the existing building.

Directing task force members' attention to the second APS handout, Mr. Winter summarized the district's capital program between 2006 and 2010. He said that during that time, APS has undertaken a massive classroom and educational space rebuild and remodel involving more than 300 classrooms. He noted that a substantial number of those classrooms include kindergarten, fine arts and music classrooms. He said that all new construction is using

sustainable materials and energy-efficient principles. He noted that to date, two completed projects — Desert Willow Family School and the Barcelona Elementary School classroom block — have been awarded Leadership in Energy and Design (LEED) certification from the U.S. Green Building Council.

In response to task force members' discussion and comments, Mr. Winter said that APS is in the process of phasing out portable buildings for permanent, sustainable and energy-efficient facilities. In response to a task force question, Mr. Winter stated that the district defines "sustainability" as the practice of meeting the quality-of-life needs of the present without compromising the ability of future generations to meet their own needs.

Mr. Winter reported that APS currently has 1,487 portable classroom buildings covering 1.8 million square feet, which amounts to 15 percent of the district's total square footage. He said that over the past four years, APS has moved an average of 160 portable buildings per year for an average cost of \$6.4 million per year — 37 percent of the cost to build a new elementary school. He added that portable buildings have historically been used to address growth, programmatic needs and lack of capital funds to construct permanent facilities. In response to task force questions and comments, Mr. Winter explained that the district has a number of issues with using portable classrooms, including problems with fire-suppression requirements, Americans with Disabilities Act (ADA) requirements, wireless communication and installation and recurring costs for these "temporary" facilities.

Continuing his response, Mr. Winter said that APS spends \$14.9 million each year for gas and electric utility costs, which breaks down to \$41,000 per day. He said that sustainable buildings contribute to better student test scores due to a healthier learning environment, reduce operating costs, enhance teacher performance and satisfaction, increase building life and reduce liability.

2010 Charter School and School District Lease Assistance

Mr. Berry discussed the PSCOC 2010-2011 preliminary lease assistance applications. He mentioned that 86 charter schools and districts applied for funding, including 80 charter schools and six school districts. He reminded task force members about the history of the lease payment assistance program and noted that the 2004-2005 school year was the first year the program was offered at a rate of \$300 per MEM. He noted that subsequently, the rate was increased to \$700 per MEM with automatic cost-of-living increases. He said that the last major legislative change was removal of the \$7.5 million cap on the amount to be spent for leases, allowing for a possible unlimited amount of funding to go for leasing classroom space.

Directing task force members' attention to the handouts provided, Mr. Berry explained that the PSFA had received a total request of \$9.8 million, with approximately \$9.7 million for the 80 charter schools that applied. Of that number, he explained, 32 are state charters, 11 charter schools are in their first year of operations and 22 are in public buildings. In response to a task force question, Mr. Berry explained that one charter school is in a school district building with no lease costs to the charter school (Lindrith), three charter schools are leasing from counties, 11 are leasing from districts, two are leasing from the federal government, one is leasing from a municipality, one is leasing from a tribal entity, three are leasing from higher education institutions and nine are leasing from nonprofit organizations.

Of the applying charter schools, Mr. Berry said that two are in lease-purchase agreements, 49 are limited by their numbers of students and 31 are limited by the actual lease cost.

Representative Gardner and Senator Asbill inquired about the allocation of capital outlay awards that involve local charter schools. Mr. Berry and Mr. Gorrell replied that all schools are ranked despite their charter status. A locally chartered charter school's application for the award goes through the district, and if the district refuses to submit the charter school application, then the charter school may apply directly. In addition, if the superintendent of a given district does not abide by the guidelines of the ranking system, the PSCOC could override the superintendent's decision. Representative Gardner and Mr. Berry discussed offsets and charter schools.

Some task force members expressed concern about the amount of money being spent on renting classrooms from the private sector and suggested that the use of idle portables around the state for charter schools would alleviate charter schools from being in private landlord leases and would allow taxpayer money to remain in the public sector.

Some task force members also expressed concern about using severance tax bond proceeds to pay for leases; specifically, that lease payments are not long-term capital investments. Mr. Berry explained that funds used for lease payments come from short-term bonds that have been determined by the Attorney General's Office to be the same as cash. Mr. Heyman added that only limited amounts of the severance tax bond proceeds can be used as cash and that most proceeds are used for long-term capital investments.

Finally, task force members expressed concern about a lack of oversight on the quality and quantity of space being leased. Mr. Berry reminded task force members that they had endorsed a bill the 2010 session that would have required PSFA approval of facilities being leased. He noted that the bill was introduced, but it did not receive a message from the governor allowing it to be considered in the 30-day fiscal session. Mr. Berry added that a geographic information system (GIS), which the task force would hear about in the afternoon, will assist in locating appropriate public facilities for charter school use.

Prior to the lunch recess, Senator Jennings noted that the August 25, 2010 meeting date conflicts with a Legislative Education Study Committee (LESC) meeting on the same day. He moved to cancel the meeting and make Thursday, October 7, 2010, the next meeting date. The motion passed.

The task force recessed for lunch at 11:50 a.m. and reconvened at 1:25 p.m., at which time Speaker Lujan became temporary chair of the task force.

GIS (SB 217 (2009)): Implementation and Demonstration

Bill Sprick, facilities master planner, PSFA, reminded task force member that they had endorsed legislation, enacted in 2009, that appropriated \$575,000 from the Public School Capital Outlay Fund for expenditure in fiscal years 2010 through 2012 to contract with the Bureau of Business and Economic Research at the University of New Mexico (UNM) to develop, in conjunction with several different entities, including the PSCOC, the Legislative Finance

Committee, the LESC, the PED, the Department of Finance and Administration and the Department of Information Technology, a portable and secure GIS to be used by the executive and legislative agencies. He introduced Shawn Penman, Ph.D., GIS specialist, Earth Data Analysis Center (EDAC), UNM, and indicated that the PSFA has been able to work with Dr. Penman and the EDAC on this project.

In response to task force comments and questions, Dr. Penman explained that a GIS is an organized collection of computer hardware, software, geographic data and personnel designed to capture, store, update, manipulate, analyze and display all forms of geographically referenced information. She added that a GIS can link a geographical location on a virtual map to buildings, vehicles, students, property tax areas and bonding capabilities and allow that information to be analyzed to provide comparative information for decision-makers.

Moving to a demonstration of the currently developed GIS capabilities, Mr. Sprick said that New Mexico is the first state to develop a statewide database for school districts and for state-level applications. He explained that the program desktop can be used for in-house PSFA analysis to share with districts for development of their respective facilities master plans and other activities requiring knowledge of locations and categories of the population.

He added that the web site will have two mapping sites: one is a PSCOC project that includes information on current and incomplete projects; a second is a statewide overview with statewide data sets. He talked about the collaboration with various state agencies and the challenges.

Dr. Penman provided a demonstration of the GIS, illustrating various abilities and information sets on both web sites. The first screen in the demonstration illustrated the actual New Mexico public school size compared to the planning guideline table in the adequacy standards. Dr. Penman pointed out, for example, that 83 schools in the state are 80 percent or more than indicated the planning guideline table. Mr. Sprick and Dr. Penman then provided a demonstration of GIS analysis and exploration for the Las Cruces and Clovis school districts, demonstrating the level of detail available. For example, they showed a detailed mapping of a Las Cruces elementary school's 2009-2010 40-day count for school capacity. Directing task force members' attention to the screen, Dr. Penman pointed out Desert Hills Elementary School in the west part of the district. The data show that Desert Hills had a 40-day count of 709 and a school capacity of 477, with 551 in-boundary students and 158 out-boundary students with a negative capacity of 232. She also provided an illustration on the GIS of the location of all elementary schools in the Clovis district.

Mr. Sprick pointed out that data are inputted using the PED STARS ID number, allowing the PED to connect its information with other GIS data. He emphasized that these connections, linked with geocoding, is the way in which the New Mexico GIS is unique. He emphasized the importance of collaboration with other state agencies to maximize the GIS capabilities. He noted that nothing in statute or rule requires state agencies to share data with other state agencies — and sometimes even within state agencies — which creates a "silo effect" that separates related issues from one another. He said that the GIS' purpose is to do quick analyses for decisions about allocation of statewide dollars and to save agencies and school districts money.

Task force members expressed interest in the possibilities of further development of the GIS. Mr. Gorrell pointed out that within the next year, the PSFA will be looking for a permanent home for the system.

Task force members expressed concern about the challenges of partnering with the PED and other state agencies. Dr. Penman said that the most populated counties were prioritized initially so that the PSFA could obtain the largest amount of information possible. They are now beginning to work with smaller counties in the state.

Public School Facilities Maintenance — 2010 Update: Facilities Information Management System (FIMS) Implementation, Equipment Inventory and Preventive Maintenance Plans

Les Martinez, maintenance specialist, PSFA, provided the task force with some background on the FIMS. He explained that in recognizing the importance of preventive maintenance, the PSCOOTF in 2005 required all districts participating in the PSCOC standards-based process to have preventive maintenance in place, and it began providing FIMS software and instruction to all districts that were willing to commit to the program. He explained that the purpose of establishing preventive maintenance plans is for the district to establish written policies and procedures for maintenance and custodial operations. Preventive maintenance plans document responsibilities and accountability of all maintenance staff. A typical proactive preventive maintenance scheduled work order costs approximately \$150 compared to a reactive work order of approximately \$280.

Martin Montaña, facilities maintenance and operations support manager, PSFA, said that 60 of the state's 89 districts have current preventive maintenance plans in place or are in the process of updating their plans. He said that districts are in the business of education, rather than understanding what maintenance data mean. Directing task force members' attention to the handouts he provided, he pointed out that this matrix helps the districts understand what progress they need to be making. He added that if progress is tracked, it is able to be managed appropriately.

Mr. Montaña reported on additional challenges to the system. First, the services provided are not regularly maintained. Second, the skill level among staff is often not adequate for improvement without face-to-face interaction. He then explained the assessment tools used to examine existing schools. He said that the physical and management sides of a facility are examined and the districts are scored. He added that schools are evaluated on a calendar-year basis.

Task force members familiar with the program discussed their positive experiences. Mr. Martinez noted that the opportunity to save funds through building management is particularly important during these difficult financial times.

Responding to questions and comments about the statutory requirements for rewards for exemplary maintenance, Mr. Gorrell directed task force members' attention to the handout labeled "Facility Maintenance Assessment Report — 2010". He noted that this tool will be helpful as a measure of exemplary maintenance, and the current study of implementation of the report's assessment measures will help by documenting standards.

Representative Saavedra assumed the chair. There being no further business, the task force adjourned at 3:00 p.m.

Revised: October 5, 2010

**TENTATIVE AGENDA
for the
TWENTY-EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 7, 2010
Room 307, State Capitol
Santa Fe**

Thursday, October 7

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of July Minutes**
- 9:10 a.m. **Construction Manager at Risk: New Las Cruces High School Workforce Solutions Department Wage Increase**
—Herb Torres, Assistant Superintendent for Operations, Las Cruces Public School District
—Gary Yabumoto, Principal, ASA Architects, Las Cruces
—Tiffani Lucero, On-Site Project Manager, Gerald Martin Ltd.
—Johnny Barton, Vice President, General Construction, Gerald Martin Ltd.
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Tim Berry, Deputy Director, PSFA
- 10:30 a.m. **Public School Capital Outlay Projects: Space Incentives**
—John Petronis, President, Architectural Research Consultants, Inc.
—Gary Yabumoto, Principal, ASA Architects, Las Cruces
—Joe Muhlberger, Principal, Van Gilbert Architects, Albuquerque
—Martica Casias, Planning and Design Manager, PSFA
- 11:30 a.m. **PSFA Audit Reports on State Sources of Funding**
—Jeff Eaton, Chief Financial Officer, PSFA
—Casandra Cano, Financial Analyst, PSFA
- 12:00 noon **Lunch**
- 1:00 p.m. **Report from Public School Capital Outlay Oversight Task Force Work Group Studying Performance-Based Procurement for Public School Capital Outlay Projects**
—Work Group Members
—Mark Bennett, Contract Facilitator

3:45 p.m. **Recommendations**
—Task Force Members, Work Group Members and Staff

4:00 p.m. **Adjourn**

MINUTES
of the
TWENTY-EIGHTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

October 7, 2010
Room 307, State Capitol
Santa Fe

The twenty-eighth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Representative Rick Miera, co-chair, at 9:25 a.m. on Thursday, October 7, 2010, in Room 307 of the State Capitol, Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Ms. Cecilia J. Grimes
Sen. Timothy Z. Jennings
Mr. Richard La Pan for Sec.-Designate
 Dannette Burch
Rep. Larry A. Larrañaga
Rep. James Roger Madalena
Mr. Kilino Marquez
Rep. W. Ken Martinez
Mr. Antonio Ortiz for Sec.-Designate
 Dr. Susanna Murphy
Sen. Sander Rue

Absent

Sen. Cynthia Nava, Co-Chair
Dr. Lisa Grover
Mr. Leonard Haskie
Mr. Robbie Heyman
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Ms. Elizabeth Marrufo
Dr. John Mondragon
Mr. Mike Phipps
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Mr. Ernesto Valdez

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)
Raúl E. Burciaga, Director, LCS
Martica Casias, Planning and Design Manager, PSFA
Pat McMurray, Senior Facilities Manager, PSFA
Leslie Porter, Research Assistant, LCS
Mark Williams, Communications and Strategic Planning Manager, PSFA

Guests

A copy of the guest list is in the meeting file.

Handouts

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Thursday, October 7

Construction Manager at Risk: New Las Cruces High School, Workforce Solutions Department Wage Increase

Tiffani Lucero, on-site project manager, Gerald Martin Ltd. (GML), explained that the new Las Cruces High School project is one of the first projects to be undertaken under the 2007 construction manager at risk (CMAR) statute that was enacted in 2007. She explained that the construction process was begun in August 2009, included seven separate phased work packages and was approached as a single job. Work packages numbers one through six were advertised for subcontractor interest in 2009, and work package number seven was in early 2010. She emphasized that it was not until work package number seven had begun that GML was informed that, according to the Workforce Solutions Department (WSD), the 2010 wage rate increases needed to be included in the package. She emphasized that GML had no knowledge of being out of compliance with laws and regulations. She mentioned that GML has met with the WSD to try to mediate the situation. Ms. Lucero believes that GML is currently in compliance with all laws and regulations and that GML should not be penalized for the new wage rates to which it did not have access at the time the project was initiated. She explained that enforcing the new wage rates on a project that began in 2009 will cost the school district an additional \$1.5 million.

Lar Thomas, general counsel, GML, informed the task force that in 2010, one class of wage rates increased 40 percent while other classes decreased. He added that there is no schedule for the WSD to issue decisions as is required in other jurisdictions.

Johnny Barton, vice president, general construction, GML, indicated that the wage changes are very difficult to implement. He said, for example, that workers may perform more than one job on a project site and, as a result, can be earning one amount in the morning and another amount in the afternoon. He also indicated that wage changes in the middle of a contract can create an environment of poor morale and bad productivity. He added that contract amounts are not adequate to accommodate mid-contract wage changes.

Mr. Berry explained the statutory requirements for current public school capital outlay CMAR procedure. At the beginning of the process, the PSFA, together with the school district, defines the scope of the work and then a request for proposals is issued. Proposals from general contractors are reviewed and scored. Then the most qualified contractor is chosen. This contractor is not necessarily the one with the lowest bid. Once the CMAR has been chosen, the contractor and the architect work together to stay within the budget developed by the owner of the project and the PSFA. He explained that the advantage to this system is that, when the general contractor is brought on early to work with the architect to discuss and determine the constructability of the project, the number of change orders is greatly reduced, which, in turn, reduces the overall cost of the project.

In terms of the issues related to the new Las Cruces High School project, Mr. Berry stated that GML entered into the CMAR contract with the Las Cruces Public Schools in July 2009. Because of the time frame the district had established for the project, the district requested a wage determination for the entire project that would be accomplished through phased early work so that materials could be ordered and the infrastructure and footings could be started. He explained that as the project designs and specifications progressed to a level sufficient to request a guaranteed maximum price (GMP) from the CMAR, each early work package was accomplished through an

amendment to the contract under terms previously agreed to in the contract negotiations. The CMAR is then responsible to solicit subcontractor proposals for all work that the CMAR will not perform itself.

Mr. Berry said that the CMAR and owner of the project must agree to the GMP prior to selecting subcontractors, and if the cost comes in higher than the originally agreed-upon amount, the contractor must absorb that additional cost. He noted that this practice allows project costs to remain stable. He noted also that vague language in current rules does not define the way in which prevailing wage laws are followed with a CMAR project.

In response to task force questions and comments, Mr. Berry briefly explained the way in which the State of Massachusetts deals with this issue. He said that under the current interpretation of Massachusetts law, the wage decision is in effect when the first early work amendment begins or the GMP agrees to stays that are in effect throughout the project.

Representative Miera asked representatives from the Attorney General's Office (AGO) and the WSD to respond to questions from the task force.

Melanie Carver, assistant attorney general, Civil Division, AGO, said that the parties in the dispute may proceed through the process in place to deal with the policy interpretation given by the WSD and that any member of the PSCOOTF can request an official opinion from the AGO on the policy issue at hand.

Clyde DeMersseman, general counsel, WSD, stated that if the Massachusetts interpretation of the law were to be applied, the PSCOOTF would be seeing different results. He added that the WSD will listen to the questions presented and will return with research on how this section of the law may be modified for future applications.

Francie Cordova, director for human rights, WSD, informed the task force that the WSD is not opposed to the methodology in question.

Mr. Berry said that the Massachusetts procedure is that the wage decision stays in effect throughout the project and that the existing Massachusetts law requires annual updates of the wages, unlike the requirement under New Mexico statutes. He added that Senate Bill 33 (SB 33), passed by the 2009 legislature, allows the WSD to set prevailing wage rates on public works projects by using collective bargaining agreements and allows fringe benefits to be included in the prevailing wage. He noted that implementation of this law is currently in litigation.

Representative Gardner and Ms. Cordova discussed SB 33 from the 2009 legislature. Ms. Cordova claimed that the issue is that current bid regulations do not have an explicit expiration date, and she questioned whether the current wages can be applied 20 years from now if a project is still running. Representative Gardner stated that SB 33 does not mention the CMAR process, but it must be applied as written. He opined that GML left the bid as based on the current rules and that the legislature altered the rules while the project was in process. Ms. Cordova responded that the project is not being treated any differently from other projects, and if Las Cruces had used traditional bid processes, this issue would not have surfaced.

Senator Jennings shared Representative Gardner's concern over changing the wage rates in the middle of the project.

In response to a task force question, Mr. Berry explained that the CMAR contract was approved by the PSFA on August 13, 2009 with a substantial completion date of November 23, 2011, which was subsequently extended to May 11, 2012 after the GMP amendment was executed.

Public School Capital Outlay Projects: Space Incentives

Ms. Casias explained that over the past year, the Public School Capital Outlay Council (PSCOC) has adopted revisions to the adequacy planning guide (APG). She said that the APG is the reference document for planning and designing new schools in New Mexico. She noted that the most significant change was that the APG became more performance-based than prescriptive, as it had been in the past.

She explained that this new flexible approach to designing a school presents school districts with an opportunity to tailor the interior spaces of facilities to their needs without worrying about whether they have exceeded an upper range limit on any individual space. Conversely, this new methodology creates a potential negative effect that needs to be remedied. She noted that school districts have a natural tendency to view the maximum overall size cap as a goal to strive for in terms of getting the most square footage allowed. She explained that the PSFA and its advisory group determined that districts need an incentive to work creatively with their consultants to develop the most efficient plan possible without sacrificing the essential needs of the educational program.

Ms. Casias said that, in response to this concern, the PSFA and its advisory group are recommending a space reduction incentive to create benefits for school districts that are efficient with space in designing a new school or additions funded on a matching basis through the PSCOC. In practice, she explained, the district would work to reduce the total gross square footage (GSF) of its project below the maximum allowed in the APG, and using a standard formula, a percentage of the construction cost of the difference between the maximum space allowed and the amount of space actually proposed by the district would be given by the PSCOC to the district for use in funding other capital needs other than building new spaces.

John Petronis, president, Architectural Research Consultants, applauded the idea of space incentives and said that he believes it would be a significant change in the way in which the PSFA works. He mentioned discussions among members of the PSFA advisory committee regarding the standards establishing an upper limit on what the PSCOC would fund. He elaborated on the extensive research done by both the PSFA and the advisory committee. He said that the committee concluded that the GSF per student within New Mexico was lacking in secondary schools at upper-size levels of 550 to 600 students. He stated that the GSF per student should be more flexible and encourage efficiency.

Joe Muhlberger, principal, Van Gilbert Architects, Albuquerque, echoed the sentiments of Mr. Petronis regarding flexibility and the authority to analyze methods for better use of facilities to be more beneficial to the students. He mentioned that this adjustment will initially require a great deal of effort with the design professional and the owner to understand each school's curriculum as well as the learning and teaching processes. He applauded the PSFA and its efforts

and stated that this plan will save the state money and provide better facilities for students and teachers.

Gary Yabumoto, principal, ASA Architects, Las Cruces, expressed his support for the incentive program. He pointed out that curriculum delivery methods have changed at the high school level and that the same square footage cannot be built to address and facilitate the new approaches utilizing small communities and team teaching. He added that incentives for building "green" should also exist because green systems will save more in the long run.

Robert Gorrell, director, PSFA, noted that the initial cost of a building is 20 percent of its operating cost over 30 years and that the PSFA does spend extra money on schools if there are reflected savings within that time frame. He added that the money saved by reducing square footage cannot be used for additional square footage, such as the construction of a new theater, but it can go to educational equipment, such as turning an existing piece of square footage into a theater.

PSFA Audit Reports on State Sources of Funding

Jeff Eaton, chief financial officer, PSFA, indicated that he would discuss recent reported issues around the use of state share contributions for two projects within the Albuquerque Public Schools (APS), specifically the Volcano Vista High School and Atrisco Heritage Academy projects. Summarizing the current issue under discussion, Mr. Eaton stated that APS has contracted with an auditing firm, Meyners+Company, LLC, to audit and reconcile the district's capital funds. As part of this reconciliation, some concerns exist over the appropriate use of state funding on the projects, as reported in local newspaper articles that have included, according to Mr. Eaton, some inaccuracies.

Regarding the Volcano Vista project, Mr. Eaton provided the task force with a table illustrating the amount of funding from the state and the district and the way in which those dollars were expended to date, as well as the projected balances. He noted that APS applied for and received a PSCOC standards-based award on September 21, 2004 for a new high school to relieve overcrowding at Cibola High School. Total approved project cost to adequacy at the time of the award was approximately \$60.8 million, with state participation of 46 percent and district participation of 54 percent. Offsets for direct legislative appropriations to the district applied to this project totaled approximately \$4.7 million, resulting in an adjusted participation rate for the state and the district of 38.3 percent and 61.7 percent, respectively.

He explained that APS submitted an application for high priority project grant assistance for a local match advance on April 20, 2006 because of limited availability of local funds and the need to proceed in a timely manner. After staff review of the district's application, the PSCOC approved a revised total project cost to adequacy (because of construction inflation costs) of approximately \$89.8 million. Some of the additional costs that were determined to be for parts of the project that were above adequacy (such as a performing arts center, auxiliary gym, additional playfields and other facilities) totaled approximately \$28.4 million and would be funded at 100 percent by the district. Referring task force members to Table 2 in the handout, Mr. Eaton explained that on May 3, 2006, the PSCOC approved additional state funding to adequacy of \$13.3 million. To bridge the gap between the district's limited availability of local matching funds, the PSCOC approved an advance of the district share for project costs to adequacy totaling

\$35 million. He pointed out that the advance was repaid when the district assumed the state share on various other PSCOC-approved projects on July 25, 2008.

Turning to Table 3 in the handout, Mr. Eaton explained that in 2004, APS applied for and received a PSCOC standards-based grant award for a new high school to relieve overcrowding at West Mesa High School. Total approved project cost to adequacy was approximately \$85.4 million, with state participation of 47 percent and district participation of 53 percent. Offsets for direct legislative appropriations to the district applied to this project totaled approximately \$14.5 million, adjusting participation for the state and the district to 30.1 percent and 69.9 percent, respectively.

Mr. Eaton explained that APS also applied for a local match advance because of limited availability of local funds. As with the Volcano Vista project, the PSCOC awarded a revised project cost of \$90 million to adequacy. The advance was repaid through the district's assumption of the state share on various projects approved and awarded on July 25, 2008.

In response to a task force question, Mr. Gorrell responded that, at this time, the PSCOC has been able to deal with this and other situations with its current legislative authority, and he does not anticipate that the council will be asking for statutory amendments.

Representative Miera acknowledged a letter from APS notifying the task force about being unable to attend the meeting.

Representative Larrañaga, Representative Miera and Mr. Gorrell engaged in a conversation regarding charter schools. Mr. Gorrell noted that student population is currently in decline statewide; as a result, districts have unused space that might be available for charter schools. Representative Miera said that these facilities should be used as much as possible, and successful charter schools should be replicated. In response to additional questions and comments, Ms. Ball noted that parents can choose whether or not they would like their children to attend a charter school, and a charter school may not choose its students but must, in response to federal requirements for grants, admit students on a first-come, first-served basis or, in the case of wait lists, by lottery.

Representative Larrañaga asked how accounting for the repayment of the advance money is reconciled. Mr. Gorrell stated that this reconciliation is currently being developed. Carrie Menapace, policy analyst, APS, stated that APS uses open-end contracts, which results in better value for the money spent as well as more consistency. She added that APS, because of its size and diversity, can be a bit more difficult to track than other districts.

Report from PSCOOTF Work Group Studying Performance-Based Procurement for Public School Capital Outlay Projects

Mark Bennett, facilitator, read the five recommendations for PSCOOTF by the PSCOOTF work group studying performance-based procurement for public school capital outlay projects:

1. Legislative Aspect: The PSCOOTF work group recommends increasing the subcontractor bonding statutory threshold amount from \$150,000 to \$250,000. A foreseen challenge with this is the lack of a simple solution to track results of the bonding process over time.

2. Rule Change to the New Mexico Administrative Code:
 - First, the PSCOOTF work group recommends changing the requirement language for companies to be in-state entities. This arose due to out-of-state companies claiming that they are in-state companies in order to be able to obtain jobs.
 - Second, the PSCOOTF work group recommends replacing the term "final cost scores" to "final scores". There is also the desire to delete the term "cost as a limitation". The current scoring that applies to the resident preference fraction applies only to the cost part of the bid. The cost part of the bid is a modest fraction of total scoring.
3. Process Change: The PSCOOTF work group recommends that the PSFA develop a standardized template with detailed instructions for performance-based contracting work. There must be public confidence in the administration of the process.
4. The PSCOOTF work group recommends that a web-based training module be developed for contractors and subcontractors. This training will be aimed at smaller communities and will give smaller contractors the confidence needed to go after big jobs.
5. The PSCOOTF work group recommends that the web-based training be a requirement to serve in communities.

Ms. Ball clarified that the first recommendation applies to PSCOOTF action in terms of a change in statute. She added that the second recommendation is a change to a General Services Department rule, which needs to be addressed through a letter on behalf of the PSCOOTF. The remainder of the recommendations can be dealt with by Mr. Gorrell at the PSFA. She noted that while these recommendations were endorsed unanimously by the work group members earlier in the day, a number of members representing unions and union contractors were not present for a discussion of recommendations.

Members of the task force discussed with work group members several topics related to concerns about what may sometimes seem to be misperceptions on the part of the construction industry and the state regarding implementation of the Procurement Code.

Representative Miera noted the letter written to the General Services Department for a rule change and expressed his concern about getting a timely response because of the administration change.

Adjournment

There being no further business before the task force, the meeting of the PSCOOTF adjourned at 2:00 p.m.

Revised: November 23, 2010

**TENTATIVE AGENDA
for the
TWENTY-NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**November 24, 2010
Room 307, State Capitol
Santa Fe**

Wednesday, November 24

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of July and October Minutes**
- 9:10 a.m. **2010-2011 Public School Capital Outlay Council (PSCOC) Special Standards-Based, Short Cycle Capital Outlay and Roof Awards**
—David Abbey, Chair, PSCOC
—Joe Guillen, Chair, PSCOC Awards Subcommittee
- 10:00 a.m. **Albuquerque Public Schools (APS) Charter School Facilities Program**
—Don Moya, Chief Financial Officer, APS
—Kizito Wijenje, Director, Capital Master Plan, APS
—Joseph Escobedo, Legislative Liaison, APS
—Mark Tolley, Director, Charter and Magnet Schools, APS
- 11:30 a.m. **Lease-Purchase Update**
—Antonio Ortiz, Director, Capital Outlay Bureau, Public Education Department
- 12:00 noon **Lunch**
- 1:00 p.m. **Incubator Process for Facilities for Charter School Start-Ups**
—Robert Gorrell, Director, Public School Facilities Authority (PSFA)
—Tim Berry, Deputy Director, PSFA
- 2:00 p.m. **Charter School Concerns: Facilities and Accessing Capital Funds**
—Tony Monfiletto, Director, New Mexico School for Architecture, Construction
and Engineering
—Patricia Matthews, Esq., Matthews Fox, P.C.

3:45 p.m. **Recommendations for 2011 Public School Capital Outlay Oversight Task Force (PSCOOTF)-Endorsed Legislation**

- SB 140 (2010 Session): "School Facility Leases and Standards"
- Raising Minimum Contract Amount for Subcontractor Bonding
—PSCOOTF Members and Staff

4:30 p.m. **Adjourn**

**MINUTES
of the
TWENTY-NINTH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**November 24, 2010
Room 307, State Capitol
Santa Fe**

The twenty-ninth meeting of the Public School Capital Outlay Oversight Task Force was called to order at 9:15 a.m. by Representative Rick Miera, co-chair, on Thursday, November 24, 2010, in Room 307, State Capitol.

Present

Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Rep. Keith J. Gardner
Dr. Lisa Grover
Mr. Leonard Haskie
Mr. Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Rep. Ben Lujan
Rep. W. Ken Martinez
Mr. Richard La Pan for Sec.-Designate
 Dannette Burch
Dr. John D. Mondragon
Mr. Antonio Ortiz for Sec.-Designate
 Dr. Susanna Murphy
Mr. Mike Phipps
Sen. Sander Rue
Sen. John Arthur Smith

Absent

Sen. Cynthia Nava, Co-Chair
Ms. Cecilia Grimes
Sen. Timothy Z. Jennings
Rep. James Roger Madalena
Mr. Kilino Marquez
Ms. Elizabeth Marrufo
Rep. Henry Kiki Saavedra
Mr. Ernesto Valdez

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)
Raúl E. Burciaga, Director, LCS
Martica Casias, Planning and Design Manager, PSFA
Robert Gorrell, Director, PSFA
Pat McMurray, Senior Facilities Manager, PSFA
Leslie Porter, Research Assistant, LCS
Mark Williams, Communications and Strategic Planning Manager, PSFA

Guests

A copy of the guest list is in the meeting file.

Handouts

Copies of handouts and written testimony are in the meeting file.

Thursday, November 24**Approval of Minutes**

The minutes from the July 7, 2010 and October 7, 2010 meetings were approved.

2010-2011 Public School Capital Outlay Council (PSCOC) Special Standards-Based, Short-Cycle Capital Outlay and Roof Awards

David Abbey, chair, PSCOC, and Joe Guillen, chair, PSCOC Awards Subcommittee, provided the task force with information on the special "short-cycle", standards-based PSCOC awards process. Mr. Abbey explained that, because of a lack of significant funding available from the supplemental severance tax bonds (the dedicated funding stream for PSCOC awards) earlier in the year, the PSCOC had decided to postpone a full-fledged standards-based awards cycle.

Directing members' attention to the handouts, specifically the one labeled "Financial and Operational Data", Mr. Abbey stated that the PSCOC, with considerable support from both the legislature and the executive, has been making demonstrable progress in bringing the state's school buildings up to adequacy as measured by the PSCOC-adopted adequacy standards. He explained, for example, the criteria for building a new building as opposed to repairing, remodeling and/or refurbishing an existing building. He said that, if a public school facility receives a Facility Condition Index (FCI) at or above 60 percent, the facility should be replaced. Conversely, if the facility has been scored under 60 percent on the FCI, the facility should be remodeled, repaired or refurbished as needed. He noted that in FY 2004, the first year of implementation of the standards-based process, the average public school facility scored above 60 percent on the FCI. He pointed out that, currently, the average FCI rating of the facilities is 36.13 percent. He noted that as implementation of the standards-based process has progressed over the past six or seven years, projects are currently being funded "just in time", when districts have their projects "shovel ready". He added that, in the past, sometimes more that \$50 million could be tied up in one award while districts worked to get voter approval for the district's share of the project.

Mr. Abbey explained that the council is now awarding planning and design money first, and providing funding for construction when the plans are ready and the district's share of the funding is in place, a process that can take a year or more. He stated that in FY 2010, nearly 81 percent of awards were under contract. He discussed the financial plan and the process and said the PSCOC pays careful attention to available funding. Directing members' attention to the "PSCOC Financial Plan" document, he discussed revenue sources and uses. He noted that in

FY 2011, the funding source is supplemental severance tax bonds totaling \$260 million. He noted that funding for the Senate Bill 9 (SB 9) guarantee, the lease payment assistance program and PSFA operations come "off the top" of the available funding and must be accounted for before any standards-based grants can be awarded. He noted that the special roof award program, authorized by the 2010 legislature, accounts for another \$10 million "off the top" of the available funds. He pointed out that \$174 million has been committed to Phase II projects but that funding has not been awarded yet. He pointed out that, currently, the PSCOC can expect to make approximately \$27.8 million in planning and design grants to districts that apply for these short-cycle grant awards.

Mr. Guillen discussed the status of the current application cycle. He stated that PSCOC staff have completed site visits on their projects and will have districts make presentations on December 9, 2010 in Santa Fe. The PSCOC will be meeting on January 13, 2011 to make awards on those applications. He also emphasized the fact that the PSCOC has been funding projects on a "just in time" basis and noted that the applications received are for planning and design funding and have come from seven districts with a total of 18 projects.

Mr. Guillen highlighted the \$10 million set aside for roof applications. He closed by stating that staff will be making recommendations in terms of phasing and reducing project costs.

The topic of state reimbursement came up during the task force discussion. In response to questions about the process, Mr. Abbey said that, with some exceptions in specific circumstances, districts are reimbursed based on their provision of documentation that the funds have been expended. In response to additional discussion, Mr. Gorrell stated that the PSCOC has the authority to expend funds to make emergency repairs and to provide advances in rare cases in which districts have little or no funding available; for example, before bonds that have been authorized have been sold or receipts are due on a mill levy from the county treasurer.

Some task force members expressed concern that the Albuquerque Public Schools (APS) does not appear to be applying for PSCOC funding in this cycle. Mr. Abbey explained that APS has three schools ranked in the top 60 that could have been eligible for funding, but the district chose not to apply during this short cycle. Some task force members expressed concern about some kind of state oversight with the APS capital outlay program. Mr. Gorrell explained that all districts, including APS, must request approval from the PSFA for any project that is estimated to cost more than \$200,000. He explained that the PSFA web-based accounting system tracks whether and how a district is using PSCOC dollars.

Task force members discussed the possibility of legislation being proposed that would impose a moratorium on the establishment of new schools and the effect that this moratorium would have on the standards-based process. Representative Miera emphasized that the potential legislation would stop the building of *new schools*, not the improvements on existing facilities. Regarding the construction industry, Mr. Gorrell noted that eliminating implementation of the standards-based process could create a 40 percent to 50 percent increase in unemployment in that

sector. In response to further discussion, Mr. Gorrell stated that construction plans should be valid for up to three years.

Mr. Haskie inquired if the PSCOC has the authority to accommodate a pre-k program and stated that the program has been declared not eligible under enrollment in his area. Mr. Abbey answered that the PSCOC has funded pre-k classrooms when they are state-funded programs and requested that Mr. Haskie bring forth the details of the issue to ensure that the PSCOC is being consistent. Mr. Gorrell added that if there are not enough children, the PSCOC cannot supply the money.

In further discussion, Mr. Abbey explained that the PSCOC has funded facilities for pre-k classes only when they are state-funded programs and under specific conditions applicable at the time, such as an advance that must be repaid. Another member asked about the possibility of increasing the rate of the local match in order to allow for more state funding of projects. Mr. Abbey explained that the capital outlay funding formula and property tax rates are in statute and cannot be changed without legislative action. Superintendent Phipps stated that if the difference between the adequacy standards and what the district is building is not greater than five percent, he believes the district may be able to find ways to tighten its budget to find that five percent if a temporary adjustment to the statute is made.

Representative Miera asked if PSCOC money would be used to purchase land for new facilities. Mr. Abbey assured him it would not. Representative Miera inquired about the increase in PSCOC spending over this fiscal year and its basis. Mr. Abbey noted the consumer price index provision and suggested that this may be a way to reduce spending, for the statute has now allowed for standard yearly growth.

APS Charter School Facilities Program

Kizito Wijenje, director, Capital Master Plan, APS; Don Moya, chief financial officer, APS; Carrie Robin Menapace, policy analyst, APS; and Mark Tolley, director, charter and magnet schools, APS, provided the task force with an overview of the district's capacity and utilization analysis and its charter schools facilities programs.

Mr. Wijenje explained the difference between "maximum capacity" and "workload capacity". APS defines "maximum capacity" as the theoretical number of students that can be housed using all available instructional spaces multiplied by a student loading factor that reflects average New Mexico pupil teacher ratios (PTR). The district defines "workload capacity" as the identification of the number of students that can be housed based on actual instructional spaces available to regular and C&D special education enrollments, multiplied by a student loading factor that reflects actual New Mexico PTR for that program, and the results are multiplied by factors addressing scheduling utilization, special education inclusion and school size.

For example, Mr. Wijenje said, if APS builds a school with 30 classrooms, typically nine of those classrooms will have to be used for special programs, leaving a working capacity of about 450 students in a building with a design capacity of 650 students. He said that if APS

builds a school with 40 classrooms, its working capacity is about 650 students while its design capacity would be 880 students.

He went on to explain the way in which APS defines a "utilization analysis". Directing members' attention to his handout, Mr. Wijenje explained that a "classroom need analysis" identifies the number of classrooms needed to accommodate a given enrollment based on state PTR at a given schedule. A utilization analysis identifies the number of classrooms available on the site and the current use based upon the current program and the percentage of a given classroom capacity actually needed for existing and projected enrollments at a given schedule. He provided maps of schools in APS that illustrate the utilization of all schools in the district and pointed out the more than 25 schools that are currently at 100 percent of capacity or greater.

Mr. Wijenje indicated that the district has been looking for opportunities to co-locate charter schools within existing facilities as an alternative to new facilities. He gave the example of the co-location of Wilson Middle School and the Native American Charter Academy on the former Wilson campus and also pointed out the co-location of the Public Academy for Performing Arts on the Bel Air Elementary School campus.

Mr. Wijenje continued, stating that APS is currently providing \$34 million for the construction of new charter facilities over the next six years in its current Capital Master Plan. Three of these schools are in the advanced stage of design and should be under construction in the next three months.

He also discussed the construction of a new charter modular facility for the Robert F. Kennedy High Charter School (RFK). He explained that, given the composition of the student body, which consists of students who would not attend any type of traditional high school, the district had to search for a site that would be in "neutral gang territory".

Mr. Wijenje introduced Robert Baade, RFK principal, who discussed the type of student his school caters to and talked about the process of working with APS to select a site and build the modular school. Task force members expressed a great deal of interest in the RFK school and were very complimentary to Mr. Baade and his staff. Mr. Tolley explained that RFK provides a service to a certain type of troubled student that the district has not been able to duplicate, and he pointed out that, by working together, the charter school and the district have been able to graduate students who could not have gotten along in a traditional high school.

Mr. Wijenje discussed lessons learned with the district's current efforts to house charter schools that are willing to participate in its program. He explained that participating charter schools give up some independence and autonomy for the peace of mind of not having to deal with facilities and other real estate issues. He explained that the participating charter schools sign a memorandum of understanding (MOU) with the district to allow APS to keep six (rather than the statutorily required two) percent of its state equalization guarantee (SEG) distribution plus signing over the state lease reimbursement for APS to maintain the facilities. He emphasized the importance of the state lease reimbursement for making the school district/charter school relation

function successfully. He also opined that the current lease-purchase legislation in effect has not been a cost-effective mechanism for the district to use in building or purchasing a new facility and cited the district's experience with the Montessori of the Rio Grande Charter School. At this point, the district has simply purchased a private facility, and the charter school has committed its lease funds to the district in exchange.

In response to task force discussion and questions, Mr. Baade indicated that he has been willing to give up some of his former autonomy in order to concentrate on his school's mission, which is to work with high-risk teenagers to educate them and keep them out of trouble. He prefers to have APS as his landlord.

Mr. Wijenje pointed out that issues of governance that impact facilities must be a part of any successful MOU between the district and a charter school. He also emphasized that the MOU between the charter school and the district is such that it can be a "turnkey situation", in which the charter is left to concentrate on its ingenuity and proactive education, and the district can provide the leverage to maintain the facility.

Mr. Tolley discussed problems that have arisen throughout the process. For example, lease assistance is increasing annually, but it is still a small portion of the costs the co-located charter schools are required to pay for their leases. He mentioned that, with the lease reimbursement and the six percent of the charter school's SEG, the goal is to recoup APS costs and relieve the stress on the leadership of these charter schools, for charter schools are intended to address the needs of students in alternate ways that public schools cannot address. He added that APS also deals with the MOUs between the APS school board and the charter school board, and it is challenging to reach agreements when the memberships are continually changing. He brought up the challenge of oversight, for some of the charter schools are authorized by APS and others by the Public Education Department (PED).

Ms. Menapace stated that House Bill 33 (HB 33) is supposed to provide funds to all schools in the district. Because charters are an aspect of the audit, she said that APS would like to see a notification of some sort that would be given to both the authorizer and the charter school to ensure that HB 33 and SB 9 funds are expended according to law. She emphasized that the district is not advocating some sort of permission; rather, it would like to see a process in place in which the PED, for example, advises the charter school about appropriate expenditure of funds.

In response to task force discussion and questions about the current charter school oversight agreement and the proposed notification system for appropriate expenditure of HB 33 and SB 9 funds, Mr. Moya answered that the district believes that the proposal discussed by Ms. Menapace would not only protect locally chartered schools but also state-chartered schools. In response to a question about current PED oversight of Public Education Commission (PEC) authorized charter schools, Mr. Moya responded that he assumes the PEC and the PED do have oversight but, unlike school district authorizers, the PEC does not put the questions of a mill levy before the voters. He clarified that APS wants to ensure that local *and* state charters have a plan for the mill levy money. Representative Larrañaga asked who is providing audits for charters

funded by the PED and asked if the PED intercepts money and then distributes it to charters. In response to additional discussion and questions, Mr. Moya clarified that charters that are component units of the PED budget have an independent auditor chosen by the PED while district-chartered charter schools are a component part of the district's audit. He also noted that each county treasurer flows the SB 9 and HB 33 funding directly to the charter schools themselves, while the SEG money flows through the authorizer.

In response to additional task force discussion and questions, Mr. Tolley explained that charter schools and magnet schools often have a similar mission in terms of appealing to the student at risk of dropping out of a traditional high school, but the difference between the two is governance. He added that, in his opinion, magnet schools are not in competition with charter schools. Mr. Moya also explained that magnet schools, unlike charter schools, are not component units of the APS audit but are part of the entire district audit.

Task force members discussed the audit costs, stating that charter schools were paying more than half of the cost of the APS audit, and expressed reluctance to use those costs as an example. In response to a question, Ms. Menapace stated that APS does have a written policy in a procedural directive, making the relationship one that is board-to-board. She continued, stating that attached to that, the APS voters approved a strategy and prioritization process on how charters access the master plan, and it was part of developing the bond question that went to the public. She said that, while creating that directive, Assistant Superintendent Diego Gallegos met with charter schools for input. Ms. Menapace added that the procedural directive needs to be updated to include the local dollars and said that a letter will be sent to the locally authorized charters about how they can access the money. In response to additional questions and comments, Ms. Menapace responded that the charters included in the resolution that was approved by the voters are the ones that will receive the funds per the county treasurer. Task force members expressed concern about an apparent discrepancy between what the district is asking the county treasurer to do and what the statute says. Some task force members indicated that charters around the state are managing to use the lease-purchase program effectively to get into public buildings by 2015 and expressed concern about attempting to amend current statute. In response to this discussion, Mr. Moya assured the task force that APS is not opposed to the lease-purchase agreement legislation and concurred that it is invaluable to some charters. In that regard, he stated that APS can purchase facilities and not pay interest costs, making it more effective for the charters.

Task force members expressed concern that positively performing charter schools should remain open and expressed concerns about the method to shut down low- or non-performing charter schools. Mr. Tolley answered that the methods for withdrawing a charter school's authorization are in statute and explained that APS authorizes charters for five years and then conducts an evaluation. Ms. Menapace explained that in law, there are three things that an authorizer can do: authorize; suspend; or revoke a charter. The suspension process is not well written, and APS believes there should be a middle ground to allow charters to have a chance to redeem themselves. She added that the process mirrors what the secretary of public education can do if there is a problem with a school in a district. Task force members expressed concern about

the damage to the students given the time line to evaluate and revoke a charter. Mr. Moya responded, stating that APS does not have state-chartered schools in APS facilities and for the moment, they should not be included in the issue. In response to a task force question, Mr. Moya stated that his office would be able to serve as a landlord to charter schools in district facilities. Representative Martinez requested staff to examine the issue further, and Mr. Gorrell noted that his presentation that afternoon would address the issue.

In response to additional task force questions, Mr. Moya responded that 98 percent of the SEG funding generated by a student follows that student into the charter school regardless if the charter is state or local. Representative Martinez stated that the money moved is a net loss to the district, and Senator Asbill clarified that this is not the case if it is a startup charter. Representative Miera expressed the desire to change that.

Some task force members had a number of questions about the performance of RFK. Mr. Tolley stated that the school does not meet adequate yearly progress each year, and while the school's performance on paper appears to be dismal, this school is dealing with the highest at-risk students in the district. The school provides educational opportunities to students who would not have another choice but jail. Mr. Baade said that the school is a Title I school and serves a student body with 90 percent qualifying for free or reduced-fee lunches and 90 percent with some type of gang affiliation. The school has a substance abuse clinic and an early intervention program to provide rehabilitation and intervention; a growing bilingual program; an early childhood development program to train the students who are parents to be good parents; and a literacy program for parents to teach their kids how to read. Regarding enrollment, Mr. Baade stated that RFK enrolls students throughout the academic year because dropouts need to be in school. He discussed the school's mandatory six-week orientation program in which a student has a sponsor. He said that about half of the students do not pass the orientation requirements but half of those that do not pass voluntarily repeat it multiple times until they do. Mr. Baade stated that the average student comes into ninth grade and is four grade levels behind, so RFK has a remedial reading class that is part of the forced electives. He noted that RFK shows two years of academic growth within the first year. He declared that RFK is graduating students and that it provides the services that are not being provided elsewhere.

Several task force members complimented Mr. Baade and his staff on the important work they are doing for troubled young people.

Lease-Purchase Update

Mr. Ortiz gave a brief history on lease-purchase, stating that provisions of the enabling legislation for the constitutional amendment to allow the lease-purchase arrangement require PED approval of each lease-purchase arrangement. He reported that, since 2007, only five requests have come to the PED: the Media Arts Collaborative; a charter in Taos; Mesa del Sol; a school in Las Cruces; and Albuquerque Montessori of the Rio Grande. He stated that APS chose not to go forward with Montessori. He emphasized that the problem with the lease-purchase arrangement is that charters often do not have the money for the down payment.

Some task force members expressed concern that charter schools could have funding for a down payment if they were receiving their share of HB 33 and SB 9 funds as required by law.

The task force asked for comments from the students from the Media Collaborative Charter School. Several students stressed the point of the uniqueness of their school and the choices they have been offered. Many of the students had attended several schools and find this one to have the most opportunities.

Charter School Concerns: Facilities and Accessing Capital Funds

Patricia Matthews, Esq., Matthews Fox, P.C., began with the concerns regarding charter schools' ability to receive their share of SB 9 and HB 33 levies. She said that, first, the statute requires that district charters be included in the facilities master plan (FMP); in some cases they are not. She stated that some charters are seeking clarification within the statute to ensure that charters are included in the FMPs in the future. She posed the questions about how the PED communicates with the districts to ensure that charter schools are involved in developing the district resolutions. She noted that there had been a great deal of discussion about whether a per-MEM distribution makes sense in terms of providing sufficient funding for down payments.

Concerning the Public School Lease Purchase Act, Ms. Matthews indicated that she believes having SB 9 and HB 33 dollars flowing to charter schools will enable charters to have the money for the down payments on lease-purchase agreements. She added that these sources may be used more often and have provided some unique abilities to leverage other sources of funds. Regarding being asked to make improvement on a facility, some charters and the PSFA are working together to meet adequacy standards where appropriate.

Michael Vigil, chief executive officer for the Coalition of Charter Schools, welcomed APS' efforts to work with charters. Until recently, he said, charters did not have the ability to maintain their facilities, and this is an opportunity to work with the district and is a viable option.

Ms. Matthews said that in the past, the reporting requirement was developed to make sure charters complied and added that Dr. Grover helped with that process. She said the coalition is advocating for a quality initiative that is not legislated, but part of the performance contract with an authorizer where both the school and the authorizer comply. She said she appreciates the work that has been done and sees this as a way to maintain facilities.

Representative Miera asked if the coalition is willing to work with Ms. Ball on potential statutory language that would be acceptable to both charter schools and the PSFA. Ms. Matthews said that she believes that the acquisition of a facility is an appropriate use of that money. The transaction could be structured to include a distribution of funds over the next five years. Dr. Grover suggested finding out the ways in which charters are pursuing different sources to secure various sources of reliable funding. Ms. Ball added that both SB 9 and HB 33 are direct levies and can be used as down payments. She noted, however, that SB 9 state guarantee funds are bond proceeds and possibly may not be used for this purpose. Mr. Ortiz concurred.

Incubator Process for Facilities for Charter School Start-Ups

Mr. Gorrell discussed concerns that charter schools are being approved without having a potential facility selected. PSFA staff are proposing to amend statute so that the PSCOC can be the landlord of any new charter. He explained that the PSFA would work to establish agreements with districts to broker their use by new charter schools. Once the first anniversary date of five years occurs, charters would be eligible to opt out if they have found space.

Some task force members expressed concern about supporting legislation that would erode a local school board's authority to determine its district's expenditures. Senator Asbill noted, as an example, that his school district, Carlsbad, has a policy of supporting small, neighborhood schools and, as a result, has 10 schools where five would probably serve the students more economically. Representative Miera noted that the concept is on record and requested that Mr. Gorrell and Mr. Berry continue the research, take the idea to the PSCOC and bring it back as a formal presentation to the task force during the 2011 interim.

Recommendations for 2011 Public School Capital Outlay Oversight Task Force (PSCOOTF)-Endorsed Legislation

SB 140 (2010 Session): "School Facility Leases and Standards"
Raising Minimum Contract Amount for Subcontractor Bonding
PSCOOTF Members and Staff

Ms. Ball directed task force members' attention to the discussion drafts of two bills under consideration. She noted that the first bill, .182974.1, is the result of the work of the task force's subcommittee on subcontractor bonding. This draft, she explained, would increase the limit for the subcontractor bonding requirement from the current \$125,000 to \$250,000. Senator Asbill stated that this bill is a first step to making sure projects are funded appropriately.

Senator Asbill made a motion to endorse the draft bill, seconded by Mr. Phipps, and Representative Miera announced, without opposition, that the bill will be a PSCOOTF-endorsed bill. Senator Asbill will sponsor the bill.

Ms. Ball discussed SB 140 from the last session, noting that changes were made to the original version that were not added during the 2010 session because the bill did not receive a message to be germane from the governor. She noted that those changes are included in the present version of the bill.

Mr. Gorrell explained the rationale of the bill, stating that charters often are authorized that have facilities that are well below the state average facilities index score. He explained that once these charters are renewed, this below-average facility will move to the top of the FCI list and be among the first to be considered for state funding. He explained that this bill ensures that the facility the charter is moving into cannot be below the state average.

Task force members expressed a number of concerns about the bill, including the following:

- the requirement that charter schools must be in facilities that meet average adequacy standards;
- the lack of language to give charter schools the first right of refusal for underutilized facilities;
- a lack of protection for a charter school in a district building if the district decides to sell the facility; and
- concerns about the inclusion of the PEC as the state-chartered charter school authorizer.

Task force members requested additional work on the bill and asked that it be brought to the December 21 PSCOOTF meeting.

Task force members requested that staff draft bills to address the following issues:

- the possibility of an "intermediate" authority to determine if charter schools are expending their HB 33 and SB 9 funds according to law;
- an amendment to the construction manager at risk statute to determine "start" and "finish" dates as they relate to the determination of prevailing wage; and
- an amendment to statute to require a dispute resolution clause in the charter of a state-chartered charter school as well as a district-chartered charter school.

Adjournment

There being no further business, the task force adjourned at 2:45 p.m.

**TENTATIVE AGENDA
for the
THIRTIETH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**December 21, 2010
Room 307, State Capitol
Santa Fe**

Tuesday, December 21

- 9:00 a.m. **Call to Order**
- 9:05 a.m. **Approval of November 24 Minutes**
- 9:10 a.m. **Fiscal Year 2012 Revenue Projections**
 —Tom Clifford, Chief Economist, Legislative Finance Committee (LFC)
 —Leila Burrows, Economist, LFC
- 10:00 a.m. **Discussion of Potential Endorsement of Legislation**
 —Task Force Members and Staff
- 12:00 noon **Adjourn**

UNAPPROVED MINUTES
of the
THIRTIETH MEETING
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

December 21, 2010
Room 307, State Capitol
Santa Fe, NM

The thirtieth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order at 9:05 a.m. by Representative Rick Miera, co-chair, on December 21, 2010 in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Rick Miera, Co-Chair
Sen. Vernon D. Asbill
Dr. Lisa Grover
Mr. Leonard Haskie
Mr. Robbie Heyman
Rep. Larry A. Larrañaga
Sen. Lynda M. Lovejoy
Mr. Kilino Marquez
Ms. Elizabeth Marrufo
Rep. W. Ken Martinez
Dr. John Mondragon
Mr. Mike Phipps
Sen. Sander Rue
Rep. Henry Kiki Saavedra

Absent

Sen. Cynthia Nava, Co-Chair
Sec. Dannette Burch
Rep. Keith J. Gardner
Ms. Cecilia J. Grimes
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. James Roger Madalena
Dr. Susanna Murphy
Sen. John Arthur Smith
Mr. Ernesto Valdez

Guest Legislators

Sen. Rod Adair
Rep. Ray Begaye

Staff

Sharon Ball, Senior Researcher, Legislative Council Service (LCS)
Tim Berry, Deputy Director, Public School Facilities Authority (PSFA)
Raúl E. Burciaga, Director, LCS
Robert Gorrell, Director, PSFA
Frances Maestas, Director, Legislative Education Study Committee (LESC)
Leslie Porter, Research Assistant, LCS
Peter Van Moorsel, Policy Analyst, LESC

Guests

A copy of the guest list is in the meeting file.

Handouts

Copies of handouts and written testimony are in the meeting file.

Tuesday, December 21

Approval of Minutes

Minutes from the November 24, 2010 meeting were approved as presented.

Fiscal Year 2012 Revenue Projections

Tom Clifford, Ph.D., chief economist, Legislative Finance Committee (LFC), said that the State Board of Finance (SBOF) and the LFC have updated the fiscal year (FY) 2011 severance tax bond (STB) capacity estimates to reflect December 2010 consensus revenue estimates. Directing members to the handout he provided (see below), Dr. Clifford gave members the following summary of STB capacity as of December 2010.

Consensus Estimate	FY 2010	FY 2011	FY 2012	FY 2013
Senior Long-Term Issuance	\$149.6	\$180.5	\$180.5	\$180.5
Senior Sponge Issuance	\$178.6	\$84.2	\$67.3	\$63.2
Senior STB Capacity	\$328.2	\$264.7	\$247.8	\$243.7
Authorized Unissued		(\$0.4)	\$0.0	\$0.0
Water Project Fund		(\$26.5)	(\$24.8)	(\$24.4)
Tribal Infrastructure Project Fund			(\$12.4)	(\$12.2)
Colonias Infrastructure Project Fund			(\$12.4)	(\$12.2)
Net Senior STB Capacity	\$328.2	\$237.8	\$198.2	\$195.0
Supplemental Long-Term Issuance	\$112.9	\$0.0	\$0.0	\$0.0
Supplemental Sponge Issuance	\$97.0	\$147.7	\$144.8	\$168.0
Supplemental STB Capacity	\$209.9	\$147.7	\$144.8	\$168.0
Total STB Capacity	\$538.1	\$385.5	\$343.0	\$363.0

Dr. Clifford explained that for FY 2011, both the SBOF and LFC estimate senior long-term capacity at \$180.5 million. The figure was calculated to ensure that the same amount can be issued in each of the next 10 fiscal years.

Dr. Clifford said that the SBOF and LFC used the following assumptions to calculate the FY 2011 STB capacity estimates:

- the Consensus Revenue Estimating Group's forecast of oil and gas prices through FY 2015, after which time, the oil and gas prices are set equal to the FY 2015 estimates;

- the Consensus Revenue Estimating Group's forecasts of oil and gas volumes through FY 2015, after which time, natural gas volumes are assumed to decrease by 2% per year and crude oil volumes to decrease by 0.8% per year; and
- the interest rate on the debt service is at 3.5%.

Dr. Clifford characterized the oil and gas price assumptions as optimistic, remaining at the \$7.00 per cubic foot mark. In response to task force members' comments and questions, he noted that the purchasers of these bonds understand that oil and gas prices are volatile.

In response to questions and concerns about the level of reserves and the effect on the interest rate that the state must pay for debt service on bonds, Dr. Clifford responded that New Mexico's bond rating is currently holding up, despite the fact that the reserves have fallen significantly. He added that the current general fund outlook allows for approximately 4.5% reserves at the end of this fiscal year. He noted that the state needs to be cautious when considering creative financing methods to get through the budget shortfall because some methods may hurt New Mexico's bond rating. In response to a task force question about the negative figures in the Water Project Fund projections, Dr. Clifford clarified that negative figures indicate earmarks and senior bond capacity. He said that the Water Project Fund is currently in law and that in FY 2012, two new earmarks, the tribal and colonias infrastructure project funds, at 5% each, will also "come off the top", along with the Water Project Fund funding. Some task force members expressed concerns about the effect of adding these earmarks, which will limit available bond funds for public school capital outlay projects. Dr. Clifford noted that STBs often seem to provide a ready source of supplemental funding in times of budget shortfalls, but the supplemental STB proceeds still go to public school capital outlay. In response to an additional question, Dr. Clifford explained that the LFC staff will provide an update of the forecast during the session before the FY 2012 budget is finalized.

Discussion of Potential Endorsement of Legislation

First proposed bill (.182974.1): Ms. Ball directed task force members' attention to drafts of potential legislation in members' folders. She reminded task force members that the first bill for their consideration has already been approved for endorsement by both the task force and the LESC and is provided for informational purposes. She reminded task force members that this measure proposes to amend the Procurement Code to increase the subcontractor bonding limit from \$125,000 to \$250,000. She noted that Senator Asbill would carry this bill.

Second proposed bill (.183642.1): Directing task force members' attention to the second bill, Ms. Ball explained that this measure proposes to amend the Procurement Code to establish the applicability of the prevailing wage law for construction manager at risk (CMAR) procurement. Gary Carlson, contract bill drafter, LCS, explained that, according to a General Services Department (GSD) rule, a state agency is required to request a prevailing wage determination from the Workforce Solutions Department (WSD) prior to beginning the bidding process. He said that the intent of the bill is to prohibit the determination of another prevailing wage once the project has begun.

Task force members expressed concern about the necessity for this legislation if the matter is clear already in statute and rule. Mr. Berry reminded the task force of the problems with WSD wage determinations for the Las Cruces high school project. He acknowledged that, typically, a

wage rate is issued at the beginning of the project and stays in effect throughout the project; however, the situation that led to the drafting of this legislation relates the fact that the Las Cruces high school project is a large one both in cost and in time. He said that, in this case, the bids for the final phase of work came six months after the first work began, and, because of that time lapse, the GSD made the determination that the final bid was a new bid that required significantly higher wage rates, thereby negating the primary advantage of the CMAR process. On a motion by Representative Larrañaga, seconded by Mr. Heyman, the task force agreed to endorse the legislation, but to leave to the bill sponsor's discretion whether it will need to be introduced. Representative Miera agreed to sponsor the bill.

Third proposed bill (.183685.1): Ms. Ball and Mr. Carlson explained that this bill draft seeks to amend the Public School Capital Improvements Act (sometimes called "SB 9" or the "two-mill levy") and the Public School Buildings Act (sometimes called "HB 33") to require charter schools to report to the Public Education Department (PED) anticipated and actual expenditures of distributions made pursuant to those acts. Some task force members and charter school representatives expressed concern about endorsing legislation that would provide additional mandates for charter schools.

In response to task force discussion and questions, Ms. Ball explained that this report is only advisory in nature, and that passage of the bill will not infringe on charter schools' abilities to make their own decisions about expenditures. She added that the bill had been requested by a charter-authorizing public school district with the intent of eliminating or at least limiting charter school audit exceptions that reflect on the authorizing district.

In response to task force comments and questions, Mr. Carlson explained that school districts are required to expend any property tax money from direct mill levies for the purpose stated in the question posed to voters at the election. Ms. Ball explained that both SB 9 and HB 33 are direct levies with districts receiving their money from the county treasurer as the taxes are collected. HB 33, in particular, is a "pay-as-you-go" method for funding public school capital outlay.

Joe Guillen, executive director, New Mexico School Boards Association, asked on behalf of his organization to have local district school boards copied on advisories to charter schools that they had authorized.

In response to further discussion, Ms. Ball stated that passage of this legislation would provide a method for charter schools to receive advice on the appropriateness of their capital outlay expenditures and may help the sometimes strained relationships between some charters and their respective chartering authorities. Antonio Ortiz, Capital Outlay Bureau director, PED, stated that he and his staff are willing and able to provide this service for charter schools.

On a motion by Representative Martinez, seconded by Dr. Mondragon, the task force agreed to endorse this legislation with the suggested changes regarding wording and local school board notification. Representative Miera stated that he would designate a legislator to carry the bill before the session begins.

Fourth proposed bill (.183651.1): Ms. Ball discussed the intent of the next bill draft, which proposes to amend the Charter Schools Act to require the addition of a dispute resolution

mechanism for disputes between state and locally chartered charter schools and their respective chartering authorities. In response to a task force question, Dr. Grover explained that current statute mandates that locally chartered charter schools have this clause in place and that this legislation will require *all* charter schools and authorizers to have a dispute resolution clause in place, not simply those that are locally chartered. She added that this legislation would allow for the resolution of disputes within a given time frame agreed upon by the charter authorizer and the charter school.

After extensive task force discussion and audience comments about the bill's purpose, provisions and perhaps unintended consequences and costs, task force members agreed by consensus that the LESC may be the more appropriate venue for consideration of this legislation. In response to a request from Representative Miera, Ms. Maestas stated that the LESC will discuss possible endorsement of some version of this legislation at its next meeting.

Fifth proposed bill (.182631.2): Directing task force members' attention back to the proposed bill drafts, Ms. Ball discussed the intent of the bill draft that proposes to make several amendments to different sections of law relating to public school facilities, including the following:

- exempt school districts from seeking SBOF approval when leasing facilities to a charter school;
- beginning with FY 2012, prohibit new charter schools from opening and existing charter schools from relocating into a facility that receives a New Mexico Condition Index (NMCI) rating below the average condition for all New Mexico public schools for that year and allow for an 18-month period for the school to be improved to meet the average NMCI rating;
- require PSFA approval of all lease-purchase agreements entered into by school districts and charter schools; and
- prohibit the PSFA from making a lease assistance grant to a school district or charter school whose lease-purchase agreement has not been approved.

Ms. Ball explained that an earlier version of this measure was introduced by Senator Rue in the 2010 session, but the bill did not receive a message from the governor and therefore was not considered. She said that the bill has since been redrafted to reflect concerns expressed by charter schools during the 2010 session, including adding the additional time to bring the school up to the average score.

In response to questions from the task force about adding responsibilities to the PSFA's current workload, Mr. Gorrell indicated that passage of the bill would have a minimal fiscal impact on the agency. He noted that he would be able to reassign the duties of one full-time employee to accomplish the requirements of this bill and that minimal legal costs could be absorbed into the current budget.

Charter school representatives present in the audience expressed a number of concerns about the bill, including the following:

- a hesitancy to accept legislation that creates increased financial burdens that do not directly relate to student learning;
- a concern that charter schools are being held to a higher standard than other public schools with the average NMCI requirement; and
- a concern that the PSFA will not be able to review more than 80 leases per year in a timely manner.

Some task force members expressed concern that the comments from charter school representatives might be construed to reflect an unwillingness to be held accountable for the public funding they receive for their operations. In response to a task force question, Mr. Gorrell indicated that research shows that improved facilities can and do have an effect on students' learning. Task force members discussed the importance of continuing the implementation of the standards-based capital outlay process in response to the judge's order in the *Zuni* lawsuit for all schools and not to be tempted to provide for disequal advantages for one group of students at the expense of another group because of pressures from special interest groups.

In response to a task force question about the bill's intent to eliminate SBOF approval of leases between school districts and charter schools, Mr. Berry stated that the intent of this legislation is to provide an additional incentive for school districts to lease their facilities to charter schools as the 2015 deadline approaches.

Representative Miera requested that staff continue to work with all interested parties to continue the discussion in an effort to resolve the issues and concerns satisfactorily.

On a motion by Representative Martinez, seconded by Representative Larrañaga, the task force voted without opposition to endorse the draft bill with suggested changes.

Adjournment

Representative Miera noted that this is the final PSCOOTF meeting for the 2010 interim and that the task force membership will change with a new administration taking office. He thanked the members of the task force for their commitment and their service and also thanked the staff for all of their hard work and support.

There being no further business the thirtieth meeting of the PSCOOTF adjourned by consensus at 12:00 noon.

*PUBLIC SCHOOL CAPITAL OUTLAY
OVERSIGHT TASK FORCE*

**WORK GROUP STUDYING
PERFORMANCE-BASED
PROCUREMENT FOR PUBLIC SCHOOL
CAPITAL OUTLAY PROJECTS**

**Materials, Notes, Handouts and
Recommendations**

August 5, 2010

File No. 205.194-10

Dear :

During the 2009 legislative interim, the Public School Capital Outlay Oversight Task Force included in its work plan the examination of issues related to the statutory requirements that subcontractors be bonded when bidding on public works contracts (Section 13-1-148.1 NMSA 1978). The work group that was established to examine the issue met twice during the 2009 interim and made two recommendations to the task force:

1. that the issue be limited to the establishment and implementation of qualification-based contract selection; and
2. that the work group continue its examination during the 2010 legislative interim.

You are receiving this letter because either: (1) you were a member of the 2009 interim work group; or (2) you have been recommended or have expressed an interest in participating in the 2010 interim work group.

The first meeting of the 2010 work group has been set for August 30, 2010 at 9:00 a.m. in Room 322, State Capitol, Santa Fe. At that time, the work group will convene as required in Laws 2010, Chapter 104 (p.v.), Section 5: ". . . *the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects. The task force shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.*".

FIELD(1)

August 5, 2010

Page 2

I hope you will be able to attend this meeting at which the work group will establish any additional meeting dates to complete its charge. If you have questions, please either email me at sharon.ball@nmlegis.gov or telephone me on my direct at line (505) 986-4607.

Yours Truly,

SHARON S. BALL

Research and Committee Staff

SSB:ar

The Honorable Vernon D. Asbill
New Mexico State Senator
1502 Mountain Shadow
Carlsbad, NM 88220

The Honorable Keith J. Gardner
New Mexico State Representative
4500 Verde Drive
Roswell, NM 88201

The Honorable Larry A. Larrañaga
New Mexico State Representative
7716 Lamplighter NE
Albuquerque, NM 87109

The Honorable Ben Lujan
Speaker of the New Mexico House of
Representatives
05 Entrada Celedon y Nestora
Santa Fe, NM 87506

The Honorable Rick Miera
New Mexico State Representative
1011 Forrester NW
Albuquerque, NM 87102

The Honorable Cynthia Nava
New Mexico State Senator
3002 Broadmoor
Las Cruces, NM 88001

Bill Fulginiti
New Mexico Municipal League
1229 Paseo de Peralta
Santa Fe, NM 87501

Grace Philips
New Mexico Association of Counties
613 Old Santa Fe Trail
Santa Fe, NM 87505

Antonio Ortiz
Public Education Department
300 Don Gaspar
Santa Fe, NM 87501

Larry Miller

Property Control Division
General Services Department
1100 St. Francis Dr., Room 2002
Santa Fe, NM 87505

Lisa Cooley
Centennial Contractors Enterprises, Inc.
4113 Eubank Blvd., NE, Suite 300
Albuquerque, NM 87111

Roxanne Rivera, President
ABC
3450 Pan American Fwy. NE
Suite F
Albuquerque, NM 87107

Patricia Miller, Superintendent
Fort Sumner Municipal Schools
P.O. Box 387
Fort Sumner, NM 88119

Fred Gorenz
Gerald Martin Construction
P.O. Box 6020
Albuquerque, NM 87113

Dave McCoy, Executive Director
SMACNA
2403 San Mateo Blvd., NE, Suite P-2
Albuquerque, NM 87110

Mark Shumate
Shumate Constructors
1430 Honeysuckle Dr., NE
Albuquerque, NM 87122

Steve Crespin
4901 Chappell Drive NE
Albuquerque, NM 87107

Maria Granone, Executive Director
NECA
P.O. Box 30006
Albuquerque, NM 87190-0006

Jeep Gilliland
728 Shire SW

Albuquerque, NM 87121

Clayton Gooden
Star Construction
8912 Adams NE
Albuquerque, NM 87113

Ardist Allen
Allen Roofing
P.O. Box 2733
Roswell, NM 88202

Bob Brooks
Kinney Agency
320 Osuna Rd., NE
Albuquerque, NM 87107

AGENDA
for the
FIRST MEETING OF THE 2010 INTERIM
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP STUDYING PERFORMANCE-BASED PROCUREMENT
FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS

August 30, 2010
Room 303, State Capitol
Santa Fe

Monday, August 30

- 9:00 a.m. **Call to Order**
—Representative Rick Miera, Co-Chair, Public School Capital Outlay Oversight Task Force (PSCOOTF)
—Senator Cynthia Nava, Co-Chair, PSCOOTF
- 9:05 a.m. **Welcome and Introductions**
—Representative Rick Miera, Co-Chair, PSCOOTF
—Senator Cynthia Nava, Co-Chair, PSCOOTF
- 9:15 a.m. **Background: Where We Are and How We Got Here**
—Sharon Ball, Staff, Legislative Council Service
- 9:30 a.m. **Current Statutes and Rules**
—Dotty McKinney, Contracts Manager, Public School Facilities Authority
- 10:00 a.m. **Issues for Work Group's Consideration**
—Mark Bennett, Facilitator
- What kind of evaluation process will allow for the selection of the most qualified proposers?
 - What is the most appropriate relationship between price and other criteria?
 - Who would make up an effective group to compose the selection committee?
 - Who qualifies the qualifiers?
 - What standardized criteria should be included in the request for proposals?
 - Other issues?
- 12:00 noon **Lunch**

1:00 p.m. **Issues for Work Group's Consideration (continued)**

3:45 p.m. **Where Do We Go from Here?**
—Work Group Members

4:00 p.m. **Adjourn**

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE (PSCOOTF)

WORK GROUP STUDYING PERFORMANCE-BASED PROCUREMENT FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS

BACKGROUND: WHERE WE ARE AND HOW WE GOT HERE

For the past three legislative sessions (2008, 2009 and 2010), the PSCOOTF has endorsed legislation to eliminate or modify the statutory requirement for the bonding of subcontractors for public school projects that was enacted in 2005. Except for an amendment to increase the bonding threshold from \$50,000 to \$125,000, which was enacted in 2007, none of the PSCOOTF-endorsed legislation passed.

During the 2009 interim, the task force put together a work group consisting of task force members, representatives of trade unions, representatives from construction industries, the state superintendent of insurance, a General Services Department representative and other interested parties to study the costs and benefits of the statutory requirement that all subcontractors on public works projects of more than \$125,000 be bonded and to develop a process for determining a prequalified preferred bidder list. Member representatives from the PSCOOTF included the following: Speaker Ben Lujan, Senator Vernon D. Asbill, Representative Keith J. Gardner, Representative Larry A. Larrañaga, Senator Cynthia Nava, Representative Rick Miera, Don Moya and Bud Mulcock. Paula Tackett, Sharon Ball and Bob Gorrell served as staff. Representatives from unions, contractors' organizations and contractors were also invited (see attachment for a complete list of participants).

Meetings of the work group took place on September 17 and November 9, 2009. Discussion surrounded such issues as bond ratings, hard bids, sureties and raising the bonding limit. Work group members agreed on the positive effect of raising the state standard for bids. Members agreed that the work done during the 2009 interim has only isolated some issues to be considered, but members have not yet had enough time to work out any proposed solutions. The work group requested that it be allowed to continue its work during the 2010 interim. A temporary provision in the PSCOOTF-endorsed "omnibus" bill (Laws 2010, Chapter 104) required the task force to "continue the working group studying issues relating to performance-based procurement for public school capital outlay projects" and to "report its findings and recommendations no later than December 15, 2010 to the governor and the legislature".

PUBLIC SCHOOLS FACILITIES AUTHORITY

1312 Basehart, SE Suite 200

Albuquerque, NM 87106

Phone: 505-843-6272 Ext. 1108

Fax: 505-843-9681

E-mail address: dmckinney@nmpsfa.org

**- --SUMMARY OF RESPONSES TO
REQUEST FOR PROPOSAL for QUALIFICATIONS BASED
AWARD OF A CONSTRUCTION CONTRACT**

This Survey was distributed to Design Professionals, District Representatives, PSFA Regional Managers, and other staff who have used the RFP for Construction method of project delivery and/or Construction Manager at Risk. Only one respondent addressed the CMAR process as being sufficient for its purposes.

A total of 40 surveys were distributed, excluding general contractors and subcontractors, as follows:

Design Professionals - 14 District Representatives – 13 Regional Managers – 13

Responses were as follows:

Design Professionals – 7 District Representatives – 3 Regional Managers - 2

Responses to the questions were lumped together, not broken out by the number of respondents in the categories.

In summary, the majority of responses to the survey were from the design professionals who assist smaller districts with their construction procurements. Respondents have used the RFP for Construction on 21 PSFA projects, 15 non-PSFA projects, and 2 UNM projects.

The general consensus is that the current rules are clear and concise, that the size of the project MACC and availability of qualified general contractors and subcontractors in the local area were the driving factors to use the RFP process.

The points allocated to price was based on the size and complexity of the project. Respondents overwhelmingly felt that the point spread allowed in the 1.4.8. NMAC should not be changed.

Fifty percent (50%) of the respondents did feel that if the point spread were changed, that the low range should be no less than 40 points for price.

The number of members on the evaluation committees ranged from 4 members to 7 members, with 4-5 being the average. The majority of members were school administrators, facility users such as principals, design professionals not associated with the project, and a community business person or member at large.

The respondents felt that the no further rules are needed regarding the size, make-up or qualifications of the committee, that these types of decisions should be left up to the procuring agency.

Out-of-state contractors responding to the RFP were not a concern to the Offerors.

The award of a contract was based on the rank methodology, with no indication that this method should be changed. Skewing was not a problem because of using the rank methodology.

In most cases, however, interviews were not held (4 yes, 8 no's) due to a "clear cut winner" emerging from the technical and price proposal scores/rank, or not havng enough time in the construction schedule.

Those who did hold interviews used the process to meet the proposed teams, ensure that a complete and thorough process was executed, or to break a tie after the ranking of the technical and price proposals.

The majority of respondents felt that the qualifications statements required of general contractors and subcontractors were adequate.

There are elements of the current rules that the respondents liked and disliked. "Likes" include knowing who is being selected, the transparency of the contractors' past performance, and the standardization as well as flexibility being built in the current rules were considered a plus.

"Dislikes" included comments that the scoring methodology is cumbersome and difficult to follow, the volume of information required is overwhelming, contractors can't get past the lowest price doesn't win the contract, and that the evaluation committee members are not biased, that the process is fair.

In summary, the issues that were voiced regarding scoring methodology can be addressed in the procuring documents with no hard recommendations to change any of the rules emerging in this survey.

A detailed recap of the questions and responses are included below.

PSFA SURVEY RESPONSES

1. On how many projects have you used the RFP for qualifications based construction delivery method of procurement?
PSFA Project(s) 23 Other 15
2. Was the transition from the Invitation for Bid procurement documents and the Request for Proposal procurement documents easy to grasp?
Yes 10 No 2
3. Did you read and understand the NMAC 1.4.8 rules that govern the RFP for construction process before starting the procurement?
Yes 11 No 1
4. Did you read and understand the NMAC 1.4.1 GSD rules that govern the RFP process referred to in the NMAC 1.4.8 rules before starting the procurement?
Yes 8 No 4
5. Were the 1.4.8 and 1.4.1 NMAC Rules clear and concise in their guidance of the procurement process?
Yes 10 No 0
No Response 2
6. How did you determine how many points to allocate to Price (NMAC 1.4.8.14 allows a spread of 30 to 70 points for Price)?
 - A. Size of project (MACC)? Yes 9 No 3
 - B. Complexity of project? Yes 9 No 3
 - C. Project location and availability of qualified general contractors and subcontractors?
Yes 6 No 6
7. Points allocated for Price:
 - A. Do you think points should be allocated to Price based on the size and complexity of the project?
Yes 8 No 4
 - B. Do you think the spread in points allowed for Price in NMAC 1.4.8 of “not less than 30 and no more than 70” should be (check 1):
(1) narrowed? 1 (2) expanded? 0 (3) left the same? 11

C. Which of the differences below, in your opinion, would more adequately address Price in the RFP for Construction process: (Please check one set)

- a. Not less than 40, no more than 70 6**
- b. Not less than 40, no more than 80 1**
- c. Not less than 50, no more than 80 0**
- d. Not less than 50, no more than 70 0**
- e. No preference 3**

8. Evaluation Committee: What is the average number of people that have served on a RFP for Construction committee?

of Persons: 4/5 members - 3; 5 members - 7; 6 members – 1; 7 members - 1

9. What type of individuals have served on your Evaluation Committee (check all that apply):

- a. _____ # 21 School Administrator(s)**
- b. _____ # 4 Facility User/Teacher**
- c. _____ # Student(s)**
- d. _____ # Parent(s)**
- e. _____ # School Board Member(s)**
- f. _____ # 6 Design Professional not associated with the project**
- g. _____ # 1 Local contractor not proposing on the work**
- h. _____ # 6 Community business person/member at large**
- i. _____ # 1 PSFA Regional Manager**

10. Do you think that the size of the Committee should be more clearly defined to address manageability of the committee scheduling and meeting?

Yes 3 No 9

11. Do you think the size and make up of the Committee should be left to the Project Owner?

Yes 11 No 1

12. Do you think qualifications for potential committee members should be included in the NMAC 1.4.8 rules?

Yes 1 No 11

13. Has a school board member or governing authority been a scoring member of the Evaluation Committee?

Yes 1 No 11

A. If your answer is yes, did this person refrain from voting on the approval of the contract at a board meeting?

Yes 1 No 0

14. Did you hold a "Pre-Proposal" meeting?

Yes 11 No 0

A. If your answer to No. 14. was "Yes", did the contractors and/or subcontractors attending have a good grasp of the procurement process as defined in the NMAC 1.4.8?

Yes 10 No 2

B. Based on the questions fielded in the Pre-Proposal Conference, in your opinion, was the procurement process well-received?

Yes 12 No 0

C. Which area of the process were there more questions asked (check all that apply):

- (1) 10 Review the requirements of the qualifications statements?
- (2) 1 How many copies of the subcontractor qualifications statements were required?
- (3) 4 Who is on the evaluation committee?
- (4) 5 How the contractors would be evaluated?
- (5) 8 When and how would they know the results?
- (6) 2 Other (please describe)
- (7) 1 Where the subcontractor listing form needed to be placed
- (8) 1 What was the time of submittal

15. Were there any concerns expressed about out-of-state contractors responding to the RFP?

Yes 5 No 7

16. If you had out-of-state contractors respond to the RFP, did you apply the "in-state preference" to the in-state contractor cost proposal(s) to determine the outcome?

Yes 5 No 0
No Response 7

Scoring Proposals: What methodology did you use in scoring the Technical Proposals before evaluating Price?

Example: Procurement Manager records Committee Member 1's total points for Offeror A, then records Committee Member 2's total points for Offeror A, etc., All Committee Member's points for Offeror A are then totaled and the average point total of Offeror A is then recorded to the Cumulative Score Sheet.

A. **Did you rank the Technical Proposals strictly on highest to lowest score?**

Yes 11 No 1

B.

Did you find any scores that were skewed by a Committee Member or Members that wanted to force a certain outcome of the process?

Yes 2 No 10

C. **Did you apply a formula to translate the final scores into a Rank, First, Second, Third, to avoid a skew?**

Yes 8 No 4

D. **Are you aware of any other methodology of scoring or that would prevent skewing the outcome? Describe here:**

Individual members' scores are ranked for technical proposal, and that rank is added to the price, the lowest rank wins the contract.

18. **Based on the final Rank of the Offerors, did you hold interviews?**

Yes 4 No 8

A. **If your answer is Yes, what were the determining factors used to determine that interviews would be held?**

Describe here:

- 1) To meet the proposed team**
- 2) Ensure a complete and thorough process**
- 3) Information regarding qualifications & price was sufficient to establish a ranking**
- 4) A tie after the ranking of the technical and price were compiled**

B. **If your answer is No, what were the determining factors used to not hold interviews?**

Describe here:

- 1) Not enough time**
- 2) Spread of scores**
- 3) Construction schedule**
- 4) Clear front runner**

C. Should the Interview process be mandated in the RFP for qualifications based procurement (other than CMAR, where it is in statute)?

Yes 2 No 10

19. In order to streamline the RFP submittal process and cut down on the number of copies that have to be submitted for the evaluation committee, do you think having the GC Qualifications Statement and the Subcontractor Qualifications Statement be evaluated on a "Pass/Fail" concept would be fair, where those that did not answer all the questions completely and correctly would not have the accompanying technical proposal scored?

Yes 6 No 6

Comment: Pass/Fail would not affect the Number of copies to be submitted for committee review

20. Do you feel that the proposal submission requirements listed in 1.4.8.12 are adequate or does the qualifications section require too much information to be evaluated? (Check one that applies)

Qualifications requirements are adequate 8

Qualifications requirements are too imposing 1

No Comments 3

21. Is the list of minimum technical proposal evaluation criteria provided in NMAC 1.4.8.1 adequate?

Yes 10 No 0

No Comments 1

22. Please provide a narrative to the following questions:

A. What elements of the NMAC Rules and procurement process do you like?

- (1) Ability of 1.4.8.15.B. to add evaluation criteria to respond to additional project requirements, i.e., Leed experience**
- (2) The qualifications, projects completed under this process are quality projects**
- (3) Ability of the Owner to know what they are getting and to select a qualified contractor**
- (4) Transparency to the contractors' performance on past projects**
- (5) Considering the qualifications for the selection**
- (6) Flexibility. Procurements differ greatly in size, complexity and requirements. RFP should rectify.**

- (7) **Standardization of the process as well as the flexibility for the end user**

B. What elements of the NMAC Rules and procurement process do you dislike?

- (1) **Weighting given to 4 core areas can limit weighting of additional criteria that may be crucial for best selection for a particular project**
- (2) **Scoring methodology is cumbersome and difficult to follow**
- (3) **Inconsistency in application/interpretation of rules**
- (4) **Allotting points for basic requirements**
- (5) **Volume of information is overwhelming, Scoring methodologies vary**
- (6) **Contractors can't get past the fact that the lowest price (lowest bid) should win.**
- (7) **Selecting qualified but non-biased committee members in an inherent challenge**

C. Do you have ideas or suggestions that could make the process better?

- (1) **Formalize the optional follow-up/interview procedure and allow for final and best offer of price component.**
- (2) **Update the scoring system**
- (3) **Score sheet needs to be provided by the Owner and needs to be revised to focus more on qualifications and less on ability to complete filling n the forms.**
- (4) **Needs to be methodical and fair.**
- (5) **Public score cards & methodology-transparency.**
- (6) **Be consistent and provide example to district which should be included in the RFP for a project**
- (7) **Deliver subs' technical proposal after (24 hours, etc., the proposal is due.**
- (8) **Focus more questions on contractor's past performance.**
- (9) **End user (owner) needs to have control.**
- (10) **Standardize the scoring process**

YOU MAY ADD A SHEET TO COVER ANY TOPICS NOT COVERED IN THE SURVEY.

- (1) **Strength of RFP over CMAR is having 100% documents eliminates price hedging**
- (2) **Train regional managers on process and to score the same**

PART 8
USE OF COMPETITIVE SEALED PROPOSALS FOR CONSTRUCTION AND
FACILITY MAINTENANCE, SERVICES AND REPAIRS

- 1.4.8.1 ISSUING AGENCY
- 1.4.8.2 SCOPE
- 1.4.8.3 STATUTORY AUTHORITY
- 1.4.8.4 DURATION
- 1.4.8.5 EFFECTIVE DATE
- 1.4.8.6 OBJECTIVE
- 1.4.8.7 DEFINITIONS
- 1.4.8.8 APPLICATION (COMPETITIVE SEALED PROPOSAL PROCEDURES
FOR CONSTRUCTION AND FACILITY MAINTENANCE, SERVICE
AND REPAIRS 1.4.8.1 -1.4.8.17 NMAC)
- 1.4.8.9 GENERAL DISCUSSION
- 1.4.8.10 RFP PLANNING PROCEDURES
- 1.4.8.11 PUBLIC NOTICE
- 1.4.8.12 PROPOSAL SUBMISSION REQUIREMENTS
- 1.4.8.13 PROCEDURES REGARDING SUBCONTRACTORS
- 1.4.8.14 WEIGHT ASSIGNED TO PRICE AND RFP EVALUATION FACTORS
- 1.4.8.15 RFP EVALUATION FACTORS
- 1.4.8.16 EVALUATION OF PROPOSALS
- 1.4.8.17 RESIDENT PREFERENCE

1.4.8.1 ISSUING AGENCY:

General Services Department State Purchasing Division.
[1.4.8.1 NMAC - N, 09-30-05]

1.4.8.2 SCOPE:

All executive branch state agencies.
[1.4.8.2 NMAC - N, 09-30-05]

1.4.8.3 STATUTORY AUTHORITY:

Sections 13-1-67, 13-1-111 NMSA (2003 Amendments).
[1.4.8.3 NMAC - N, 09-30-05]

1.4.8.4 DURATION:

Permanent.
[1.4.8.4 NMAC - N, 09-30-05]

1.4.8.5 EFFECTIVE DATE:

September 30, 2005, unless a later date is cited at the end of a section.
[1.4.8.5 NMAC - N, 09-30-05]

1.4.8.6 OBJECTIVE:

The purpose of this rule is to establish uniform procedures for the use of competitive sealed proposals that will promote the delivery of high quality projects in a timely, safe and cost-effective manner.

[1.4.8.6 NMAC - N, 09-30-05]

1.4.8.7 DEFINITIONS:

Most of the terms in this rule are defined in the Procurement Code and prior Procurement Code regulations. In 1.4.8 NMAC, the following definitions apply:

A. “firm” means the company or other business entity referenced under 1.4.8 NMAC for the purpose of identifying, individually or collectively: a general contractor, a prime contractor or a subcontractor, of any tier, whether basic trade subcontractor, specialty subcontractor or other;

B. “pre listed subcontractors” means the subcontractors, of any tier, that the offeror is required to list, pursuant to 1.4.8.13 NMAC of 1.4.8 NMAC, at the time it submits a proposal in response to a request for proposals;

C. “reckless” shall mean the submission or omission of a false or misleading material fact in connection with a request for proposals under 1.4.8 NMAC that the submitting firm and/or person knew or should have known was false or misleading;

D. “RFP” means requests for proposals;

E. “RFP documents” means any one or combination of the following request for proposal documents: technical proposal; price proposal; contractor qualification statement; subcontractor qualification statement.

[1.4.8.7 NMAC - N, 09-30-05]

1.4.8.8 APPLICATION (COMPETITIVE SEALED PROPOSAL PROCEDURES FOR CONSTRUCTION AND FACILITY MAINTENANCE, SERVICE AND REPAIRS 1.4.8.1-1.4.8.17 NMAC):

A. General. The provisions of 1.4.8.1 NMAC through 1.4.8.17 NMAC set forth specific procedures that shall apply to all procurements made by competitive sealed proposals for construction and facility maintenance, service and repair.

B. The regulations applicable to the use of competitive sealed proposals pursuant to 1.4.1.29 NMAC through 1.4.1.47 NMAC, as well other existing rules applicable to competitive sealed proposals and procurement generally, e.g., 1.4.1.65 NMAC through 1.4.1.92 NMAC, shall apply to procurements made by competitive sealed proposals for construction and facility maintenance, service and repair to the extent they do not conflict with the provisions of 1.4.8 NMAC.

C. A state agency with rule making authority may adopt its own regulations to supplement the provisions of 1.4.8 NMAC, provided that such regulations meet the requirements of 1.4.8 NMAC, do not otherwise conflict with 1.4.8 NMAC and the state agency receives prior written authorization from the general services department secretary.

[1.4.8.8 NMAC - N, 09-30-05]

1.4.8.9 GENERAL DISCUSSION:

The RFP competitive sealed proposal process is authorized to give using agencies flexibility to

achieve the best overall value from a procurement contract. This is accomplished by permitting consideration of certain contractor qualification and performance factors that add value to a procurement contract, such as contractor past performance, technical expertise and experience, management capabilities and resources, subcontractor teams and craft personnel resources. It can also be achieved by permitting consideration of other technical or non-price factors that add value to a procurement contract, including schedule or contract warranty. Due to the inherently complex nature of most construction contracts and contracts for facility maintenance, service and repairs, the procurement of these services can often be accomplished more effectively through competitive sealed proposals, rather than competitive sealed bids, since the latter process essentially makes price the sole determining factor. When the competitive sealed proposal process is used, however, it is critical that appropriate procedures, criteria and information-gathering techniques be utilized to ensure that the RFP process works efficiently and fairly and achieves optimal results. The following sections are designed to assist using agencies in meeting these goals.

[1.4.8.9 NMAC - N, 09-30-05]

1.4.8.10 RFP PLANNING PROCEDURES:

A. Information required in RFPs. In addition to the information specified in 1.4.1.29 NMAC through 1.4.1.47 NMAC, or otherwise required by 1.4.8 NMAC, an RFP issued pursuant to 1.4.8 NMAC shall include:

- (1) the core evaluation factors specified in Subsection A of 1.4.8.15 NMAC;
- (2) additional evaluation factors, if applicable, as provided by Subsection B. of 1.4.8.15. NMAC, and;
- (3) the numerical weight or points assigned to price and each of the technical evaluation factors specified in the RFP in accordance with the requirements of 1.4.8.14 NMAC.

B. RFP review by state purchasing agent. A using agency issuing an RFP pursuant to 1.4.8 NMAC may submit a draft RFP to the state purchasing agent for review, but must do so at least thirty (30) days prior to the proposed issue date of the RFP. The state purchasing agent shall advise the using agency of any revisions needed to comply with the requirements of 1.4.8 NMAC. If revisions are directed, they shall be made prior to the issuance of the RFP.

C. If a using agency elects to reserve its right to enter discussions or negotiations with offerors in the context of an RFP issued under 1.4.8 NMAC, it shall explicitly reserve such rights in the RFP. If a using agency elects to engage in discussions or negotiations in the context of an RFP issued under 1.4.8 NMAC, it shall comply with applicable requirements of NMAC 1.4.1.29-1.4.1.47 NMAC.

[1.4.8.10 NMAC - N, 09-30-05]

1.4.8.11 PUBLIC NOTICE:

Procurements by the state purchasing agent. The state purchasing agent shall give public notice of the RFP in the same manner as provided in 1.4.1.17 NMAC.

[1.4.8.11 NMAC - N, 09-30-05]

1.4.8.12 PROPOSAL SUBMISSION REQUIREMENTS:

A. Two-part proposal submissions. In addition to any requirements imposed by 1.4.1.29 NMAC through 1.4.1.47 NMAC, or otherwise specified in the request for proposal

document, RFPs issued under this rule shall instruct offers to submit two-part, two-volume written proposals. Each volume shall be submitted in a separate sealed envelope or package and offerors shall be instructed to clearly label each volume with their name, address and date of submittal and prominently identify each as: volume I: technical proposal and volume II: price proposal.

B. Restrictions regarding opening of proposals. Price proposals shall remain sealed until the using agency has completed its evaluation of the technical proposals for all offerors and has prepared final technical scores as required by this rule.

C. Representations in RFP process. All RFP documents executed in connection with an RFP issued pursuant to this rule shall contain an acknowledgment and certification section with the following provisions.

(1) All RFP documents shall be signed by a director, officer or manager of the submitting firm who has sufficient knowledge to fully address all matters and respond to all inquiries included in RFP documents.

(2) The submitting firm shall represent that the information provided in the RFP documents is truthful, accurate and complete and that the firm and individual responsible for the submission shall be fully responsible for and bound by all information, data, certifications, disclosures and attachments included in the RFP documents.

(3) The submitting firm further understands:

(a) the information and data provided in connection with the RFP documents, as well as any other relevant information obtained from any other sources regarding the firm, may be reviewed to determine whether it qualifies as a responsible contractor pursuant to 1.4.1.47 NMAC and whether its offer represents the best value to using agency;

(b) a firm's failure to meet responsibility standards or provide requested information may render it ineligible to perform work on the prospective procurement contract;

(c) the submitting firm acknowledges its obligation to carefully review and complete, and, when applicable, update the RFP documents;

(d) the omission of any material fact concerning requested or submitted information, or the submission of any material false or misleading statement, or misrepresentation of a material fact concerning any requested or submitted information, may lead to the disqualification of the proposal.

(4) The submitting firm agrees that if it is awarded the contract, the RFP documents, and all terms and conditions specified therein, and all information, data, certifications and disclosures included in the RFP documents, shall be incorporated into the contract.

(5) The submitting firm further understands that if it is determined that it has intentionally or recklessly failed to disclose requested information, or has intentionally or recklessly made a false statement, misrepresentation, or omission regarding a material fact relating to the RFP documents, the firm may be declared in default of contract and any such conduct shall provide the using agency with grounds to terminate the contract and/or withhold full or partial payment and/or impose any sanctions or penalties, as deemed appropriate and available under New Mexico law.

D. Contractor/Subcontractor Qualification Statements. A general contractor or other prime contractor submitting a proposal pursuant to an RFP issued under 1.4.8 NMAC shall be required to submit as part of its technical proposal a certified contractor qualification statement and certified subcontractor qualification statements in accordance with the requirements of

1.4.8.12 NMAC.

(1) Use of Qualification Statements. Contractor and subcontractor qualification statements shall be submitted on forms prepared by the general services department or the using agency. Information provided in these statements shall be considered by the using agency for evaluating and scoring contractors and subcontractors on technical proposals required under this rule. These statements shall also be considered in determining whether a contractor or subcontractor is a responsible contractor for purposes of 1.4.1.47 NMAC. RFPs should inform contractors and subcontractors, however, that in making such evaluations and determinations, the using agency is not restricted to the minimum information required for disclosure qualification statements and that any relevant information regarding performance from reliable sources may be considered.

(2) Subcontractor Qualification Statements. Subcontractor qualification statements shall be required for all subcontractors identified in the technical proposal pursuant to the subcontractor listing requirements 1.4.8.13 NMAC, where the value of the subcontract is fifty-thousand (\$50,000) or five percent, whichever is greater. A using agency may reserve the right to require subcontractor qualification statements from any other subcontractors, at whatever tier and regardless of the value of the subcontract.

(3) Minimum Information Required. Contractor and subcontractor qualification statements required pursuant to Subsection D of 1.4.8.12 NMAC shall include, at a minimum, the following information:

(a) a list of all projects the firm has performed work on in the five (5) years immediately preceding the submission of its proposal that are similar in size and scope, as specified by the using agency in the RFP, to the prospective procurement project; in the event that an offeror or a pre-listed subcontractor is a new business and does not have a performance record sufficient to evaluate the firm's past performance, the using agency may consider the past performance of the firm's officers, management and owners or partners;

(b) copies of any types of performance evaluations reports for the past five (5) years prepared in connection with the work identified in Subparagraph (a) of Paragraph (3) of Subsection D of 1.4.8.12 NMAC;

© the following representations, regarding the firm's present capabilities to perform the procurement contract and its prior history for the past three (3) years immediately preceding the date of this statement:

(i) the firm has a current contractor registration, as required by Section 13-4-13.1 NMSA 2004;

(ii) the firm has all applicable business and/or contractor licenses required by state or local law;

(iii) the firm possesses the necessary equipment, financial resources, technical resources, management, professional and craft personnel resources and other required capabilities to successfully perform the contract, or will achieve same through its prelisted subcontractors;

(iv) the firm has not had any business, trade or contracting license suspended or revoked;

(v) the firm has not been debarred by any government agency;

(vi) the firm has not defaulted on any project;

(vii) the firm has not committed willful or repeated violations of

federal or state wage laws as determined by a final non-appealable decision of a court or government agency;

(viii) the firm has not committed serious or willful violations of federal or state safety laws as determined by a final non-appealable decision of a court or government agency;

(ix) disclosure by the firm of the following most recently available safety data: experience modification ratings; total lost workday incident rates (calculated by the number of lost time injuries and illnesses x 200,000 ÷ total hours worked); and recordable incident rates (calculated by the number of injuries x 200,000 ÷ total hours worked).

(4) Additional Performance Related Information. Using agencies may also require additional relevant information relating to a firm's past performance or present capability to perform the procurement contract. The extent of detail of such information may vary with the size and complexity of the project. Using agencies may require that additional information required from contractors and subcontractors be included in contractor and subcontractor qualification statements, or in other sections of the offeror's technical proposal. Types of additional information using agencies may wish to consider include, but are not limited to:

(a) information regarding the firm's financial status and financial resources;

(b) bonding information, including affirmative letters of bonding from certified bonding companies;

(c) past incidents involving denials of pre-qualification or findings of non-responsibility;

(d) past incidents of law violations in any area relating to contracting, including violations of environmental laws, antitrust laws, licensing laws;

(e) outstanding tax delinquencies to the state of New Mexico or its political subdivisions;

(f) disclosure of the names of any corporations, partnerships or other business entities the firm or its owners or officers have owned or operated in the past five (5) years;

(g) disclosure of the following information with regard to all projects identified in response to Subsection D (3)(a) of 1.4.8.12 NMAC:

(i) the original bid or proposal price of the projects and the final price of the projects and a brief explanation of cost growth, if any, for such projects;

(ii) the originally scheduled completion date of the projects and the final completion dates of the projects and a brief explanation of schedule growth, if any, for such projects;

(iii) a list of any contract claims or cases in litigation or arbitration concerning the projects, a brief description of the reasons for such disputes and status of such cases.

[1.4.8.12 NMAC - N, 09-30-05]

1.4.8.13 PROCEDURES REGARDING SUBCONTRACTORS:

A. Evaluation of subcontractors. To ensure that an RFP secures the best value from a procurement contract, the role and impact of subcontractors proposed for a project may be evaluated in accordance with the requirements of 1.4.8.13 for any project in which subcontractors

are used.

B. Objective of subcontractor evaluation. The objective of subcontractor evaluation is to identify the general/subcontractor team or prime contractor/subcontractor team that offers the most advantageous proposal and best overall value to the using agency. The qualifications and performance capabilities of subcontractors may be evaluated in conjunction with and in relation to the evaluation of the technical proposal of the offeror/general contractor, construction management firm or other prime contractor as specified in Paragraph (2) of Subsection B of 1.4.8.16 NMAC.

C. Subcontractor listing threshold. In preparing an RFP subject to this rule, the using agency shall prepare a subcontractor listing threshold, which shall establish a dollar threshold, stipulated in the RFP, above which subcontractors must be listed. All activities and issues concerning the listing of subcontractors in this regard shall be governed by the Subcontractor's Fair Practices Act NMSA 13-4-31, et. seq. and applicable regulations issued thereunder.

D. Subcontractor listing amount. The subcontractor listing threshold included in RFPs shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, including alternatives, whichever is greater.

E. When submitting a proposal in response to an RFP issued pursuant to this rule, the offeror shall provide a list of all subcontractors that will perform work on the project above the subcontractor listing threshold. For each such prelisted contractor, the offeror shall include in its proposal the following information:

- (1) the name of subcontractor that will perform work or labor or render service on the project identified in the RFP and the city or county of its principal place of business; and
- (2) the category of the work that will be done by each subcontractor; only one subcontractor may be listed for each category of work as defined by the offeror in its proposal.

F. Firms identified in the subcontractor list shall not be substituted except as permitted under 13-4-36 NMAC of the Subcontractor Fair Practices Act NMSA, 14-4-36. [1.4.8.13 NMAC - N, 09-30-05]

1.4.8.14 WEIGHT ASSIGNED TO PRICE AND RFP EVALUATION FACTORS:

A. Numerical ratings systems. Numerical ratings systems are required for procurements under 1.4.8 Use of Competitive Sealed Proposals for Construction and Facility Maintenance, Services and Repairs and shall comply with the requirements of 1.4.8.14 NMAC.

B. Total available points. The RFP shall specify the total points available for the procurement (for example, 1,000 total points for all price and non-price technical evaluation factors) and shall assign specific numerical weights or points to price and to each of the non-price evaluation factors identified in the RFP.

C. Numerical weight for price. The numerical weight assigned to price shall be no greater than seventy (70) percent of the total evaluation points available.

D. Numerical weight for core evaluation factors. The numerical weight assigned to the non-price evaluation factors shall be as follows:

- (1) each of the four core evaluation factors specified in Subsection A of 1.4.8.15 NMAC shall be assigned at least twenty (20) percent of the available points for non-price technical evaluation factors;
- (2) the weight assigned to any additional evaluation factors shall be determined

by the using agency in accordance with the needs of the agency and the project.
[1.4.8.14 NMAC - N, 09-30-05]

1.4.8.15 RFP EVALUATION FACTORS:

A. Core evaluation factors. Each RFP issued pursuant to 1.4.8 NMAC shall include the following core evaluation factors, for both general and subcontractors for which qualification statements are required, with the sub-factors and criteria specified herein:

- (1) Past performance:
 - (a) budget and schedule data;
 - (b) if available, performance quality and overall customer satisfaction;
 - (c) compliance with applicable laws and regulations;
 - (d) safety performance record.
- (2) Management plan:
 - (a) management team;
 - (b) technical approach to project;
 - (c) safety plan/programs;
 - (d) project schedule.
- (3) Project staffing/craft labor capabilities:
 - (a) participation in skill training;
 - (b) reliable staffing sources/project staffing.
- (4) Health & Safety.

B. Additional evaluation factors:

(1) a using agency may include additional evaluation factors in an RFP issued pursuant to 1.4.8.15 of this NMAC 1.4.8 provided that any such factor is relevant to the successful completion of the contract or otherwise in the best interest of the state or using agency;

(2) examples of such additional factors may include, but are not limited to financial capabilities, project schedule, contract warranty or hiring of local construction or maintenance craft labor.

[1.4.8.15 NMAC - N, 09-30-05]

1.4.8.16 EVALUATION OF PROPOSALS:

A. Evaluation Committee ("EC"). Proposals submitted in response to RFPs issued under this regulation shall be evaluated by an evaluation committee ("EC") of at least three persons appointed by the procuring agency's management. The team should collectively possess expertise in the technical requirements of the project, construction design and contracting. A using agency may use independent consultants or agents to support source selection teams, provided appropriate precautions are taken to avoid potential conflicts of interest.

B. Scoring technical proposals. General procedures regarding technical proposal evaluation.

(1) When rating the technical proposals, the EC shall consider only the evaluation factors stated in the RFP.

(2) The EC may consider any relevant information or data, from any reliable source, relating to the RFP evaluation factors and the firm's ability to successfully perform the project. Such information may be obtained from the firm itself, prior customers of the firm,

commercial and public databases and other reliable sources.

C. Scoring price proposals. Procedures for scoring price proposals under this rule shall be as follows:

(1) price proposals shall be initially evaluated to ensure that the price(s) offered is responsive to the RFP requirements and instructions and is realistic in respect to the project plans and specifications;

(2) price proposals shall be evaluated on the basis of the numerical weight assigned to price in the RFP and scored in accordance with the following process to permit the scoring of competing offerors' price proposals in relation to one another: the offeror with the lowest price shall receive the maximum price score, i.e., the maximum numerical weight assigned to price in the RFP (for example, 500 points out of a total 1,000 points);

(3) the price score of each other offeror shall be determined by applying the following mathematical formula: price of lowest offeror divided by the price for this offeror multiplied by the maximum price score, i.e.,

$$\frac{\text{price of lowest offeror}}{\text{price of this offeror}} \times \text{maximum price score} = \text{price score of this offeror}$$

[1.4.8.16 NMAC - N, 09-30-05]

1.4.8.17 RESIDENT PREFERENCE:

To effectuate the requirements of the state's resident contractor preference laws, 13-4-1 NMSA, et. seq., final cost scores of proposals under 1.4.8 NMAC shall be modified.

[1.4.8.17 NMAC - N, 09-30-05]

HISTORY OF 1.4.8 NMAC: [RESERVED].



Manuel Lujan Agencies
 4801 Indian School Rd NE #100
 PO Box 3727
 Albuquerque, NM 87190
 Phone: (505) 266-7771 - Fax: (505) 266-9542

CONTRACTOR QUESTIONNAIRE
 www.nasbp.org/toolkit



BUSINESS INFORMATION

Name of Firm: _____

Contact Name: _____ E-mail Address: _____

Firm Address: _____

Phone: _____ Fax: _____

Web Site: http:// _____

State of Incorporation: _____ Year Started: _____

Tax ID: _____ Is your firm union? Yes No

Contracting Specialty: _____
 Geographic Area(s) of Operation: _____

Type of Business C-Corp. Sub S. Corp. Part. Prop. LLC

OFFICER INFORMATION

List the corporate officers, partners, or proprietors of your firm:

<u>Legal Name</u>	<u>Date of Birth</u>	<u>SSN</u>	<u>Legal Name of Spouse</u>	<u>Spouse SSN</u>
1. _____	/ /	_____	_____	_____
<i>Position:</i> _____	<i>Percent Owned:</i> _____	<i>Home Address:</i> _____	_____	_____
2. _____	/ /	_____	_____	_____
<i>Position:</i> _____	<i>Percent Owned:</i> _____	<i>Home Address:</i> _____	_____	_____
3. _____	/ /	_____	_____	_____
<i>Position:</i> _____	<i>Percent Owned:</i> _____	<i>Home Address:</i> _____	_____	_____
4. _____	/ /	_____	_____	_____
<i>Position:</i> _____	<i>Percent Owned:</i> _____	<i>Home Address:</i> _____	_____	_____
5. _____	/ /	_____	_____	_____
<i>Position:</i> _____	<i>Percent Owned:</i> _____	<i>Home Address:</i> _____	_____	_____

Will the above individuals and spouses personally indemnify Surety? Yes No (explain below)

If No, explain: _____

Is there a buy/sell agreement among the owners of the business? Yes No

Is this agreement funded by life insurance? Yes No

BUSINESS DETAILS

Has your firm or any of its principals ever petitioned for bankruptcy, failed in business or defaulted so as to cause a loss to a Surety? If so, please attach explanation. Yes No

Is your firm or any of its owners or officers currently involved in any litigation? If so, please attach explanation. Yes No

What percentage of the firm's work is normally for: Government Agencies _____ Private Owners _____

What trades do you normally undertake with your own forces? _____

What percentage of the firm's work is normally subcontracted to others? _____

What trades do you normally subcontract? _____

What is your sub bonding policy? _____

What was your largest uncompleted backlog? Amount: \$ _____ Year: _____

What is the largest job you expect to do during the next year? _____

What is the largest backlog expected next year? _____

What is your expected annual volume? _____

Do you lease equipment? Yes No Type of lease: _____

What are the terms of the lease? _____

FINANCIAL INFORMATION

Name of CPA Firm: _____ Fiscal Year End: _____

Contact Name: _____ E-mail: _____

Company Address: _____

Company Phone: _____ Fax: _____

On what basis are taxes paid? Cash Completed Job Accrual % of Completion

On what basis are financial statements prepared? Cash Completed Job Accrual % of Completion

On what level of assurance are financial statements prepared? CPA Audit Review Compilation

How often are internal financial statements prepared? Annually Semi-Annually Quarterly Monthly

Do you have a full time accountant on staff? Yes No Professional designations: _____

What accounting software do you use? _____

What estimating software do you use? _____

What job cost software do you use? _____

Name of Bank: _____ Address: _____

Contact Name: _____ Phone: _____

Line of Credit: \$ _____ Expiration: ____ / ____ / ____

EXPERIENCE & REFERENCES

Previous Bonding Companies:

<u>Name:</u>	<u>Reason for Leaving:</u>
1. _____	_____
2. _____	_____
3. _____	_____

List five of your largest contracts:

<u>Job Name:</u>	<u>Contract Price:</u>	<u>Gross Profit:</u>	<u>Completion Date:</u>	<u>Bonded?</u>
1. _____	_____	_____	/ /	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contact: _____	Phone/Fax Numbers: p: _____ f: _____			
2. _____	_____	_____	/ /	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contact: _____	Phone/Fax Numbers: p: _____ f: _____			
3. _____	_____	_____	/ /	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contact: _____	Phone/Fax Numbers: p: _____ f: _____			
4. _____	_____	_____	/ /	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contact: _____	Phone/Fax Numbers: p: _____ f: _____			
5. _____	_____	_____	/ /	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contact: _____	Phone/Fax Numbers: p: _____ f: _____			

List five of your major suppliers:

Name	Phone/Fax Numbers	Contact
1. _____	p: _____ f: _____	_____
2. _____	p: _____ f: _____	_____
3. _____	p: _____ f: _____	_____
4. _____	p: _____ f: _____	_____
5. _____	p: _____ f: _____	_____

List five subcontractors (or contractors if you are a subcontractor) that you do business with:

Name	Phone/Fax Numbers	Contact
1. _____	p: _____ f: _____	_____
2. _____	p: _____ f: _____	_____
3. _____	p: _____ f: _____	_____
4. _____	p: _____ f: _____	_____
5. _____	p: _____ f: _____	_____

List three specialty trades you have done business with:

Name	Phone/Fax Numbers	Contact
1. _____	p: _____ f: _____	_____
2. _____	p: _____ f: _____	_____
3. _____	p: _____ f: _____	_____

KEY PERSONNEL

List additional personnel key to your operations:

Name	Position	Birth Year	Yrs. Experience
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____

LIFE INSURANCE INFORMATION

List any life insurance in effect on officers or key personnel:

Name	Beneficiary	Amount	Insurance Company
1. _____	_____	\$ _____	_____
2. _____	_____	\$ _____	_____
3. _____	_____	\$ _____	_____
4. _____	_____	\$ _____	_____

BUSINESS INSURANCE INFORMATION

Provide information on your business insurance:

Name of insurance broker/agency? _____

Agent's Name: _____ E-mail: _____

Fax: _____ Phone: _____

SUBSIDIARIES AND AFFILIATES

List any subsidiaries and affiliates of the contracting firm:

Firm Name	Ownership	Type of Business	Cross/Corp. Indemnity?
1. _____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. _____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. _____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. _____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. _____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

Remarks: _____

Attachments:

- Copies of the last three fiscal financial statements including work in progress & completed contract schedules
- Current interim financial statement and work in progress report if fiscal statement is over six months old
- Current financial statement for all indemnitors
- Bank Line of Credit Agreement
- Business Plan
- Buy/Sell Agreement
- Specimen Copy of Subcontract Agreement
- Certificate of Insurance
- Resumes of Owners/Key Employees
- Brochure and/or Letters of Recommendation about the accomplishments of your firm
- Other: please describe below:

Applicant(s) hereby authorize the Surety to make such pertinent inquiry as may be necessary from financial institutions, persons, firms, and corporations in order to confirm and verify information referred to or listed on this application.

This questionnaire must be signed by an owner or officer of the company for which bonding is being requested.

Name of Firm: _____

Completed by: _____

Title: _____

Signature: _____

Date: _____ / _____ / _____

Additional Remarks:

INSERT COMPANY NAME

Address 1
 Address 2
 City, State, Zip
 Phone: (XXX) XXX-XXXX - Fax: (XXX) XXX-XXXX
 Web: http://www.website.com



Date Prepared: MM/DD/YY

SECTION 1: PERSONAL INFORMATION

Full Name: _____ Date of Birth: MM/DD/YY SSN: ###-##-####
 Spouse Name: _____ Date of Birth: MM/DD/YY SSN: ###-##-####
 Address: _____ Business Name: _____
 City, State, Zip: _____ Home Phone: ###-###-#### Alt. Phone: ###-###-####

*** NOTE: Complete Schedules A-H prior to completing Section 2. ***

SECTION 2: STATEMENT OF FINANCIAL CONDITION AS OF MM/DD/YY

Assets: (Do not include assets of doubtful value)	In Dollars (omit cents)	Liabilities:	In Dollars (omit cents)
Cash in Primary Bank: (checking & savings)	<input type="text"/>	Unsecured Debt: (Sch. G)	\$ <input type="text"/>
Cash & CD's in Other Banks: (Sch. A)	\$ <input type="text"/>	Current Bills Due:	<input type="text"/>
Stock Bonds & Marketable Securities: (Sch. B)	\$ <input type="text"/>	Real Estate Mortgages: (Sch. C)	\$ <input type="text"/>
Real Estate Owned: (Sch. C)	\$ <input type="text"/>	Secured Debt (Sch. H):	\$ <input type="text"/>
Cash Surrender: (Sch. D)	\$ <input type="text"/>	(other than real estate)	
Business Ventures: (Sch. E)	\$ <input type="text"/>	Taxes Payable:	<input type="text"/>
Notes Receivable: (Sch. F)	\$ <input type="text"/>	Other Debts & Liabilities: (specify)	<input type="text"/>
Personal Property: (jewelry, coins, collections, etc.)	<input type="text"/>		<input type="text"/>
Automobiles, RV's, Boats:	<input type="text"/>		<input type="text"/>
Other Assets: (specify)	<input type="text"/>		<input type="text"/>
	<input type="text"/>		<input type="text"/>
	<input type="text"/>		<input type="text"/>
TOTAL ASSETS:	\$ <input type="text"/>	TOTAL LIABILITIES:	\$ <input type="text"/>
		TOTAL NET WORTH:	\$ <input type="text"/>
		TOTAL LIABILITIES & NET WORTH:	\$ <input type="text"/>

Do you have a will? Yes No
 Have you ever declared bankruptcy? Yes No

Accountant Name: _____ Address: _____ Phone: ###-###-####
 Attorney Name: _____ Address: _____ Phone: ###-###-####

Do you have any... If "yes" to any questions, describe:

contingent liabilities?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Est. Amount: <input type="text"/>	_____
involvement in pending legal actions?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Est. Amount: <input type="text"/>	_____
other special circumstances?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Est. Amount: <input type="text"/>	_____
contested income tax liens?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Est. Amount: <input type="text"/>	_____

SCHEDULE A: CASH AND CD'S IN OTHER BANKS

Description:	Name of Institution:	In Name of:	Pledged or Held by Others?	Value:
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="text"/>
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="text"/>
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="text"/>
			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="text"/>

SCHEDULE B: STOCKS, BONDS, MARKETABLE SECURITIES

BROKERAGE ACCOUNTS

Name of Brokerage:	In Name of:	Pledged or Held by:	Cost:	Market Value:

INDIVIDUAL SECURITIES NOT INCLUDED ABOVE (INCLUDE IRA AND 401K ACCOUNTS)

# of Shares or Face Value:	Individual Securities:	In Name of:	Pledged or Held by:	Cost:	Market Value:	Retirement Account:
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No
						<input type="checkbox"/> Yes <input type="checkbox"/> No

SCHEDULE C: RESIDENCE AND OTHER REAL ESTATE

Address and Type of Property:	Title in Name of:	Percentage Owned:	Year Acquired:	Cost:	Market Value:	Monthly Payment:	Mortgage Balance:	Maturity Year:

SCHEDULE D: LIFE INSURANCE CARRIED, INCLUDING GROUP INSURANCE

Name of Insurance Company:	Owner of Policy:	Name of Insured:	Beneficiary and Relationship:	Face Amount:	Policy Loans:	Cash Surrender:

SCHEDULE E: BUSINESS VENTURES AND OTHER ASSETS

Name of Business:	Type of Business:	Years in Business:	Net Worth:	Percentage Owned:	Value of your Ownership Interest:
					\$ -
					\$ -
					\$ -
					\$ -

SCHEDULE F: NOTES RECEIVABLE

Due From:	Due Date:	Description	Monthly Payment:	Total Amount:

SCHEDULE G: UNSECURED DEBT (CREDIT CARDS, ETC.)

Name of Creditor:	Description of Debt:	Describe:	Monthly Payment:	Amount Owed:
Total of All Credit Cards		<i>Various credit card debt</i>		

SCHEDULE H: SECURED DEBT (HELOC, VEHICLES, ETC.)

Name of Creditor:	Original Loan/Line Amount:	Date of Loan:	Maturity Date:	Unsecured or Secured (List Collateral)	Monthly Payment:	Amount Owed:

This information contained in this statement is provided to induce you to extend or to continue the extension of credit to the undersigned or to others upon the surety of the undersigned. The undersigned acknowledge and understand that you are relying on the information provided herein in deciding to grant or continue credit or to accept a surety thereof. Each of the undersigned represents, warrants, and certifies that the information provided herein is true, correct and complete. Each of the undersigned agrees to notify you immediately and in writing of any change in name, address, or employment and of any material adverse change (1) in any of the information contained in this statement or (2) in the financial condition of any of the undersigned or (3) in the ability of any of the undersigned to perform its (or their) obligations to you. In the absence of such notice or a new and full written statement, this should be considered as a continuing statement and substantially correct. You are authorized to make all inquiries you deem necessary to verify the accuracy of the information contained herein, and to determine the credit-worthiness of the undersigned. Each of the undersigned authorizes you to answer questions about your credit experience with the undersigned.

Signature (applicant) _____

Date signed _____

Signature (co-applicant) _____

Date signed _____

BOND REQUEST FORM



TO: Manuel Lujan Insurance, Inc.
Phone (505) 266-7771 FAX (505) 266-9542

DATE: _____

CONTRACTOR: _____ REQUESTED BY: _____

ADDRESS: _____

PROJECT OWNER _____

ADDRESS: _____

ARCHITECT/ENGINEER: _____

ADDRESS: _____

PROJECT: _____

ADDRESS: _____

DESCRIPTION OF WORK: _____

EST. AMOUNT: _____ BID DATE & TIME: _____

BID BOND AMOUNT: 5% 10% 20% OTHER _____

BOND FORM: A.I.A. GOVMT OTHER _____

AGENTS AFFIDAVIT Yes No INSURANCE CERTIFICATE Yes No

**** PLEASE REMEMBER TO PROVIDE US WITH ANY SPECIAL BOND FORMS OR AGENTS AFFIDAVITS AS SUPPLIED BY THE OWNER**

COMPLETION TIME / DATE: _____ PENALTY: _____

WARRANTY PERIOD: _____ MORE THAN ONE YEAR* _____

CURRENT WORK ON HAND _____

SUBCONTRACTOR TYPE OF WORK % AMOUNT

APPROVED BY: _____ DATE: _____ TIME: _____
DECLINED BY: _____ DATE: _____ TIME: _____

BOND NO: _____ CONTRACT AMT: _____ DATE: _____

No. of Pages _____

ATTACHMENTS / NOTES: _____

SAMPLE ONLY

BANK LETTERHEAD

DATE

Manuel Lujan Insurance, Inc.
4801 Indian School Rd. NE; Suite 100
Albuquerque, NM 87110

RE: **YOUR COMPANY NAME**

Dear

In response to your request for a customer confirmation and rating on **YOUR COMPANY NAME**, we are pleased to report that **YOUR COMPANY NAME** has been a customer of **NAME OF BANK** since **MONTH/YEAR** and maintains deposit accounts in which balances average **XXXXXXXX** figures. These accounts have been handled as agreed.

With regard to credit, **NAME OF BANK** has extended credit in the amount of **XXXXXXXX** figures to **YOUR COMPANY NAME**. All credit accommodations have been handled as agreed.

Should you have any questions or require further information with regard to the above, please do not hesitate to call our office.

Sincerely,

NAME OF BANK OFFICER

SAMPLE ONLY

ATTENDEES AND NOTES
from the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP STUDYING PERFORMANCE-BASED PROCUREMENT
FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS

August 30, 2010
Room 322, State Capitol
Santa Fe

Monday, August 30

Members Present:

Sen. Vernon D. Asbill
Tim Berry
Dave Flood
Rep. Keith J. Gardner
Bob Gorrell
Speaker Ben Lujan
Dotty McKinney
Pat McMurray
Rep. Rick Miera
Tom Padilla
Steve Reinhart
Roxanne Rivera
Mark Shumate
Dean Vigil
Ovidiu Viorica

Staff:

Sharon Ball, Legislative Council Service (LCS)
Mark Bennett, Contract Facilitator
Raúl E. Burciaga, LCS
Leslie Porter, LCS

Notes from August 30 Meeting, Subcommittee of the Public School Capital Outlay Oversight Task Force

Opening comments included the following:

- This is the time to work out proposed solutions.
- The work group needs to produce findings and recommendations.
- The task is to keep performance-based contracting honest and above board.
- This is a transition from an objective (bid) to a subjective (evaluation) process. It is important to have transparency and education.
- The traditional process is outdated and there is a need to move to "best value" (performance-based) construction.

- The issue of pricing and its appropriate weight: How to take best value and still allow in-state companies to compete.
- How to fine-tune to make a great deal for the citizens of the state.
- It is important to come out with a clear agreement that has real commitment.
- How to get concurrence on guidelines/best practices.

Issue: How are we treating the question of subcontractor bonding?

The group then moved to a discussion of whether to keep the focus on the specific, limited question of subcontractor bonding, as opposed to the broader set of issues involved in performance-based contracting. By consensus, the group agreed to a discussion of subcontractor bonding.

There is a need to be clear on enforcement of the law on bonding (audit?) and other issues:

- Use of in-state builders.
- There is a need to make language consistent in the area of performance-based contracting. (Qualifications and "best value" are used differently.)
- Prequalification is a very limited way to get to best value.
- How can use of locals be addressed through best value?
- Current instructions to bidders provide tools for dealing with subcontractor qualifications.
- Need for verification.
- Problem with insurance.
- There is claims experience with the payment of bonds that can be verified.
- IDEA... Tracking of bonds can be done in a low- or no-cost way (require architect review/certification of the bond).
- There is a paper-chase problem with subcontractor bonds. The time pressure to keep a job moving creates a challenge for events that stop or slow the process (contractor protests).
- Issue: Use of in-state companies with out-of-state qualifications (preference vs. parent).
- How does subcontractor bonding add value?
- With a working prequalification list, there is no need for subcontractor bonding.
- How do we enforce the law under a solid set of rules? If we do this, then there can be a reasonable evaluation of the law, and the law can be repealed if it is not working.
- Bonding has a qualifying effect and helps the process.
- Is there a model for subcontractor prequalifying, e.g., Massachusetts?
- A prequalification system is important because the time pressure and legal realities result in no real remedies.
- Subcontractor bonding as a risk mitigation tool.
- The insurance companies have an underwriting list that they could share.
- The Department of Transportation has a prequalification system.

QUESTION: Is there a way for the bonding process to have an "A" grade that addresses performance quality and enables a low-bid, straightforward process?

IDEA: Is holdback an effective mechanism?

Break for Lunch
Afternoon Discussion

The chair thanked participants for their ideas and comments about subcontractor bonding and asked that the group move on to discuss other questions on the agenda, allowing staff to work with the comments on subcontractor bonding and bring back a proposal to the next meeting.

The group moved on to discuss QUESTION: What kind of qualifications-based evaluation process will allow for the selection of the best proposers?

- enforceable with consequences;
- verifiable;
- set of guidelines for four procurement methods;
- need for better guidelines on reference checking; and
- training for evaluation committee members (mentioned several times).

Improve transparency with timely feedback to contractors, including an anonymous scoring matrix.

Consider having a pool of approved general contractors to participate on evaluation committees.

Use the General Services Department (GSD) model as a starting place (a copy of the model was provided to all participants) as it has been the subject of a lot of stakeholder feedback when it was developed.

Pricing-application of points based on a high/low bid spread.

Important to maintain the integrity of low bid.

Remember that there are consequences for failing to use local people.

Public School Facilities Authority does, on a project-by-project basis, look at subs.

Should there be a local preference?

Needs for the Next Meeting

Staff will research subcontractor bonding and additional ideas for prequalification and bring back a discussion draft bill to the next subcommittee meeting.

Deal with the enforcement "hole" in the existing system and fill it with a clear mechanism (who enforces and what are the penalties for violation).

ISSUES: There are problems with best and final negotiation abuses.

- Continuing CMAR based on our experience into other areas (this will go to a regular meeting of the task force).

- Do not let best value turn into bid shopping.
- Problem: amount of paperwork, lack of standardization.
- Availability of best practices information.
- "Best Practices for Use of Best Value Selections", a joint publication of AGC and NASFA, is available for purchase at www.agc.org/bookstore.
- "Qualifications Based Selection of Contractors", an AGC White Paper, is available at www.agc.org/cs/industry_topics/project_delivery.
- Distinction between value engineering and bid shopping.

Agenda Item: Non-resident contractor language/preference entity (Mark Shumate)...what about areas of interest?

Local control is important.

Need for a fiscal impact report sooner rather than later.

Consider education on pricing so appropriate weighting is accurately stated.

Price weighting.

Need for flexibility.

Consider a parameter, such as 40% to 60%.

Committee selection.

How to deal with the issue of an "outlier" score that may reflect a personal agenda.

The public is watching.

ISSUE: Need to be fair to new and emerging businesses (do not set the bar too high).

Importance of education (in-service opportunities).

Need to get feedback from the attorney general (Mr. Burciaga will follow up).

The Legislative Education Study Committee is looking at tightening ethics for elected officials and may be creating a video presentation option. This could also be considered for evaluation committee members.

Timely award of bids.

Issue: How to "certify" the selection committee members.

Consider the public trust.

Time/accessibility must be considered for rural people if they are to attend a course.

There are multiple delivery options, such as presentations at scheduled conferences, podcasts and webinars.

There is a critical role for outside professionals, as is provided for in APS process and GSD process.

Send in a proposed draft of changes to green copy of GSD framework to Ms. Ball by October 4.

Next meeting: October 7, Room 307.

Dear Work Group Members,

The situation has changed somewhat for the October 7, 2010, meeting. The Public School Capital Outlay Oversight Task Force will need to address a couple of issues in the morning at a regular meeting. In order to try to accommodate the needs of the task force and the work group, I have revised the schedule:

- **All day:** Task force meets in **Room 307**.
- **9 a.m. - 12 noon:** Work group meets in **Room 303** to address responses to NMAC 1.4.8 (the "green sheet). Mark Bennett and I will work with the work group to put together the group's recommendation to the task force at 1 p.m.
- **1 p.m. - 4 p.m.:** Work group meets with task force in **Room 307** in joint meeting to discuss recommendations.

Thank you so much for your willingness to participate and for the time you have already spent on this effort.

Warmest regards,

Sharon

AGENDA
for the
SECOND MEETING OF THE 2010 INTERIM
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP STUDYING PERFORMANCE-BASED PROCUREMENT
FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS

October 7, 2010
Room 303, State Capitol
Santa Fe

Thursday, October 7

- 9:00 a.m. **Call to Order, Welcome, Introductions and Discussion of Agenda**
—Representative Rick Miera, Co-Chair, Public School Capital Outlay
Oversight Task Force (PSCOOTF)
- 9:05 a.m. **Group Discussion**
- **Subcontractor Bonding**
 - **NMAC 1.4.8 (Use of Competitive Sealed Proposals for Construction and Facility Maintenance Services and Repairs)**
 - **Construction Manager at Risk**
 - Mark Bennett, Facilitator
 - Sharon Ball, Legislative Council Service Staff
- 11:00 a.m. **Discussion of Recommendations to Task Force**
—Mark Bennett, Facilitator
—Work Group Members and Staff
- 12:00 noon **Lunch**
- 1:00 p.m. **Report to Task Force (Room 307)**
- 4:00 p.m. **Adjourn**

APPROVED RECOMMENDATIONS
of the
PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
WORK GROUP STUDYING PERFORMANCE-BASED PROCUREMENT
FOR PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS

October 7, 2010
Room 303, State Capitol
Santa Fe

Thursday, October 7

Members Present:

Sen. Vernon D. Asbill
Tim Berry
Dave Flood
Rep. Keith J. Gardner
Bob Gorrell
Speaker Ben Lujan
Dotty McKinney
Pat McMurray
Rep. Rick Miera
Patricia Miller
Tom Padilla
Steve Reinhart
Roxanne Rivera
Mark Shumate
Dean Vigil
Ovidiu Viorica

RECOMMENDATIONS TO THE TASK FORCE

1. Legislation

– Support increase in subcontractor bonding threshold for mandatory bond from \$125,000 to \$250,000.

2. Rule Changes

a. Proposal Subcommittee Req's

– § 1.4.8.12.D.3.A

Delete "firm's, management and owners or partners" and replace it with "project management team".

b. Resident Preference

– §1.4.8.17

Change "final cost scores" to "final scores".

3. Process Improvements

a. PSFA should develop a standardized template for submission of an RFP for construction with detailed instructions.

b. Develop a web-based training module for contractors and sub-contractors.

c. Move forward with a process for web-based training for evaluation committee members that they must acknowledge completing.

Appendix E

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

2011 ENDORSED LEGISLATION

underscored material = new
[bracketed material] = delete

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SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
AND FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC WORKS; RAISING THE MINIMUM CONTRACT AMOUNT
FOR WHICH A SUBCONTRACTOR IS REQUIRED TO PROVIDE A BOND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-1-148.1 NMSA 1978 (being Laws 2005,
Chapter 99, Section 1, as amended) is amended to read:

"13-1-148.1. BONDING OF SUBCONTRACTORS.--A subcontractor
shall provide a performance and payment bond on a public works
building project if the subcontractor's contract for work to be
performed on a project is [~~one hundred twenty-five thousand
dollars (\$125,000)~~] two hundred fifty thousand dollars
(\$250,000) or more."

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE AND
THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL
IMPROVEMENTS ACT AND THE PUBLIC SCHOOL BUILDINGS ACT TO REQUIRE
CHARTER SCHOOLS TO REPORT ANTICIPATED AND ACTUAL EXPENDITURES
OF DISTRIBUTIONS MADE PURSUANT TO THOSE ACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Capital
Improvements Act is enacted to read:

"~~[NEW MATERIAL]~~ EXPENDITURES BY CHARTER SCHOOLS--REPORTS
TO DEPARTMENT.--

A. No later than December 1 of each year, each
locally chartered or state-chartered charter school that
expects a state distribution or a distribution of property
taxes pursuant to the Public School Capital Improvements Act
during the next calendar year shall submit a report to the

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1 department showing the purposes for which the expected
2 distribution will be expended. The department shall review the
3 report and, no later than twenty days after receiving the
4 report, shall advise the charter school if, in its opinion, the
5 proposed expenditures are consistent with law and shall provide
6 a copy of the advice to the local district.

7 B. No later than January 31 of each year, each
8 locally chartered or state-chartered charter school that
9 received a state distribution or a distribution of property
10 taxes pursuant to the Public School Capital Improvements Act
11 during the preceding calendar year shall submit a report to the
12 department showing the purposes for which the distribution was
13 expended and the amount expended for each purpose."

14 SECTION 2. A new section of the Public School Buildings
15 Act is enacted to read:

16 "[NEW MATERIAL] EXPENDITURES BY CHARTER SCHOOLS--REPORTS
17 TO DEPARTMENT.--

18 A. No later than December 1 of each year, each
19 locally chartered or state-chartered charter school that
20 expects a distribution of property taxes pursuant to the Public
21 School Buildings Act during the next calendar year shall submit
22 a report to the department showing the purposes for which the
23 expected distribution will be expended. The department shall
24 review the report and, no later than twenty days after
25 receiving the report, shall advise the charter school if, in

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1 its opinion, the proposed expenditures are consistent with law
2 and shall provide a copy of the advice to the local district.

3 B. No later than January 31 of each year, each
4 locally chartered or state-chartered charter school that
5 received a distribution of property taxes pursuant to the
6 Public School Buildings Act during the preceding calendar year
7 shall submit a report to the department showing the purposes
8 for which the distribution was expended and the amount expended
9 for each purpose."

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

AN ACT

RELATING TO PUBLIC WORKS; AMENDING THE PUBLIC WORKS MINIMUM WAGE ACT TO CLARIFY THAT A CONTRACT WITH A CONSTRUCTION MANAGER AT RISK FOR THE CONSTRUCTION OF A SPECIFIC EDUCATIONAL FACILITY PURSUANT TO THE EDUCATIONAL FACILITY CONSTRUCTION MANAGER AT RISK ACT IS SUBJECT TO A SINGLE RATE DETERMINATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-4-11 NMSA 1978 (being Laws 1965, Chapter 35, Section 1, as amended) is amended to read:

"13-4-11. PREVAILING WAGE AND BENEFIT RATES DETERMINED--MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS-- WEEKLY PAYMENT--WITHHOLDING FUNDS.--

A. Every contract or project in excess of sixty thousand dollars (\$60,000) that the state or any political

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1 subdivision thereof is a party to for construction, alteration,
2 demolition or repair or any combination of these, including
3 painting and decorating, of public buildings, public works or
4 public roads of the state and that requires or involves the
5 employment of mechanics, laborers or both shall contain a
6 provision stating the minimum wages and fringe benefits to be
7 paid to various classes of laborers and mechanics, which shall
8 be based upon the wages and benefits that will be determined by
9 the director to be prevailing for the corresponding classes of
10 laborers and mechanics employed on contract work of a similar
11 nature in the state or locality, and every contract or project
12 shall contain a stipulation that the contractor, subcontractor,
13 employer or a person acting as a contractor shall pay all
14 mechanics and laborers employed on the site of the project,
15 unconditionally and not less often than once a week and without
16 subsequent unlawful deduction or rebate on any account, the
17 full amounts accrued at time of payment computed at wage rates
18 and fringe benefit rates not less than those determined
19 pursuant to Subsection B of this section to be the prevailing
20 wage rates and prevailing fringe benefit rates issued for the
21 project.

22 B. The director shall determine prevailing wage
23 rates and prevailing fringe benefit rates for respective
24 classes of laborers and mechanics employed on public works
25 projects at the same wage rates and fringe benefit rates used

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1 in collective bargaining agreements between labor organizations
2 and their signatory employers that govern predominantly similar
3 classes or classifications of laborers and mechanics for the
4 locality of the public works project and the crafts involved;
5 provided that:

6 (1) if the prevailing wage rates and
7 prevailing fringe benefit rates cannot reasonably and fairly be
8 determined in a locality because no collective bargaining
9 agreements exist, the director shall determine the prevailing
10 wage rates and prevailing fringe benefit rates for the same or
11 most similar class or classification of laborer or mechanic in
12 the nearest and most similar neighboring locality in which
13 collective bargaining agreements exist;

14 (2) the director shall give due regard to
15 information obtained during the director's determination of the
16 prevailing wage rates and the prevailing fringe benefit rates
17 made pursuant to this subsection;

18 (3) any interested person shall have the right
19 to submit to the director written data, personal opinions and
20 arguments supporting changes to the prevailing wage rate and
21 prevailing fringe benefit rate determination; ~~and~~

22 (4) a determination of prevailing wage rates
23 and prevailing fringe benefit rates for the construction of a
24 specific educational facility pursuant to a contract with a
25 construction manager at risk entered into under the Educational

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1 Facility Construction Manager At Risk Act shall not be amended
2 and shall be binding for five years or until the completion of
3 the educational facility, whichever occurs first; and

4 [~~(4)~~] (5) prevailing wage rates and prevailing
5 fringe benefit rates determined pursuant to the provisions of
6 this section shall be compiled as official records and kept on
7 file in the director's office and the records shall be updated
8 in accordance with the applicable rates used in subsequent
9 collective bargaining agreements.

10 C. The prevailing wage rates and prevailing fringe
11 benefit rates to be paid shall be posted by the contractor or
12 person acting as a contractor in a prominent and easily
13 accessible place at the site of the work; and it is further
14 provided that there may be withheld from the contractor,
15 subcontractor, employer or a person acting as a contractor so
16 much of accrued payments as may be considered necessary by the
17 contracting officer of the state or political subdivision to
18 pay to laborers and mechanics employed on the project the
19 difference between the prevailing wage rates and prevailing
20 fringe benefit rates required by the director to be paid to
21 laborers and mechanics on the work and the wage rates and
22 fringe benefit rates received by the laborers and mechanics and
23 not refunded to the contractor, subcontractor, employer or a
24 person acting as a contractor or the contractor's,
25 [~~subcontractor's~~], subcontractor's employer's or person's

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1 agents.

2 D. Notwithstanding any other provision of law
3 applicable to public works contracts or agreements, the
4 director may, with cause:

5 (1) issue investigative or hearing subpoenas
6 for the production of documents or witnesses pertaining to
7 public works prevailing wage projects; and

8 (2) attach and prohibit the release of any
9 assurance of payment required under Section 13-4-18 NMSA 1978
10 for a reasonable period of time beyond the time limits
11 specified in that section until the director satisfactorily
12 resolves any probable cause to believe a violation of the
13 Public Works Minimum Wage Act or its implementing rules has
14 taken place.

15 E. The director shall issue rules necessary to
16 administer and accomplish the purposes of the Public Works
17 Minimum Wage Act."

18 SECTION 2. EMERGENCY.--It is necessary for the public
19 peace, health and safety that this act take effect immediately.

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE
AND THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; EXEMPTING CERTAIN LEASES
FROM STATE BOARD OF FINANCE APPROVAL; REQUIRING STANDARDS FOR
CERTAIN CHARTER SCHOOL FACILITIES; REQUIRING APPROVAL BEFORE
ENTERING INTO A LEASE AGREEMENT OR LEASE-PURCHASE AGREEMENT FOR
SCHOOL FACILITIES OR BEFORE APPLYING FOR A GRANT FOR LEASE
PAYMENTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION
OF LAW IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-6-2.1 NMSA 1978 (being Laws 1989,
Chapter 380, Section 1, as amended by Laws 2003, Chapter 142,
Section 3 and by Laws 2003, Chapter 349, Section 22) is amended
to read:

"13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF
FINANCE APPROVAL.--

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1 A. Except as provided in Section 13-6-3 NMSA 1978,
2 for state agencies, any sale, trade or lease for a period of
3 more than five years of real property belonging to a state
4 agency, local public body or school district or any sale, trade
5 or lease of such real property for a consideration of more than
6 twenty-five thousand dollars (\$25,000) shall not be valid
7 unless it is approved prior to its effective date by the state
8 board of finance.

9 B. The provisions of this section shall not be
10 applicable [~~as~~] to:

11 (1) those institutions specifically enumerated
12 in Article 12, Section 11 of the constitution of New Mexico;

13 (2) the state land office;

14 (3) the state transportation commission; [~~or~~]

15 (4) the economic development department when
16 disposing of property acquired pursuant to the Statewide
17 Economic Development Finance Act; or

18 (5) a school district when leasing facilities
19 to a locally chartered or state-chartered charter school."

20 SECTION 2. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,
21 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
22 as amended) is amended to read:

23 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

24 A. The facilities of a charter school that is
25 approved on or after July 1, 2005 and before July 1, 2015 shall

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1 meet educational occupancy standards required by applicable New
2 Mexico construction codes.

3 B. The facilities of a charter school whose charter
4 has been renewed at least once shall be evaluated, prioritized
5 and eligible for grants pursuant to the Public School Capital
6 Outlay Act in the same manner as all other public schools in
7 the state; provided that for charter school facilities in
8 leased facilities, grants may be used to provide additional
9 lease payments for leasehold improvements made by the lessor.

10 C. On or after July 1, 2011, a new charter school
11 shall not open and an existing charter school shall not
12 relocate unless the facilities of the new or relocated charter
13 school, as measured by the New Mexico condition index, receive
14 a condition rating equal to or better than the average
15 condition for all New Mexico public schools for that year or
16 the charter school demonstrates, within eighteen months of
17 occupancy or renewal of the charter, the way in which the
18 facilities will achieve a rating equal to or better than the
19 average New Mexico condition index.

20 [~~G.~~] D. On or after July 1, 2015, a new charter
21 school shall not open and an existing charter shall not be
22 renewed unless the charter school:

23 (1) is housed in a building that is:

24 (a) owned by the charter school, the
25 school district, the state, an institution of the state,

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1 another political subdivision of the state, the federal
2 government or one of its agencies or a tribal government; or

3 (b) subject to a lease-purchase
4 arrangement that has been entered into and approved pursuant to
5 the Public School Lease Purchase Act; or

6 (2) if it is not housed in a building
7 described in Paragraph (1) of this subsection, demonstrates
8 that:

9 (a) the facility in which the charter
10 school is housed meets the statewide adequacy standards
11 developed pursuant to the Public School Capital Outlay Act and
12 the owner of the facility is contractually obligated to
13 maintain those standards at no additional cost to the charter
14 school or the state; and

15 (b) either: 1) public buildings are not
16 available or adequate for the educational program of the
17 charter school; or 2) the owner of the facility is a nonprofit
18 entity specifically organized for the purpose of providing the
19 facility for the charter school.

20 E. Without the approval of the public school
21 facilities authority pursuant to Section 22-20-1 NMSA 1978, a
22 charter school shall not:

23 (1) on or after July 1, 2012, enter into a new
24 lease agreement or renew an existing lease agreement; or

25 (2) enter into a lease-purchase agreement.

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1 ~~[D-]~~ F. The public school capital outlay council:

2 (1) shall determine whether facilities of a
3 charter school meet the educational occupancy standards
4 pursuant to the requirements of Subsection A of this section
5 or the requirements of Subsections B, ~~[and]~~ C and D of this
6 section, as applicable; and

7 (2) upon a determination that specific
8 requirements are not appropriate or reasonable for a charter
9 school, may grant a variance from those requirements for that
10 charter school."

11 **SECTION 3.** Section 22-20-1 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 270, as amended) is amended to read:

13 "22-20-1. SCHOOL CONSTRUCTION--LEASE AGREEMENTS--LEASE-
14 PURCHASE AGREEMENTS--LEASE PAYMENT GRANT APPLICATIONS--APPROVAL
15 OF THE PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH
16 STATEWIDE ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE
17 STANDARDS APPLICABLE.--

18 A. Except as provided in Subsection ~~[D]~~ G of this
19 section, each local school board or governing body of a charter
20 school shall secure the approval of the director of the public
21 school facilities authority or the director's designee prior
22 to:

23 (1) the construction or letting of contracts
24 for construction of any school building or related school
25 structure; ~~[or before]~~

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1 (2) entering into a new lease agreement on or
2 after July 1, 2012 or renewing an existing lease agreement on
3 or after that date for a building to be used as a school
4 building or a related school structure;

5 (3) entering into a lease-purchase agreement
6 for a building to be used as a school building or a related
7 school structure; or

8 (4) reopening an existing structure that was
9 ~~[formerly used as a school building but that has not been used~~
10 ~~for that purpose]~~ not used as a school building during the
11 previous year.

12 B. A written application shall be submitted to the
13 director requesting approval of the construction, lease
14 agreement, lease-purchase agreement or reopening, and, upon
15 receipt, the director shall forward a copy of the application
16 to the secretary. The director shall prescribe the form of the
17 application, which shall include the following:

18 (1) a statement of need;
19 (2) the anticipated number of students
20 affected ~~[by the construction];~~

21 (3) the estimated cost;
22 (4) for approval of construction, a
23 description of the proposed construction project;

24 (5) for approval of a lease agreement, a
25 lease-purchase agreement or a reopening of an existing

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1 structure, a description of the structure to be leased or
2 reopened, including its location, square footage, interior
3 layout and facilities, such as bathrooms, kitchens and handicap
4 access, a description of the prior use of the structure and a
5 description of how the facility and supplemental shared
6 facilities and resources will fulfill the functions necessary
7 to support the educational programs of the school district or
8 charter school;

9 [~~5~~] (6) a map of the area showing existing
10 school attendance centers within a five-mile radius and any
11 obstructions to attending the attendance centers, such as
12 railroad tracks, rivers and limited-access highways; and

13 [~~6~~] (7) other information as may be required
14 by the director.

15 [~~B-~~] C. With respect to an application for the
16 approval of construction, the director or the director's
17 designee shall give approval to an application if the director
18 or designee reasonably determines that:

19 (1) the construction will not cause an
20 unnecessary proliferation of school construction;

21 (2) the construction is needed in the school
22 district or by the charter school;

23 (3) the construction is feasible;

24 (4) the cost of the construction is
25 reasonable;

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1 (5) the school district or charter school has
2 submitted a five-year facilities plan that includes:

3 (a) enrollment projections;
4 (b) a current preventive maintenance
5 plan;

6 (c) the capital needs of charter schools
7 chartered by the school district, if applicable, or the capital
8 needs of the charter school if it is state-chartered; and

9 (d) projections for the facilities
10 needed in order to maintain a full-day kindergarten program;

11 (6) the construction project:

12 (a) is in compliance with the statewide
13 adequacy standards adopted pursuant to the Public School
14 Capital Outlay Act; and

15 (b) is appropriately integrated into the
16 school district or charter school five-year facilities plan;

17 (7) the school district or charter school is
18 financially able to pay for the construction; and

19 (8) the secretary has certified that the
20 construction will support the educational program of the school
21 district or charter school.

22 D. With respect to an application for the approval
23 of a lease agreement, the director or the director's designee
24 shall give approval to an application if the director
25 reasonably determines that the buildings to be leased meet

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1 educational occupancy standards required by applicable New
2 Mexico construction codes.

3 E. With respect to an application for the approval
4 of a lease-purchase agreement or for the reopening of an
5 existing structure, the director or the director's designee
6 shall give approval to an application if the director or
7 designee reasonably determines that:

8 (1) the buildings to be reopened or leased for
9 purchase meet the applicable statewide adequacy standards
10 adopted pursuant to the Public School Capital Outlay Act or the
11 buildings can be brought into compliance with those standards
12 within a reasonable time and at a reasonable cost and that
13 money or other resources will be available to the school
14 district or charter school to bring the buildings up to those
15 standards; and

16 (2) the buildings to be reopened or leased for
17 purchase have, as measured by the New Mexico condition index, a
18 condition rating equal to or better than the average condition
19 for all New Mexico public schools for that year.

20 [~~G.~~] F. Within thirty days after the receipt of an
21 application filed pursuant to this section, the director or the
22 director's designee shall in writing notify the local school
23 board or governing body of a charter school making the
24 application and the department of approval or disapproval of
25 the application.

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1 ~~[D-]~~ G. By rule, the public school capital outlay
2 council may:

3 (1) exempt classes or types of construction
4 from the application and approval requirements of this section;
5 or

6 (2) exempt classes or types of construction
7 from the requirement of approval but, if the council determines
8 that information concerning the construction is necessary for
9 the maintenance of the facilities assessment database, require
10 a description of the proposed construction project and related
11 information to be submitted to the public school facilities
12 authority.

13 H. A school district or a charter school shall not
14 apply for a lease payment grant pursuant to Subsection I of
15 Section 22-24-4 NMSA 1978 unless the lease agreement or the
16 lease-purchase agreement has been approved pursuant to this
17 section, except that the approval requirement of this
18 subsection shall not apply for a lease agreement in effect on
19 June 30, 2012 until the agreement is subsequently renewed.

20 ~~[E-]~~ I. A local school board or governing body of a
21 charter school shall not enter into a contract for the
22 construction of a public school facility, including contracts
23 funded with insurance proceeds, unless the contract contains
24 provisions requiring the construction to be in compliance with
25 the statewide adequacy standards adopted pursuant to the Public

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1 School Capital Outlay Act, provided that, for a contract funded
2 in whole or in part with insurance proceeds:

3 (1) the cost of settlement of any insurance
4 claim shall not be increased by inclusion of the insurance
5 proceeds in the construction contract; and

6 (2) insurance claims settlements shall
7 continue to be governed by insurance policies, memoranda of
8 coverage and rules related to them.

9 ~~[F-]~~ J. Public school facilities shall be
10 constructed pursuant to state standards or codes promulgated
11 pursuant to the Construction Industries Licensing Act and rules
12 adopted pursuant to Section 59A-52-15 NMSA 1978 for the
13 prevention and control of fires in public occupancies.
14 Building standards or codes adopted by a municipality or county
15 do not apply to the construction of public school facilities,
16 except those structures constructed as a part of an educational
17 program of a school district or charter school.

18 ~~[G-]~~ K. The provisions of Subsection ~~[F]~~ J of this
19 section relating to fire protection shall not be effective
20 until the public regulation commission has adopted the
21 International Fire Code and all standards related to that code.

22 ~~[H-]~~ L. As used in this section, "construction"
23 means any project for which the construction industries
24 division of the regulation and licensing department requires
25 permitting and for which the estimated total cost exceeds two

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1 hundred thousand dollars (\$200,000)."

2 SECTION 4. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2011.

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Appendix F

PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE

1998-2010 *Zuni* Lawsuit Time Line (Long Version)

TIME LINE OF KEY EVENTS RELATED TO THE ZUNI LAWSUIT

January 1998	<i>Zuni</i> lawsuit filed.
March 1998	Public Education Department (formerly State Department of Education) appoints a task force to study public school capital outlay issues.
1999 Regular and Special Sessions	State reduces impact aid credit; increases funding for critical capital outlay program; creates supplemental severance tax bonds and limits their issuance to 62.5% of previous year severance tax revenues; and authorizes \$100 million of bonds for public school capital improvements. (Laws 1999, Chapter 275 and Laws 1999, Special Session, Chapter 6)
October 1999	District court rules that current public school capital outlay funding system is unconstitutional.
2000 Regular and Special Sessions	State increases the limit for issuance of supplemental severance tax bonds to 87.5% of previous year severance tax revenues; authorizes an additional \$475 million in bonds for public school capital improvements; and creates a new Public School Capital Outlay Task Force (PSCOTF).
March 2000	District court holds status conference.
2001 Session	State adopts new, statewide capital outlay system based on adequacy standards and a state-share formula to determine state grant amounts as the basis for a long-term funding system and appropriates funds for a statewide assessment of all school facilities to be used to rank schools against the adequacy standards. Establishes a short-term deficiencies corrections program; appropriates \$200 million to fund it; and creates a new state agency to administer it. Additional funding for maintenance is provided by increasing the state guarantee amount under SB 9 from \$35.00 to \$50.00 per unit and the existing critical capital outlay program without the need for annual legislative approval. (Laws 2001, Chapter 338)
May 2001	District court appoints a special master to review the state's progress in developing a uniform system for funding public school capital improvements.
October 2001	Special master holds hearing.
January 2002	Special master issues a report finding that the state "is in good faith and with substantial resources attempting to comply with the requirements" of the court. The report also finds that "because the use of direct appropriations necessarily removes substantial funds from the capital outlay process where merit and need on a priority basis dictate how funds are to be distributed, the state should take into account in its funding formula these appropriations as an element thereof".

May 2002	District court adopts the report of the special master and agrees to continue to review the state's progress.
September 2002	Public School Capital Outlay Council (PSCOC) adopts newly developed adequacy standards.
2003 Session	State revises state-share formula and provides for an offset against state grant awards for direct appropriations for nonoperating purposes. The offset amount is calculated based on the local share percentage of the district, so that wealthy districts have a greater offset percentage than poorer ones. Additional funding for maintenance is provided by adding a \$5.00 per mill per unit minimum distribution to districts through the SB 9 program; up to \$40 million in additional funds are appropriated for the deficiencies correction program; and a new, permanent Public School Facilities Authority (PSFA) is created to implement the standards-based process. (Laws 2003, Chapter 147 and Laws 2003, Chapter 238)
October 2003	PSCOC implements standards-based funding process for grant award requests.
2004 Session	State increases the limit for issuance of supplemental severance tax bonds from 87.5% to 95% and provides \$67 million in additional funding for projects begun under the critical capital outlay program but not yet completed and for the deficiencies correction program. (Laws 2004, Chapter 147 and Laws 2004, Chapter 126)
October 2004	PSCOC provides \$198.9 million in first-year standards-based grant awards.
2005 Session	State provides for permanent Public School Capital Outlay Oversight Task Force (PSCOOTF) and provides \$62 million in additional funds for roof repair and replacement as part of the deficiencies correction program and as part of the standards-based process. The SB 9 guarantee is increased from \$50.00 to \$60.00 per mill per unit. The state-share formula is modified to allow the local share to be reduced or eliminated in certain circumstances. (Laws 2005, Chapter 274)
October 2005	PSCOC provides \$255.6 million in grant awards under the second year of the standards-based program.
2006 Session	State creates a new "high-priority" program for projects meeting specified criteria in high-growth areas and provides an additional \$90 million for these projects. The high-priority projects are subject to the same standards and procedures as other projects but are eligible for advanced funding of the local share amount with the requirement that this advanced funding be recouped by future grant offsets. (Laws 2006, Chapter 95)

March 2006	District court holds status conference. Parties agree to an evidentiary hearing to be held in October 2006.
October 2006	PSCOC provides \$137.4 million in third-year standards-based grant awards.
October 2006	<i>Zuni</i> plaintiffs present concerns to the PSCOOTF, which sets up a work group to seek responses to those concerns.
2007 Session	Legislature passes legislation to allow a reduction of 50% of offsets from future project awards for direct legislative appropriations that are designated for school building projects that rank among the top 150 projects statewide; to exempt direct appropriations to state-chartered charter schools from offsets against the district in which the school is located; to increase lease reimbursement payments from \$600 to \$700 per MEM and allow administrative space to qualify for the reimbursement; to increase the state SB 9 guarantee from \$60.00 to \$70.00 per mill per unit with yearly increases based upon the Consumer Price Index; to increase the period for which an HB 33 tax may be imposed from five to six years to track with biennial school district elections; to require that, upon termination of the charter of a state-chartered charter school, the facility must revert to the local school district rather than to the state if any proceeds from local bond issues were used to finance the facility; and to add two members to the PSCOOTF (bringing the total number of members to 26) to include both a senator and a representative who represent impact aid school districts. (Laws 2007, Chapter 366)
August 2007	PSCOC provides \$212.2 million in grant awards for the 2006-07 standards-based awards cycle.
2008 Session	Legislature passes legislation to amend the Public School Insurance Authority Act to allow for insurance for joint use of school buildings. (Laws 2009, Chapter 198) Other legislation amended the Public School Capital Outlay Act to reduce the offset for direct appropriations from a PSCOC grant award made for joint use with another governmental entity; to authorize funding to continue the development and implementation of the Facility Information Management System (FIMS), a uniform, web-based system to manage maintenance for school district facilities; to provide an increased grant award to districts with a demonstrable exemplary record of preventive maintenance; and to eliminate the state investment officer as a member of PSCOOTF, reducing membership to 25. (Laws 2008, Chapter 90, p.v.)
August 2008	PSCOC provides \$93.4 million for the 2008-09 funding cycle. PSCOC changes from a one-time annual funding cycle to an ongoing examination of project readiness to make grant awards only when a project is able to make expeditious use of the funds. Albuquerque Public Schools reduces its advances and offsets by \$75.6 million through applications in the standards-based process.

2009 Session	Legislature passes legislation to amend the Charter Schools Act to extend to 2015 the deadline for charter schools to be located in public buildings (Laws 2009, Chapter 198); to amend the Public School Capital Outlay Act to remove the limit on the amount of lease payment assistance funds that may be awarded (Laws 2009, Chapter 258, p.v.); and to allow for funding to develop a geographic information system for use by the PSFA and other state governmental agencies. (Laws 2009, Chapter 115)
2010 Session	Legislature passes legislation to amend the Qualified School Construction Bonds Act to clarify the methodology for allocation of bonding authority (Laws 2010, Chapter 56); to amend the Public School Capital Outlay Act to require the PSFA to administer procurement for certain emergency projects; and to extend the time limit for roof repairs from 2012 to 2015. (Laws 2010, Chapter 104, p.v.)
January 2011	Scheduled: Award of roof project grants and short-cycle standards-based grant awards.