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Meeting Minutes – March 11, 2021

Call to Order:

Dr. Karen Salmon called the video-conference meeting of the Interagency Commission on School Construction to order at 9:01 a.m.

Members in Attendance:

Dr. Karen Salmon, State Superintendent of Schools, Chair
Denise Avara, Appointee of the Governor
Linda Eberhart, Appointee of the Speaker of the House
Clarence Felder, Designee for Secretary Ellington Churchill, Maryland Department of General Services
Brian Gibbons, Appointee of the Speaker of the House
Edward Kasemeyer, Appointee of the President of the Senate
Gloria Lawlah, Appointee of the President of the Senate
Dick Lombardo, Appointee of the Governor
Secretary Robert S. McCord, Maryland Department of Planning

Members Not in Attendance:

None

Public Comment:

There was no public comment.

IAC Correspondence:

Wicomico County submitted written testimony to the Chair and Members of the IAC regarding their Capital Improvement Program allocations and their needs for further funding from the Built to Learn Act of 2020.

1. Consent Agenda – [Motion Carried]

Upon a motion from Mr. Gibbons and a second by Mr. Lombardo, the IAC voted unanimously to approve the consent agenda.

A. Approval of the February 11, 2021 Minutes

To approve the minutes of the February 11, 2021 Interagency Commission on School Construction Meeting.

B. Summary of Contract Awards

To approve contract procurement as presented.

C. Approval of Revisions to Previously Approved Contracts

To approve the revisions to previously approved contract awards to accurately reflect the adjusted reversion amounts as presented.

D. Project Closeouts

To approve the final State project costs as presented and to remove the projects from the active project detailed financial report.

E. Approval of Change Orders

The presented statistical information is for Change Order Letters dated February 08, 2021 to be included in the March 4, 2021 Outgoing Agenda for IAC Meeting approval of Contracts & Items, with an approval date of March 11, 2021. This item is informational and does not require IAC Action.

F. Amendment to January 14, 2021 Minutes

To revise the January 14th, 2021 Minutes Executive Session language to include: “The IAC discussed the performance evaluation of an employee.”

2. IAC Impact of the Built to Learn Act of 2020 – [Informational Only]

Cassandra Viscarra, Program Support Manager for the IAC, delivered a presentation on the Built to Learn Act, which recently took effect, with a brief overview on the portions of the bill that impact IAC Operations and Programs.

The bill allows the Maryland Stadium Authority to sell bonds of up to \$2.2 Billion to fund Public School Construction. The amount actually sold will be dependent upon the cash available each year for debt service. Statute does require that certain LEAs receive specific percentages of the revenue, which can be found on page 29 of the Agenda. The program will be governed by an MOU between the IAC and MSA.

The IAC is required to approve Built to Learn Act funding allocations on a rolling basis, as opposed to annual allocations. The first projects that are to receive this rolling funding should be CIP “B” status projects. This funding cannot reimburse a facility that has already been completed, but can reimburse projects that began after June 1, 2020.

Cassandra described other provisions of the legislation, including revisions to the Enrollment Growth and Relocatable Classroom Program threshold, provision for a Public Private Partnership agreement in Prince George’s County, an evaluation of the life cycle costs of public school facilities, and the adoption of a Computerized Maintenance Management System by the IAC.

Lastly, Cassandra explained impacts on some of the IAC’s ongoing programs and Workgroups, such as the Assessment and Funding Workgroup deadlines, the extension of the Healthy School Facility Fund Program, the development of a CTE program with apprenticeships in school building maintenance, and the creation of the Public School Facilities Priority fund. The Priority Fund uses the results of the Statewide Facilities Assessment to address facilities with the highest needs. This program will be allocated \$40 Million per year in FY25 and FY26, and will be allocated \$80 Million every year after.

3. Adoption of Proposed COMAR Revisions, Including FY23 and FY24 State Cost Shares – [Motion Carried]*

Before the Item was presented, IAC Member Linda Eberhart expressed three points of concern with the item: 1) LEA comments had not yet been received at the time of presentation of the proposal to the IAC, 2) the priorities of the President of the Senate and House Speaker during this session are not yet fully known, and 3) the pandemic is changing rapidly, and waiting another month will provide a clearer outlook. Dr. Salmon clarified that this would only advance a proposal of changes, and that this would only begin the process of notice and comment before any amendment of the Code of Maryland Regulations (COMAR). Director Gorrell further clarified that adoption of the item would begin the Public Review process, and that feedback would be provided to the IAC before final adoption and implementation.

Cassandra Viscarra highlighted the proposed revisions in the item, which were designed to comply with the Built to Learn Act of 2020, and include the proposed new State Cost shares as calculated by the formula in COMAR 14.39.02.05.

The primary proposed change is to modify regulations to allow funding of planning and design as required by the Built to Learn Act of 2020. IAC Staff wanted to maximize LEA flexibility, so instead of replacing the locally-funded design option, we have added to it a state-funded design option. IAC staff added the requirements for planning and design funding approval, found in section B1. Page 47 includes minor changes to cross-references, and page 49 includes further clarifications to allow for design funding. Page 51 lays out the allocation for planning and design funding, which cannot exceed 10% of the anticipated eligible project amount. The regulation also modified the current eligible and ineligible expenditures to make design and planning expenses eligible for State funding. Other modifications include updates to cross-references and minor technical changes.

Deputy Director of Administration, Kim Spivey presented proposed FY 2023 and FY 2024 State and Local Cost Shares for each county. Kim briefly described the factors used in the State formula, in accordance with COMAR 14.39.02.05. Overall, the proposed State cost shares include 8 LEAs with an increase in their State Cost Share, 11 counties that stay the same, and 5 counties that see a decrease. No LEA will receive more than a 5% reduction in their State Cost Share per year, as required by COMAR.

Members expressed strong concern with some calculated reductions, including the 9% decrease over two years for Baltimore City. Chair Salmon noted that we have historically deferred decreases in State Cost Share, and have been advised that changes in the Built to Learn Act of 2020 block the IAC's ability to modify the calculated cost shares to hold harmless LEAs that would experience a decrease. Deputy Director Spivey noted that last time the State and Local Cost Share was calculated, there was a 10% Tier 1 County add-on for Baltimore City based on the unemployment and median household criteria thresholds, whereas this year there was only a 5% Tier 1 County add-on for Baltimore City based on median household criteria.

Members further discussed the implications of the State Cost share adoption and expressed hesitation to act without additional information. Secretary McCord noted that other provisions noted in the proposed regulatory changes could be approved for submission to the Division of State Documents, while adoption of the State cost shares could be postponed. Members agreed to postpone adoption of the State Cost share and directed staff to return to the April meeting with additional information and options. The members modified the staff proposed motion to exclude adoption of proposed amendments to COMAR 14.39.02.05.

Upon a motion from Ms. Lawlah and a second by Ms. Eberhart, the IAC voted unanimously to approve and amended motion to approve a proposed COMAR change to:

1. recodify existing regulations 14.39.02.08, .09, .13, .16, .19, and .21—.30 to be Regulations 14.39.02.09, .10, .14, .17, .20, and .22—.31, respectively, and
2. to approve amendments to COMAR 14.39.02.03, **.05***, .06,
3. to amend and recodify existing regulations 14.39.02.10, .11, .12, .14, .15, .17, .18, and .20, to be Regulations 14.39.02.11, .12,.13, .15, .16, .18, .19, and .21, respectively, and
4. adopt new Regulation 14.39.02.08 Early Planning and Design Funding Allocation, and
5. to authorize staff to make additional technical edits as necessary.

Secretary McCord suggested that IAC Staff examine a county by county cost per pupil comparison in funding and include this research in future information presented to the IAC.

***Indicates changes to the motion from Staff recommended language included in the agenda publication.**

4. Washington County Public Schools Amendment to the Approved State FY 2021 Capital Improvement Program (CIP) – [Motion Carried]

Arabia Davis, Funding Programs Manager for the IAC, presented amendments to the FY21 Capital Improvement Program (CIP) allocations for Washington County Public Schools (WCPS) for the Western Heights Middle roof project, and the North Hagerstown High chiller project. WCPS has requested that the IAC allow \$736,000 in State FY 2021 funding originally allocated but not needed to complete the Western Heights Middle School Roof replacement project to be transferred to fully fund a revised State share on the North Hagerstown High School Chiller replacement project. The realignment of funding in WCPS FY 2021 CIP is needed to avoid the chiller project from being deferred due to lack of available local funding.

Director Gorrell mentioned that this follows what IAC staff have encouraged in Baltimore City, which is to be able to shift money from prior allocations to keep important projects moving. As such, IAC Staff is in support of the proposed amendments.

Upon a motion from Ms. Lawlah and a second by Ms. Eberhart, the IAC voted unanimously to approve an amendment to the Washington County Public School’s (WCPS) FY 2021 CIP project allocations for the:

1. Western Heights Middle School roof replacement project decreasing the allocation from \$1,873,000 to \$1,051,000;
2. North Hagerstown High School chiller replacement project increasing the allocation from \$711,000 to \$1,447,000, and;
3. Revert \$86,000 to the reserved appropriation account for WCPS.

5. Nonpublic Project Approvals and Allocations

Fred Mason, School Facilities Branch Chief, presented nonpublic project approvals and allocations items to the IAC.

A. Nonpublic Schools Safety Grants Program – FY 2021 Project Approvals and Allocations – [Motion Carried]

Branch Chief Mason presented the proposed FY21 allocations for the Nonpublic Schools Safety Grant Program, totaling \$3,496,260. The Nonpublic School Safety Grant Program, jointly administered by the Maryland State Department of Education (MSDE) and the Interagency Commission on School Construction (IAC), provides grants for nonpublic schools to renovate and improve school facilities for safety improvements. Nonpublic schools participating in MSDE’s Aid to Nonpublic Schools Textbook Loan Program are eligible for the grants. Facilities must be 16 years or more of age.

A nonpublic school meeting the basic requirements may receive a minimum grant of \$5,000, with a maximum grant of \$65 per student for schools where less than 20% of the students are eligible for free and reduced price meal programs, or a maximum grant of \$85 per student where more than 20% of the students are eligible for free and reduced price meal programs.

Mr. Lombardo asked if the several hundred schools eligible for these grants are monitored to verify the expenditures are being implemented accordingly. Mr. Mason clarified that while there is no physical examination, there is an extensive review process which includes proof that they paid their contractors for the completion of the work before the reimbursements are improved. Ms. Eberhart asked if the schools that qualify via the Textbook Loan Program adhere to the anti-discrimination assurances as required under the Textbook Loan Program, and Mr. Mason confirmed that all comply.

Upon a motion from Mr. Lombardo and a second by Mr. Gibbons, the IAC members voted unanimously to approve FY 2021 Nonpublic Schools Safety Grants Program project allocations as presented, totaling \$3,496,260.

B. Nonpublic Aging Schools Program – FY 2021 Project Approvals and Allocations – [Motion Carried]

Fred presented the FY21 allocations for the Nonpublic Aging Schools Program (NASP), totaling \$3,499,578. The NASP provides grants of general obligation bond proceeds to nonpublic schools to renovate and improve school facilities. These grants provide funds for projects in buildings at least 16 years of age that would have been eligible under the Aging Schools Program if they were public schools. Nonpublic schools participating in MSDE's Aid to Nonpublic Schools Textbook Loan Program are eligible for the grants. Also, eligible are nonpublic schools serving students with disabilities through the Nonpublic Placement Program, R00A02.07 Subprogram 076.

A nonpublic school meeting basic requirements may receive a minimum grant of \$5,000. The amount of the actual grant is based on additional criteria: Tuition is less than the Statewide average per pupil expenditure for public schools; At least 20% of the students are eligible for free and reduced price meal programs; The school facility has an average age of 50 years or more. The statutory maximum funding level for schools meeting one criterion is \$25,000; for two additional criteria, the maximum allocation is \$75,000; and for three additional criteria the maximum grant amount is \$100,000. Due to the large number of qualified applicants, the actual allocations are pro-rated. The funding levels are \$7,641, \$22,923, and \$30,564.

Ms. Eberhart asked the same question as asked in the prior item, regarding anti-discrimination assurances as required under the Textbook Loan Program. Mr. Mason again confirmed that these schools all comply. Secretary McCord mentioned that there is a need for enrollment data for nonpublic schools for planning purposes. Mr. Mason noted that IAC staff receive enrollment information as part of the NASP application process, but only for schools that apply for the funding. IAC staff do not have information relating to enrollments at other nonpublic schools.

Upon a motion from Mr. Felder and a second by Secretary McCord, the IAC Members voted unanimously to approve FY 2021 Senator James E. "Ed" DeGrange Nonpublic Aging Schools Program project allocations as presented, totaling \$3,499,578.

6. Baltimore City Roland Park PK-8 Approval COMAR Waiver and Allocation of Emergency Planning Funding – [Motion Carried]

Jamie Bridges, Regional Facilities Manager for Baltimore City, presented an approval of a COMAR waiver and a transfer of \$76,800 for emergency structural repair funding at Roland Park PK-8.

The structural issues at Roland Park PK-8 #233 have been clear to Baltimore City Public Schools (City Schools) and to State maintenance inspectors since at least 2015, when State inspectors observed and documented them. City Schools included a structural investigation and repair project as priority #37 in its FY 2020 CIP request, as priority #27 in its FY 2021 request and as priority #6 in its FY 2022 CIP request — submitted in October 2020. Each time, the project has been deferred due to insufficient scope development. Without a detailed structural investigation with potential solutions and budgets identified prior to allocation of state funds for construction, the risk is high that the estimated requested state allocation will not be sufficient to complete the scope and that the project will need to be cancelled. Any such cancellation and reversion of funds would come at a financial cost (due to construction-cost escalation) to the State and to City Schools. It would also come at an educational cost to the students. In light of this, IAC staff support and recommend the approval of emergency funds for design.

Upon a motion from Ms. Lawlah and a second from Mr. Lombardo, the IAC voted unanimously to approve:

1. the waiver of COMAR 14.39.02.11C, as requested by Baltimore City Public Schools and approved by the Assistant Attorney General for legal sufficiency, so that design funding will be an eligible expense for an emergency structural repair project at Roland Park PK-8; and
2. the transfer of \$76,800 from the Emergency Repair Fund to establish an allocation for professional design services for early planning for an emergency structural repair project at the Roland Park PK-8.

7. Baltimore City Public Schools — Cancellation of FY 2020 Southside Building #181 Healthy School Facility Fund (HSFF) Project – [Motion Carried]

Jamie Bridges, Regional Facilities Manager for Baltimore City, presented the cancellation of the Baltimore City Public Schools FY 2020 Healthy School Facility Fund (HSFF) vertical packaged air conditioning units at Southside Building #181, and the transfer of the project allocation for this project for reallocation to other eligible projects under the HSFF.

The Healthy School Facility Fund (HSFF) Administrative Procedures Guide requires project allocations uncontracted after final reimbursement of an approved project to be transferred back to the Fund and reserved for reallocation to other eligible HSFF projects in the state. Per the submitted letter dated November 19, 2020, City Schools requested the cancellation of the one FY 2020 HSFF project because City Schools does not intend to complete the project.

At the January 14, 2021 meeting of the IAC, a motion to approve the request to cancel the project was postponed and more information on the project and the building were requested. In particular, members wanted to know that school #181 is safe, if the VPU project at school #181 could be completed, and of City Schools' long-term plan for school #181. City Schools provided immediate assurance that school #181 is safe, and in particular, that the fire alarm is operational. Since then, staff confirmed that City Schools does not intend to complete the project. Staff recommends approval of the request to cancel the FY 2020 Healthy School Facility Fund project — the installation of VPUs at the Southside Building #181 — and to transfer the project allocation of \$896,682 as detailed in the motion.

Upon a motion from Mr. Kasemeyer and a second from Mr. Lombardo, the motion to approve the cancellation of the Baltimore City Public Schools FY 2020 Healthy School Facility Fund (HSFF) vertical packaged air conditioning units project at Southside Building #181, and the transfer of the project allocation

of \$896,682 to the Healthy School Facility Fund for reallocation to other eligible Healthy School Facility Fund projects in the State was approved unanimously.

Dr. Salmon expressed that after her visit to this facility, she is happy that this facility is being reviewed and brought before the IAC, but hopes that Baltimore City staff are still seeking a better solution for this facility than is currently available.

8. Baltimore City E15M HVAC Project Status Report – [Informational Only]

Jamie Bridges, Regional Facilities Manager, presented a status report on the Baltimore City E15M HVAC allocation. Jamie noted that 12 of the 19 projects are operational, 2 projects are more than two months behind schedule, 4 projects are just about on schedule, and 1 project is five months ahead of schedule. Jamie also reported that, to date, \$13.5 million (about 90%) of the program funds have been contracted, and \$7.1 million (close to 50%) have been expended. Secretary McCord expressed admiration for the amount of work that Baltimore City has put into these projects.

In closing remarks, Chair Salmon stated that she had recently been in St. Mary's County, touring Green Holly Elementary School, and got to see the new standing seam metal roof with a 30-50 year lifespan. Chair Salmon observed that not only does it look beautiful, but it is great to see the work of the IAC coming to fruition with Total Cost of Ownership being taken into consideration. Lastly, Dr. Salmon noted that there were two women construction workers who worked on that roof, and she was pleased to hear about the diversity initiatives on behalf of the construction crew.

Adjournment:

Upon a motion from Secretary McCord and a second from Mr. Gibbons, the IAC members voted unanimously to conclude the meeting at 10:31 a.m.