

*Santora CPA Group*

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**State of Delaware  
Statewide School Districts' Construction  
Projects Attestation Engagements  
Sussex Technical School District**

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*Fiscal Year Ended June 30, 2016*

Issued December 14, 2016

## **Background**

### **School District Construction Projects**

In accordance with 29 Del. C. §7509, the Department of Education (DOE) shall determine the present necessity for any school construction program. Once a School District (District) identifies the need for a construction project and receives approval from its local Board of Education (Board), they submit a Major Capital Improvement Program request form to the DOE by August 31 each year. The DOE then meets with the District to review appropriate documentation and discuss the necessity of the project. If it is deemed necessary, the DOE will include the project in its budget request for the following fiscal year. All projects that are included in the budget request are then issued a Certificate of Necessity (CN) by the end of November, which authorizes the construction project and details the scope and cost limits for the project.<sup>1</sup>

The DOE calculates the amount of State of Delaware (State) funding the District will receive using a standard school construction formula. The formula is uniform throughout the State and is based on pupil capacity for the type of school requested (i.e., elementary, middle, or high school). The remainder of the cost is paid with local tax receipts, thus referred to as the local share.

Before a District can issue bonds to fund the local share of the construction costs, taxpayers must approve the bond sale through a referendum.<sup>2</sup> A referendum may occur any time after a CN is issued, and the District has one year and two opportunities to pass a successful referendum before needing to request a new CN from the DOE. The timing of each referendum is at the discretion of the Board. Vocational-Technical Districts are not subject to the referendum process. Instead, the Legislature approves these Districts' tax rates.<sup>3</sup>

The District must provide adequate public notice of the referendum that includes the purpose and amount of the proposed bond issuance, as well as the estimated annual amount of tax increase upon approval.<sup>4</sup> The estimated increase, however, is based on certain assumptions that are subject to change, such as the anticipated interest rate on new bonds.<sup>5</sup> Therefore, taxpayers are voting on the approval of the construction project and cannot rely on the advertised referendum rate as the effective tax rate.

The District may ask their taxpayers to approve a local share in excess of the school construction formula to finance additional options. For example, if a construction project included expanding a particular school building and the District wished to continue the same flooring throughout the entire building, taxpayers may be asked to fund the costs in excess of the State formula. This particular request must be clearly labeled on the referendum voting ballot using the language set forth in 14 Del C. §2004.

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<sup>1</sup> DOE's School Construction Manual, Section 2: Major Capital Improvement Program Regulations (<http://www.doe.k12.de.us/Page/1828>)

<sup>2</sup> 14 Del. C. §2122

<sup>3</sup> 14 Del. C. c. 26

<sup>4</sup> 14 Del. C. §1074 (b)

<sup>5</sup> Other rates that are not subject to voter approval (e.g., tuition, minor capital improvements) may be increased by the District to meet annual demands, thus resulting in the effective tax rate for the District.

The DOE presents their budget of all the State's Districts' construction projects to the Office of Management and Budget for approval and inclusion in the Governor's Recommended Budget.<sup>6</sup> The Governor's Recommended Budget is then subject to final approval by the Bond Bill Committee and the Legislature via the Bond and Capital Improvements Act (also referred to as the Bond Bill). If a District fails to obtain a successful referendum before June 30, their project is removed from the Governor's Recommended Budget and not included in that year's Bond Bill.

The District's Board then has the "power to employ engineers, architects and such other employees as it deems essential..." for their construction project per 29 Del. C. §7521. All final plans and specifications, including costs of construction under any school construction bond authorization act, are approved by the DOE.<sup>7</sup>

Depending on various factors (e.g., the total cost of the project, other projects within the State), the District will receive funding for their construction project over the course of several fiscal years. For each State bond sale, the District receives an aggregate allocation of funds and must pay back a portion of those funds with local tax receipts. The local share for each District in the State can vary between 20% and 40%,<sup>8</sup> depending on an assessment of the District's ability to meet their obligations.<sup>9</sup>

The District coordinates with the Office of the State Treasurer to pay the local share of their outstanding principal and interest payments in accordance with 14 Del. C. §2108. Annually, the Office of Auditor of Accounts audits the Districts' local tax collections and debt service management in a separate engagement. Further, this engagement examines all State and local construction project expenditures.

In the event the construction project comes in under budget, the District may request permission from the State legislature to redirect the State-funded portion of the excess budget amount to fund another project. The subsequent epilogue language in the Bond Bill dictates if the District must put forth local tax receipts and what sources of funding the District may use, such as Minor Capital Improvement funds. Since this is a result of Delaware law, the change does not require a referendum.

There are no legal or statutory provisions that would prohibit a District from utilizing excess funds for early repayment of their debt.

### **Maintenance of Records**

The District should maintain all appropriate documentation related to their construction projects and related debt, including documents related to the referendum process, for audit purposes.

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<sup>6</sup> Same as footnote 1

<sup>7</sup> 29 Del. C. §7518

<sup>8</sup> 29 Del. C. §7503 (b)

<sup>9</sup> An Equalization Committee, as defined by 14 Del. C. §1707 (i), is comprised of 10 to 15 members appointed by the Secretary of the DOE. The equalization formula (detailed in 14 Del. C. §1707) incorporates an annual survey conducted by the University of Delaware and is annually reviewed and approved by the Equalization Committee.

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## Independent Accountants' Report

Dr. Allen Lathbury, Jr.  
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Sussex Technical School District  
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Georgetown, Delaware 19947

The Honorable Steven H. Godowsky, Ed.D.  
Secretary, Department of Education  
Townsend Building, Suite 2  
401 Federal Street  
Dover, Delaware 19901

We have examined the accompanying State of Delaware Sussex Technical School District (the District) *Schedule of Construction Projects* for the year ended June 30, 2016. The District's management is responsible for the *Schedule of Construction Projects*. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence supporting the District's *Schedule of Construction Projects* and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the *Schedule of Construction Projects* referred to above presents fairly, in all material respects, the construction projects for the District for the year ended June 30, 2016, based on the criteria set forth in the *Delaware Code*, the *State of Delaware Generally Accepted Accounting Principles Reporting Package Manual*, the *State of Delaware Department of Education School Construction Technical Assistance Manual*, and the *State of Delaware Budget and Accounting Policy Manual*.

In accordance with *Government Auditing Standards*, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws or regulations that could have a material effect on the *Schedule of Construction Projects*; and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the subject matter. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our examination to express an opinion on whether the *Schedule of Construction Projects* is presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control applicable to preparing the *Schedule of Construction Projects* or on compliance and other matters; accordingly, we express no such opinion. Our examination disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*, described in the accompanying *Schedule of Current Year Findings* as findings 2016-1 and 2016-2.

This report is intended solely for the information and use of District management and Board Members, the Office of Auditor of Accounts, and the Department of Education and is not intended to be, and should not be, used by anyone other than these specified parties. However, under 29 Del. C., §10002(l), this report is public record and its distribution is not limited. This report, as required by statute, was provided to the Office of the Governor, Office of the Controller General, Office of the Attorney General, and Office of Management and Budget.

Santora CPA Group

October 17, 2016  
Newark, Delaware

*Schedule of Construction Projects  
Fiscal Year Ended June 30, 2016*

Project Name	FY	APPR	Source of Funding (State/Local)	Original Funding	Increases (Decreases) in Funding	Total Funding to Date	Expended in Prior Years	Expended in Current Year	Total Expended to Date	Balance as of 6/30/16
Sussex Technical High School HVAC Renovation	2013	50388	60/40	\$ 4,050,000	\$ -	\$ 4,050,000	\$ 856,371	\$ 2,153,224	\$ 3,009,595	\$ 1,040,405
	2014	50388	60/40	1,350,000	-	1,350,000	3,375	32,596	35,971	1,314,029
Sussex Technical High School Instructional Shop Renovation	2013	50395	60/40	3,415,800	-	3,415,800	2,665,873	634,640	3,300,513	115,287
	2014	50395	60/40	3,415,800	-	3,415,800	68,370	2,735,840	2,804,210	611,590
District Office Renovation	2014	50407	60/40	983,700	-	983,700	154,433	49,558	203,991	779,709
<b>Construction Projects Total</b>				<b>\$ 13,215,300</b>	<b>\$ -</b>	<b>\$ 13,215,300</b>	<b>\$ 3,748,422</b>	<b>\$ 5,605,858</b>	<b>\$ 9,354,280</b>	<b>\$ 3,861,020</b>

**Schedule of Current Year Findings  
June 30, 2016**

**Finding 2016-1**

***Criteria***

The *State of Delaware Department of Education School Construction Technical Assistance Manual* (SCM) 2.0, Section 7.2 and 7.2.1 state:

*"7.2 All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the Department of Education along with the purchase order.*

*7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; local board of education minutes identifying and approving the changes; completed AIA document G701, and correspondence which gives a breakdown in materials mark-up and other expenses."*

***Condition***

In the beginning of the fiscal year, District policy required local Board approval for all construction purchase and change orders; approval was documented in the meeting minutes. In August 2015, a packet of construction purchase and change orders was presented for approval. The Board approved all transactions in the packet presented, except two transactions to one vendor; the Board specifically did not approve two transactions to Common Sense Solutions totaling \$68,352. Of this total, \$44,844 related to the Sussex Technical High School Instructional Shop Renovation project (appropriation 50395) and \$23,508 in minor capital improvements storm draining work expenditures.

In the September 2015 Board minutes, the Board approved a change to District policy, delegating approval for purchase and change orders to the Superintendent and the Supervisor of Transportation and Operations and/or Administration. We reviewed the Board minutes for Fiscal Year 2016, noting that no construction or purchase change orders were presented to the Board after this date and that the Common Sense Solutions purchase orders from August were never approved by the Board. These purchase orders were approved by the Supervisor of Transportation and Operations and/or Administration and processed without Board approval. Based on the date of the transaction, Board approval was required.

In addition, during Fiscal Year 2016, the District processed 24 construction change orders totaling \$225,728. Of that population, 23 change orders totaling \$182,968 were not approved by the local Board, as required by the SCM. In testing a sample of six change orders totaling \$19,246, we noted five change orders totaling \$34,454 that did have architect approval, as required by the SCM.

***Cause***

Management failed to adhere to the provisions of the SCM after August 2015; change orders were not reviewed or approved in the District's local Board meetings. Due to lack of management oversight, transactions were processed without Board approval.

***Effect***

The District is not in compliance with the requirements of the SCM, as noted above. Unauthorized change orders were processed. There is no local Board approval trail to support the validity and propriety of change orders.

***Recommendation***

We recommend that the District present change orders to their local Board on a monthly basis, and include documentation of the Board's review and approval of change orders in the monthly board minutes in compliance with the provisions of the SCM.

***District Response***

The District contends that with regard to the Board's delegation of authority to approve change orders to the Superintendent and the Supervisor of Transportation and Operations and/or Administration so long as the change order relates to a project that is within the Board's approved budget for the project, that the Board properly delegated this authority. 14 Del. C. § 1091 states that the Board shall appoint as the Chief School Officer, a Superintendent who shall also serve as the Executive Secretary of the Board. Section 6902(1) and (2) state that the elected or appointed agency head (agency head means the top official in an agency whether elected or appointed) may delegate duties under the Procurement Act. In our attorney's opinion, this authority to delegate duties includes the duty to approve a change within specified parameters.

***Auditor Comment***

The provisions of the SCM, as noted above, do not allow for a complete delegation of change order approvals. The Board should be reviewing and approving change orders in Board minutes. If approval of certain change orders are delegated to the Superintendent and the Supervisor of Transportation and Operations and/or Administration (i.e., those under a selected dollar threshold), the change orders they approved should be presented to the Board at regular meetings so that the Board is aware of the activity approved and can still serve in an oversight capacity for change order activity.

**Finding 2016-2**

***Criteria***

The SCM 6.0, Section 6.1 states:

*"Each local district is required to maintain standardized bidding files regarding each item or service purchased by bid. Each bid file should be identified using the certificate of necessity number, the number of the bid within the project, the date of the bid opening and contain the following information:*

- *Copy of media advertisements (as required by Title 29, Chapter 69).*
- *Copy of specifications, instructions and addenda provided to potential vendors/bidders.*
- *Complete, original bids submitted by the vendors/bidders, less any bid bond that was returned, to include the date and time stamped envelope.*
- *Tabulation of bids.*
- *Any bid analysis conducted by district to determine bid award.*

- *Copy of bid award letter to successful bidder and copies of letter notice of award to another bidder and return of bid bond (as warranted) to unsuccessful bidders.*
- *Any bid award challenge and disposition correspondence.*
- *Copy of the signed contract.*
- *Copy of school board meeting minutes authorizing bid award.*
- *If contract was not awarded to lowest bidder, statement of reasons and a copy of the school board minutes indicating reasons for same.*
- *Other pertinent information deemed necessary by the administration."*

The SCM 5.0, Section 5.61(A) and (B) require the District selection of contractors be competitively bid and made in accordance with 29 Del. Code, Ch. 69, Subchapter V, Professional Services.

The *State of Delaware Budget and Accounting Policy Manual* (BAM) Chapter 5, Section 5.2.2, Exceptions to Bid Laws, and 29 Del. C. §6904(e) state:

*"If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties."*

The BAM Chapter 5, Section 5.4.3, Exceptions to Bid Laws, and 29 Del. C. §6904(f) and §6963(b) state:

*"Materials may be purchased and work contracted to be performed without competitive bidding in the following instances:*

*Where, because of changed situations, unforeseen conditions, strikes and acts of God, change orders, supplemental agreements, or extra work determined to be necessary and requested by the agency and not specified in the agency's solicitation or advertisement for bids and in the awarded contract, the awarding agency may issue a change order or supplemental work agreement(s) on a contract, which shall not:*

- *Be subject to competitive bidding requirements; or*
- *Invalidate the contract, provided the change is within the scope of the contract as set forth in the standard specifications, special provisions, or similar publication of the agency."*

The BAM Chapter 5, Section 5.3 states:

*"For Professional Services purchases, the dollar amounts listed below are on a contract by contract basis.*

<u><b>Threshold</b></u>	<u><b>Requirement</b></u>
<i>Less than \$50,000</i>	<i>Open Market Purchase</i>
<i>\$50,000 and over</i>	<i>Formal RFP Process"</i>

***Condition***

In Fiscal Year 2013, the District bid and awarded the construction management services for the Sussex Tech Bus Entrance Project to Common Sense Solutions, LLC. Subsequently, the District added construction management services to that contract for two separate projects, the Sussex Technical High School HVAC Renovation (appropriation 50388) and the Sussex Technical High School Instructional Shop Renovation (appropriation 50395) projects.

In testing the construction project file for the Sussex Technical High School Instructional Shop Renovation (appropriation 50395), we noted that there was no evidence included in the file to demonstrate that the selection process for all project vendors was made in accordance with the provisions of the Delaware Code, the SCM, and the BAM, as noted above.

During Fiscal Year 2016, the District processed 42 construction purchase orders with remaining balances of \$2,696,005 as of June 30, 2016. In testing a sample of 11 purchase orders totaling \$3,397,448 (remaining balances of \$1,969,053 as of June 30, 2016), we noted five purchase orders for \$1,286,251 related to professional services that were not bid in accordance with the provisions of the Delaware Code, the SCM and the BAM, as noted above.

***Cause***

The Request for Proposals (RFP) for Construction Management (CM) Services includes the following provisions:

*“The Board reserves the right to retain new/other CM services for projects beyond the scope of the bus entrance modification project without explanation or justification.”*

Section III.D. *“... The District reserves the right to ‘rollover’ the contract with the successful construction manager to include additional projects, and to renegotiate terms, fees, and conditions as a part of that ‘rollover’.”*

The addition of the Sussex Technical High School HVAC Renovation (appropriation 50388) and the Sussex Technical High School Instructional Shop Renovation (appropriation 50395) projects to the CM contract was in compliance with the terms of the RFP, as noted above. However the terms of the RFP are not in compliance with the provisions of State procurement law (29 Del. C. ch. 69).

The contracts and transactions above did not meet any of the exceptions to the procurement law described in 29 Del. C. §6904(e-f) and §6963(b) and the BAM Chapter 5, Sections 5.2.2 and 5.4.5. Management failed to adhere to the bid requirements per Delaware Code, the SCM, and the BAM, as noted above.

***Effect***

The District is not in compliance with the requirements of the Delaware Code, the SCM, and the BAM, as noted above.

***Recommendation***

We recommend that the District enhance their contract and transaction review and approval process to ensure that all new work that requires a new contract and that all work awarded through a construction manager that exceeds bidding thresholds be granted through a formal bid process to meet the requirements of the Delaware Code, the SCM, and the BAM.

***District Response***

The District will attempt to enhance the contract and transaction review and approval process to continue to ensure that the requirements of Delaware Code, the SCM, and the BAM are met. The District contends that it is in compliance since the construction management services for the Bus Entrance, the HVAC Renovation, and the Instructional Shop Renovation (collectively “the Projects”) were covered by a single Certificate of Necessity (CN 1240). When the District went through the process for selecting a construction manager to provide professional services (29 Del. C. §§ 6980 6982), the District had funding for the first portion of the Projects (the Bus Entrance), but it was anticipated that, as the funding for all of the Projects became available, the District would need professional services for all of the Projects. Thus, the additional professional services for the Project(s) was within the scope of the previously awarded contract. According to our attorney, this situation appears to fall within the scope of what is permitted by 29 § 6981(b)(2), which creates an exception to the need to go through the selection process for professional services under the following circumstances:

Where professional services are determined by the agency to be necessary during the course of completion of a previously awarded contract and:

- a. The agency determines that it would be in the best interest of the State to procure such additional or supplemental services from a firm already under contract for which the supplemental and additional services are required; and
- b. Such additional or supplemental professional services are within the scope of the contract.