

District: Adams-Cheshire Regional School District
 School Name: Hoosac Valley Middle/High School
 Recommended Category: Amendment to Project Funding Agreement
 Date: November 9, 2011

Recommendation:

That the Executive Director be authorized to amend the Project Funding Agreement with the Adams-Cheshire Regional School District for a Project at the Hoosac Valley High School to transfer funds from the construction and owner’s contingencies to the construction budget, including the associated grant funds, with no increase to the maximum Total Facilities Grant, subject to the District satisfying the conditions set forth below.

Background and Scope of Project:

In November 2007, the MSBA’s Board of Directors (the “Board”) invited the Adams-Cheshire Regional School District to conduct a feasibility study for the purpose of addressing issues at the Adams Memorial Middle School. Prior to the completion of the feasibility study, the District chose to close the Middle School and focus its attention on creating a middle/high school at the Hoosac Valley High School.

The scope of the District’s preferred option ultimately included relocating the middle school students to the existing high school and undertaking renovations and additions to the high school to accommodate grades 6-12. At its September 29, 2010 meeting, the Board voted to approve the Project, which addressed issues at two schools not just the District’s priority. The Project consists of the renovation of approximately 90% of the building and the construction of three additions at the Hoosac Valley High School, resulting in a 173,999 gross square foot building to serve 805 students in grades 6-12. The following table is a summary of the Total Project Budget, basis of grant, reimbursement rate, and maximum Total Facilities Grant that were approved by the Board.

Project Scope & Budget Agreement		
Design Enrollment: 805 Total Gross Square Feet: 173,999	District’s Proposed Total Project Budget	Basis of Total Facilities Grant ¹
Total Project Budget	\$40,561,257	\$36,038,192
Project Cost per square foot	\$233	\$207
Total Construction Budget ²	\$30,075,221	\$26,299,376

¹ Excludes costs associated with solar water heating and photovoltaic systems, ineligible costs associated with abatement of asbestos-containing floor materials, and site costs in excess of 8% of the building construction costs.

² The Total Construction Budget is supposed to be based upon the contract-required independent cost estimates provided by the Designer and the OPM specific to each project and based on the project specifics and project location. The Total Construction Budget is supposed to include the trade and non-trade work, all general requirements, insurance, overhead, profit, and fee for the General Contract or CM-R firm as well as a design and

Construction Cost per square foot ³	\$173	\$151
Reimbursement Rate		78.37%
Maximum Total Facilities Grant		\$28,243,131

In March, 2011, less than six months after the Board’s authorization, the Construction Manager at Risk (CM-R) estimated the Project to be over budget by approximately \$3.4 million. The District proceeded into construction in May 2011 with knowledge that the budget issues had not been resolved. In June, the District advised the MSBA that the District planned to transfer funds from the construction contingency and the owner’s contingency to cover the overruns in the Construction Budget and that it assumed those costs would be eligible for MSBA reimbursement. Pursuant to MSBA policy and procedures, a District may transfer contingency funds to the construction budget; however, the transferred contingency funds are not eligible for reimbursement. Section 2.3 of the Project Funding Agreement⁴ expressly places the risk of construction costs that exceed the Board-approved Construction Budget squarely on the District. The MSBA deferred to the District, in consultation with its professional team, to determine whether this significant portion of the contingency funds should be used to cover the \$3.4 million budget over-run. However, the MSBA expressed serious concerns that the depletion of the contingencies at this stage of the Project may leave inadequate money for the District to cover any unanticipated expenses as the Project progresses. The District requested an opportunity to present the Project specifics to the MSBA, to emphasize its concern that the District may not be able to complete the Project, and to reiterate the District’s commitment to ensuring the most cost-effective project.

Discussion

On October 5, 2011, the Adams-Cheshire Regional School District met with the MSBA Project Management Subcommittee to discuss its request to transfer funds from the construction and owner’s contingencies to cover the increase in the Construction Budget and for those contingency funds to be eligible for MSBA reimbursement. The District requested that the MSBA consider the following in its evaluation.

- The District chose the renovation and additions to the Hoosac Valley High School as the most cost-effective option.
- The costs included in the Project are for the minimum project scope required to restore the building to meet the District’s educational program for grades 6-12.
- The District is committed to completing the Project with no increase to the Total Project Budget as approved by the two communities that form the regional school district.

pricing contingency that is based on the level of detail in the schematic design and escalation to the mid-point of construction.

³ The cost per square foot is based upon the District’s estimation of the Total Construction Budget and does not include construction contingency which is carried separately in the Total Project Budget. The construction contingency is included in the budget for costs that may occur after the construction contract is awarded.

⁴ Section 2.3 of the PFA states, in relevant part: “in the event that the lowest, responsible bid accepted by the District for the construction of the Project exceeds the corresponding amount set forth in the Total Project Budget, the Authority shall not make any adjustments to its Total Facilities Grant on account of the bid, and the increased costs shall be the sole responsibility of the District.”

- The District provided documentation that during design development it implemented scope reductions totaling almost \$3.5 million, which still left the Construction Budget \$3.4 million over the estimate.
- The District states that it has been significantly impacted by market swings, limited bids, and lack of competition, citing both its geographical location and the availability of bidders. The District states that despite significant outreach efforts and rebidding, they continued to receive only one or two bids in key areas such as drywall, roofing, tile, and sitework.
- The District states that its use of the CM-R process has identified unforeseen scope items such as additional asbestos, deficient electrical equipment, and the need for a fire pump that, if not for the additional investigatory work done by the CM-R, would have been considered as change orders eligible for funding by the MSBA.

After review of the information provided by the District, the Project Management Subcommittee expressed the following concerns:

- The Project is *not* \$3.4 million over budget (11.3%), as stated by the District. If the District had not implemented scope reductions of \$3.5 million, the Project would have been \$7 million over the budget (23%). This magnitude of overrun cannot be accounted for by market conditions alone.
- The estimate prepared by the Designer appears not to have properly considered the complete scope of work required for the renovation, including most significantly the work required to comply with seismic code, the geographic location of the Project, or the appropriate design and pricing contingency based upon the level of design detail they now claim was the basis of the schematic design budget.
- Among other issues, the Designer's analysis of the seismic requirements should have been more thorough and definitive given not only the significance of this issue as it relates to a recommended preferred solution for a renovation, but also to the budget because it accounts for almost \$1 million of the overrun.
- The OPM has not demonstrated an understanding of MSBA policies and procedures especially during the administration of the Project regarding the timely selection of a CM-R firm and managing the budget during design development and construction documents. In addition, the OPM did not demonstrate an understanding of the MSBA budget process, grant calculation, or statute requirements for CM-R agreements during the Project Management Subcommittee meeting.
- The GMP submitted by the CM-R firm still includes a 2% GMP contingency for use by the CM-R firm for unforeseen circumstances. This 2% GMP contingency of \$600,000, is included despite the fact that the District and its consultants claim that they do not anticipate any additional change orders due to the extensive investigative work they have done, the job is approximately 98% bid including all the filed sub-bids, and the construction progress is 20%.

According to the District's most recent Total Project Budget, dated November 7, 2011, which is based upon the District-approved Guaranteed Maximum Price ("GMP"), the Construction

Budget is now \$33,474,193, which exceeds the budgeted amount on which the MSBA approved its grant by \$3,398,972.

Based on a review of the factors noted above, the MSBA is recommending the following revisions to the Total Project Budget approved by the Board on September 29, 2010, subject to the District satisfying the conditions set forth below.

The revisions to the Total Project Budget include:

- Increase the Construction Budget to be in accordance with the District-approved Guaranteed Maximum Price (GMP);
- Decrease the construction contingency from \$3,007,552 to \$208,550, transfer these funds to the Construction Budget, and allow the transferred funds to be eligible for reimbursement, subject to audit by the MSBA.
- Decrease the owner’s contingency from \$600,000 to \$0, transfer these funds to the Construction Budget, and allow the transferred funds to be eligible for reimbursement, subject to audit by the MSBA.
- In no event will the maximum Total Facilities Grant increase beyond \$28,243,131, and it may decrease depending on the outcome of the MSBA’s audit for eligible costs.

The District must satisfy the following conditions:

1. The District has submitted a revised Total Project Budget based upon the GMP approved by the District. The Total Project Budget memorialized in Exhibit A to the PFA is based on a very specific itemized project budget. The itemized costs, summarized in the table below, contain an enumeration of all project costs including both eligible and ineligible costs. Although reallocation of funds between the categories noted below may not affect the Total Project Budget, it would alter the itemized costs on which the MSBA based its grant, and therefore would affect the calculation of the maximum Total Facilities Grant. The District and its consultants must acknowledge that the maximum Total Facilities Grant is a not-to-exceed amount, subject to audit and is further capped by category. Any further changes to this revised budget would result in a recalculation of the grant monies available to the District. As an example, the Total Project Budget includes a total of \$1,850,000 for Furniture, Fixtures, and Equipment (FF&E). If the District spent these funds on different scope or did not require all of the funds for FF&E, then the amount of the maximum Total Facilities Grant would be adjusted downward accordingly. The portion of the grant identified for this category as an amount up to \$1,449,845 is not eligible to be utilized to fund overruns in any of the other budget categories including the Construction Budget.

Category	Total Project Budget	Cost/scope exclusions and ineligible costs	Maximum Total Facilities Grant
Feasibility Study Agreement	\$390,069	\$0	\$305,697
Administration (includes OPM fee)	\$983,000	\$10,000	\$762,540

Architectural/Engineering	\$2,803,225	\$0	\$2,196,887
CM at Risk Precon Services	\$100,000	\$0	\$78,370
Site Acquisition	\$0	\$0	\$0
Construction Contract	\$32,439,293	\$2,532,395	\$23,438,036
Work deferred until Substantial Completion	\$1,034,900	\$1,034,900	\$0
Construction Contingency	\$208,550	\$208,550	\$0
Misc Project Costs	\$752,220	\$737,220	\$11,756
FF&E	\$1,850,000	\$0	\$1,449,845
Owner's Contingency	\$0	\$0	\$0
Total Project Budget	\$40,561,257.00	\$4,523,065.00	\$28,243,131.00

2. The MSBA has recommended that the District consider deferring sitework and the installation of the photovoltaic (PV) panels until such time as the District could be certain that there were sufficient funds available in the Total Project Budget. This deferred work was not eligible for MSBA funding under the terms of the original PFA, and this work will not be eligible for funding under the amended PFA (line 86 of Exhibit A, Total Project Budget).
3. At the direction of the MSBA, the District has been required to specifically identify the deferred items noted above and their associated budgets in the Total Project Budget (lines 84 and 85, Exhibit A, Total Project Budget) and will also be required to identify the deferred sitework on the CM-R pay requisition as well as the project schedule. This work shall be deferred until Substantial Completion of the building has been obtained and/or until such time that the District can demonstrate to the MSBA's satisfaction that the Project can be completed within the established Total Project Budget of \$40,561,257.
4. The District's consultants must agree that they will perform the services as outlined in their contracts for the remainder of the Project in accordance with the budget numbers identified in the Total Project Budget dated November 7, 2011. The MSBA will not consider any request for an increase in the OPM's, Designer's, or CM-R's fee.
5. The OPM must agree that it will supplement the efforts of the current OPM team with a senior Project Director or Project Executive. This Project Director or Executive will be subject to the approval of the MSBA and, once approved, will oversee existing OPM staff, properly advise the District, administer the Project budget through successful completion in accordance with MSBA procedures, and bring the Project to completion in accordance with the proposed schedule. This additional person will be provided by the OPM firm with no increase to the OPM fee as outlined in the Total Project Budget dated November 7, 2011.
6. The CM-R will provide a full accounting of the buy savings to the OPM each month, and the OPM will in turn report these savings as part of its monthly report. The CM-R will return these buy savings to the District each month. The District will hold these monies in reserve to replete the funds removed from the contingency fund.
7. The MSBA's sitework cap policy of 8% of the building costs has been applied to the numbers provided in the Total Project Budget dated November 7, 2011. The exclusion is \$1,301,968 as identified on line 80 of Exhibit A, Total Project Budget.

8. The District and its consultants have stated that they do not anticipate any additional change orders beyond the District-approved GMP. In any event, the MSBA will not participate in any change orders or other contingency expenditures that may be identified.
9. The MSBA will include an evaluation of these consultants and their participation in this Project in the record files and share this evaluation with the OPM Review Panel, the Designer Selection Panel, and other districts.