



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

SUBJECT: NJEDA/School Facilities Construction Bonds and
School Facilities Construction Notes, 2011 Series
Par Amount Not to Exceed \$3.695 billion

DATE: December 21, 2010

SUMMARY OF PROPOSED FINANCING

The Authority is currently being asked to approve the issuance of one or more series of the 2011 School Facilities Construction Refunding Bonds (the “2011 Refunding Bonds”) and the 2011 School Facilities Construction Refunding Notes (the “2011 Refunding Notes”) (collectively, the “2011 Refunding Obligations”) and various related actions described below. The 2011 Refunding Obligations (not to exceed \$3,695,000,000) will be used to (i) refund a portion of the prior School Facilities Construction Bonds (“Prior Bonds”); (ii) pay a portion of the costs of issuance of the 2011 Refunding Obligations; and (iii) pay costs associated with the termination of certain Swap Agreements associated with the School Facilities Construction Bond Program.

BACKGROUND

The Educational Facilities Construction and Financing Act, L. 2000, c. 72, as amended and supplemented by L. 2007, c. 137 and L. 2008, c. 39 (the “Act”), establishes a comprehensive program for the design, renovation, repair and new construction of primary and secondary schools throughout the State. Initially, the Act authorized the Authority to issue up to \$8.6 billion of State contract bonds to finance the acquisition, construction and/or renovations of K-12 School Facilities Projects throughout the State. Thereafter, the Act was amended and supplemented in 2008 by L. 2008, c. 39 (the “2008 Amendment to the Educational Facilities Act”) to authorize the Authority to issue up to an additional \$3.9 billion bonds for the funding of School Facilities Projects.

Since April 2001, the Authority has issued twenty seven (27) series of tax-exempt and taxable School Facilities Construction Bonds and Notes totaling \$8,648,954,000 under the Act. Additionally, the Authority has issued seven (7) series of refunding bonds in the par amount of \$3,852,260,000 that restructured and refunded a portion of several Series of tax-exempt bonds and a series of tax-exempt notes, previously issued under the Act. To date, \$8,145,929,000 of such Bonds and Notes have been issued pursuant to the original \$8.6 billion of bonding authorization contained in the Act and pursuant to the School Facilities Construction Bond Resolution adopted by the Authority on February 13, 2001, as amended September 5, 2002 (the “General Bond Resolution”). Because only \$454,071,000 of bonding capacity remains under the original authorization,

\$483,025,000 of additional Bonds and Notes were issued in May 2010 pursuant to \$3.9 billion of bonding authorization contained in the 2008 Amendment to the Educational Facilities Act. The remaining bonding capacity under the original authorization will be set aside to fund other School Construction projects that may not otherwise be funded under the new authorization.

PLAN OF FINANCE

In conjunction with the State's overall management of the School Facilities Construction Bonds, there is a need to re-evaluate and restructure the variable rate debt secured by letters of credit as well as the derivatives portfolio in order to reduce the risks associated with the existing derivative portfolio and renewing the existing letter of credit portfolio. The School Facilities Construction Bond Program's letter of credit portfolio includes 7 separate letters of credit¹. There is an opportunity to refund variable rate demand bonds with floating rate notes and/or fixed rate bonds to eliminate LOC demand. The proposed plan of finance contemplates:

- advance refunding up to \$982.5 million of Series 2002 C, 2003 F, 2004 G, 2005 L, 2005 O, 2005 P, 2005 Q2, 2006 S, 2007T, 2007 U, 2008 W, 2008 Y, 2009 Z fixed rate bonds.
- current refunding up to \$750 million of Series 2006R, 2008 V-1, 2008 V-2, 2008 V-3, 2008 V-4, 2008 V-5, 2008 X variable rate demand bonds with floating rate notes.
- current refunding of variable rate demand bonds in an amount up to \$1.8013 billion, which includes Series 2006 R, 2008 V-1, Series 2008 V-2, Series 2008 V-3, 2008 V-4, Series 2008 V-5 and 2008 X with fixed rate bonds.

With the refunding of the variable rate debt, there is also an opportunity to re-evaluate the existing derivative portfolio. The Authority is currently a party to 15 separate variable to fixed interest rate exchange agreements and one fixed to variable interest rate exchange agreement in combined aggregate outstanding notional amount of \$3,629,785,001 (as of November 30, 2010). It is recommended that the NJEDA terminate approximately \$1.7 billion (at current market conditions) of its existing derivative portfolio thereby reducing the risks inherent in such derivative exposure, including counterparty and basis risks. The cost to terminate the swaps is expected to be funded with the proceeds of taxable 2011 Refunding Bonds.

For more detailed explanation, please see the attached summary of the proposed Plan of Finance from Bank of America Merrill Lynch as the senior underwriter.

APPROVAL REQUEST

The Members are requested to approve the adoption of the Twenty-Sixth Supplemental School Facilities Construction Bond Resolution (the "Twenty-Sixth Supplemental Resolution") authorizing the issuance of one or more series of the 2011 Refunding Bonds in the amount not to exceed \$2.945

¹ Letter of Credit Providers: Series R - Bank of Nova Scotia/Lloyds TSB Bank, PLC; Series V-1 - Barclays Bank PLC; Series V-2 - Dexia Credit Local; Series V-3 - The Bank of Nova Scotia; Series V-4 - Bank of America; Series V-5 - Wachovia Bank, N.A.; Series X - Bank of America

billion and 2011 Refunding Notes in the amount not to exceed \$750 million (for total aggregate amount not to exceed \$3.695 billion). The 2011 Refunding Obligations will be issued for the purposes set forth above in the proposed Plan of Finance, as determined by an Authorized Officer of the Authority in consultation with the State Treasurer, Office of Public Finance, Attorney General's Office and Bond Counsel. The 2011 Refunding Obligations will be secured by the State Contract with the State Treasurer (as amended by Amendment No.1 to the State Contract dated April 22, 2010, to implement the funding provisions of the 2008 Amendment to the Educational Facilities Act). Payments will be directly remitted by the State Treasurer to pay the debt service on the bonds and the notes subject to appropriation by the State Legislature for this purpose.

The 2011 Refunding Obligations may be issued as fixed rate and/or variable interest rate, tax-exempt or taxable bonds or notes, and subject to the following parameters all as determined by an Authorized Officer of the Authority in consultation with the State Treasurer, Office of Public Finance, Attorney General's Office and Bond Counsel:

- (i) The final maturity of any 2011 Refunding Bonds issued as tax-exempt bonds will not exceed the final maturity of the bonds being refunded. The final maturity of any 2011 Refunding Bonds issued as taxable bonds will not exceed 25 years;
- (ii) The final maturity of any 2011 Refunding Notes will not exceed 85 months;
- (iii) The true interest cost for fixed rate bonds or notes issued as tax-exempt will not exceed 10%, and 15% if taxable; and
- (iv) The maximum interest rate on any variable interest rate bonds or notes (other than bank bonds) will not exceed 12%.

The Board is being asked to approve certain actions and delegation of actions to, an Authorized Officer with information provided by the State Treasurer, Bond Counsel, the State Attorney General and Lamont Investment Advisers Corp., the swap advisor, (the "Swap Advisor") and in consultation with, the Office of Public Finance, the Swap Advisor, Bond Counsel and the Attorney General's Office, as applicable and as approved by the State Treasurer, which actions are more fully set forth in the Twenty-Sixth Supplemental Resolution, which is incorporated here by reference, and will be memorialized in one or more Series Certificates, and may include, without limitation:

- To determine the date of issuance, sale and delivery, the maturity date, the principal amount, the variable rate interest provisions and the redemption and tender provisions of each series of 2011 Refunding Obligations in accordance with the parameters set forth above;
- To determine whether each Series of the 2011 Refunding Obligations shall bear interest at fixed or variable interest rates in accordance with the parameters set forth above;
- To determine whether each Series of the 2011 Refunding Obligations shall be issued as tax-exempt or taxable obligations;

- To select and appoint any additional co-managers and/or underwriters for the 2011 Refunding Obligations upon recommendation of the State Treasurer, utilizing Treasury's RFQ/RFP process in accordance with Executive Order No. 26 and Executive Order No. 37;
- To permit the termination, amendment, transfer, extension or substitution of existing letters of credit or stand-by purchase agreements or other credit enhancements ("replacement credit enhancement") entered into in connection with the outstanding variable interest rate bonds issued under the resolution via a competitive process utilizing Treasury's RFQ/RFP process in accordance with Executive Order No. 26 and Executive Order No. 37; provided however that (i) any replacement credit enhancement shall have a long-term rating by any two of the Rating Agencies equal to or higher than "A2" from Moody's and "A" from S&P and Fitch or short term rating by any two of the rating agencies of "VMIG-1" or "P-1" from Moody's, "A-1" from S&P and "F-1" from Fitch; and (ii) (A) the interest rate on the Bonds or notes purchased by the replacement credit enhancement shall not exceed 12% (maximum rate), (B) the term shall not exceed 7 years; and (C) the term-out period to repay amounts payable under the replacement credit enhancement shall not be less than 3 years;
- To permit the amendment to, extension or replacement of, any one or more of the remarketing agreements relating to any of the Series Bonds or Notes issued as variable rate bonds via a competitive process utilizing Treasury's RFQ/RFP process in accordance with Executive Order No. 26 and Executive Order No. 37. The amount of compensation to be paid to the remarketing agent will not exceed \$1.20 per \$1000 of the Series Bonds or Notes issued as variable rate interest obligations;
- To purchase one or more municipal bond insurance policies with respect to any or all of the maturities of the 2011 Refunding Bonds or 2011 Refunding Notes if determined that municipal bond insurance is necessary, available or desired in order to achieve the economic objectives of the financing;
- To select and appoint a firm upon recommendation of the State Treasurer through a competitive process utilizing Treasury's RFQ/RFP process in accordance with Executive Order No. 26, to serve as bidding agent to solicit bids, to enter into or to purchase investment securities with proceeds of the 2011 Refunding Bonds or 2011 Refunding Notes in the event it is determined that it is advantageous to invest any proceeds of the 2011 Refunding Bonds or 2011 Refunding Notes in such investment securities;
- To negotiate and approve amendments, assignments and/or terminations of all or portion of the existing swap agreements related to School Facilities Construction Bonds, in consultation with the State Treasurer and the Swap Advisor, provided that (i) any such amendment shall not increase the original notional amount of such swaps,(ii) any such amendment shall not extend the final maturity date of the series of Bonds to which swap relates or if such swap agreement does not relate to any Series of the Authority's Bonds, March 1, 2035 (the last

maturity of any of the School Facilities Construction Bonds), and (iii) any renegotiated fixed rate payable by the Authority shall not exceed 5.50%.

Such amendments may include, without limitation, (i) amendments which result in both paying and receiving a fixed rate; (ii) to convert a swap to a basis swap, provided the floating rate is most advantageous; (iii) to relinquish or modify the right to optionally terminate such swap agreement or to provide the swap provider with an option to cancel such swap agreement on a future date(s) in exchange for payment by the swap provider; and (iv) to restructure the floating rate payments received from a swap provider, whether or not in exchange for the payment by the swap provider.

- To solicit and receive proposals based on competitive process for one or more additional swap agreements, including without limitation for the purpose of restructuring the cash flow of an existing swap agreement, which offers most favorable terms provided that (i) the fixed rate, if any, payable to the Authority shall not exceed 5.50 % per annum, (ii) the ratings of the long term unsecured and unenhanced senior debt of the swap provider shall either be (I) equal to or higher than at least one of the following ratings: (A) with respect to Moody's: "Aa3"; (B) with respect to S&P: "AA-"; and (C) with respect to Fitch: "AA-," but, in no event, shall such Swap Provider have a rating lower than "A2" from Moody's, "A" from S&P or "A" from Fitch, or (II) if such 2011 Swap Agreement reduces counterparty risk, equal to or higher than at least two of the following ratings: (A) with respect to Moody's: "A2"; (B) with respect to S&P: "A"; and (C) with respect to Fitch: "A".

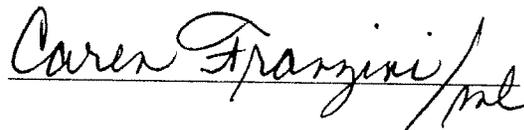
In exercising the Authority's discretion to approve specific transactions authorized under the Twenty-Sixth Supplemental Resolution, it is anticipated that the Authorized Officers of the Authority will make decisions on behalf of the Authority in consultation with the Treasurer and the Swap Advisor and will select the option(s) that are in the best interests of the State and will reduce letter of credit needs, thereby reducing credit and rollover risks, and reduce the notional amount of Swap Agreements in effect under the Resolution, thereby reducing counterparty and basis risks. The Board will be updated upon completion of the transaction.

Professionals for the 2011 Refunding Bonds and Notes were selected in compliance with Executive Order No. 26. Wolff & Samson was selected as Bond Counsel through a competitive RFP/RFQ process performed by the Attorney General's Office on behalf of Treasury for State appropriation backed transactions. Through Treasury's competitive RFP/RFQ process the following professionals were chosen: Merrill Lynch, Pierce, Fenner & Smith Incorporated as senior manager; Lamont Investment Advisers Corp., as swap advisor; and U.S. Bank National Association as Trustee, Paying Agent, Registrar, Dissemination Agent, Calculation Agent, Escrow Agent and Tender Agent. The Twenty-Sixth Supplemental Resolution will also authorize Authority staff to take all necessary actions incidental to the issuance of the 2011 Refunding Bonds and the 2011 Refunding Notes subject to the State Treasurer's approval, including without limitation, the selection of additional

underwriters and bond insurers, if any, pursuant to a competitive process utilizing Treasury's RFP/RFQ process in accordance with Executive Order No. 26 and Executive Order No. 37.

RECOMMENDATION

Based upon the above description, and subject to the criteria set forth above, the Members are requested to: (i) approve the adoption of the Twenty-Sixth Supplemental Resolution authorizing the issuance of the 2011 Refunding Bonds and the 2011 Refunding Notes in the total aggregate principal amount not to exceed \$3.695 billion as well as other matters in connection with the issuance and sale thereof and otherwise described above as well as the amendment, assignment and/or termination, in whole or in part, of the existing swap agreements and the entry into new swap agreements, and the termination, amendment, transfer, extension or substitution of existing letters of credit or standby purchase agreements; (ii) approve several actions and delegation of actions to an Authorized Officer as may be necessary or advisable in order to issue the 2011 Refunding Obligations and to undertake the other transactions described in (i) above on terms which are in the best interest of the State; (iii) authorize the use of the aforementioned professionals and (iv) authorize Authority staff to take all necessary actions incidental to the issuance of the 2011 Refunding Obligations; subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.

A handwritten signature in cursive script that reads "Caren Franzini" followed by a diagonal slash and the initials "ml".

Prepared by: Teresa Wells

**New Jersey Economic Development Authority
School Facilities Construction Program
January 2011 Proposed Plan of Finance**

Background

The NJEDA, on behalf of the State's School Facilities Construction Program (the "School Program"), entered into \$3.9 billion of forward-starting swap agreements with 9 different counterparties between 2003 and 2004. The amounts payable by the Authority under the swap agreements are secured by and payable from amounts payable under the State Contract which secures the School Program Bonds. Since 2004, the NJEDA, at the State's request, modified the terms of the derivative contracts several times to delay their effective dates, or to better match slower than expected borrowing needs. These \$3.9 billion of derivatives were originally to become effective on staggered dates between 2004 and 2009.

- With the NJ Building Authority and the NJ Transportation Trust Fund Authority, the State's portfolio as of November 30, 2010 consisted of \$4.15 billion of derivatives with 11 different counterparties.

By late 2007, several of the School Program's derivatives had become effective. The NJEDA also had issued \$2.8 billion of variable rate securities. Of that amount, approximately \$2.3 billion were Auction Rate Securities ("ARS") – designed to match those derivatives. The collapse of several municipal bond insurers in 2007 and 2008, however, brought an unexpected end to the ARS market, forcing the State to restructure out of the outstanding ARS for the School Program by early 2008 to avoid severe financial implications. This restructuring was accomplished using several replacement debt products:

- \$1.1 billion of the ARS were restructured to Variable Rate Demand Bonds ("VRDBs") which required 5 separate bank Letters of Credit ("LOC"s). This represented the maximum amount of LOCs available to the State for the School Program at the time;
- \$0.7 billion of the ARS were restructured to fixed rate bonds, requiring a matching amount of swaps to be terminated at significant cost so that the State would not be obligated to make fixed payments to bondholders and swap counterparties; and
- \$0.4 billion of the ARS were restructured to short-term put bonds that were swapped back to variable through a new swap so as to remain "variable" to match with swaps that were not terminated.

Subsequent to the ARS restructuring of mid-2008, the School Program continued to face challenges with both variable rate debt and derivatives. To keep the inflows and outflows of the debt portfolio in balance to the extent possible, \$250 million of additional VRDBs requiring bank LOCs were issued and \$500 million of derivatives were restructured through entering into new short-term reversals at times when cost-effective LOCs were not available. Reflecting all modifications and restructurings of debt and derivative portfolios to date, the School Program presently has \$3.6 billion of swap contracts and \$1.8 billion of VRDBs backed by LOCs. While the 2008 restructuring was effective in addressing the immediate financial demands of the collapse of the financial market and in particular the ARS market, the variable rate bond portfolio and the derivative portfolio will continue to face significant challenges.

Since 2007, the School Program has had to face each and every risk factor associated with derivatives and variable rate debt.

- **Credit Risk**
 - Every one of the banks providing an LOC to the NJEDA has been downgraded by the Rating Agencies since the financial crisis of 2008, causing the NJEDA's VRDB rates to rise – in some case temporarily and in others permanently.
 - Allied Irish Bank's ratings were so severely downgraded that the NJEDA replaced the Allied Irish Bank LOC.
- **Liquidity Risk**
 - Dexia and Lloyd's of London which represent approximately 30% of the School Program's current LOC portfolio are no longer providing LOCs.
- **Basis Risk**
 - Dislocations in the short-term markets have caused the variable rates received under the derivatives to fall short of covering the School Program's variable rate debt cost.
- **Counterparty Risk**
 - Many of the School Program's swap counterparties have merged or been downgraded over the past two years, leaving the School Program at higher risk for payment receipt under these contracts.

These events have caused an increase in interest rates paid by the State and will likely cause a continued increase in costs for the State going forward.

Calendar Year 2010

In the spring of 2010, the State's Office of Public Finance issued a Request for Expressions of Interest (REI) to all banks interested in providing LOCs. This resulted in \$1 billion of interest with an average price of 118 basis points. It is important to note that the spring of 2010 was one of the lowest periods of demand for LOC's in the municipal market in recent years.

Current Situation

In 2011, the School Program's main challenge will be replacement of over \$1.1 billion of LOCs. To successfully achieve this level of LOC supply the State and the NJEDA are facing four issues. They are as follows:

- **Lack of supply:**
Fewer banking institutions are offering LOCs, usually at higher prices, and only after protracted negotiation. Should there not be enough LOCs, the NJEDA would have to restructure the School Program VRDBs or have the VRDBs become bank bonds from the LOC bank. Restructuring the VRDBs to fixed rate would most likely necessitate the termination of the associated swaps, the cost of which and the impact on remaining School Program bond authorization capacity cannot be estimated at this time.
- **Increase in demand: Amount of LOCs expiring:**
Over \$80 billion of LOCs are expected to be sought by municipal issuers across the country in support of existing transactions in 2011. Of that amount, approximately \$28.0 billion of demand for LOCs is expected during the 2nd Quarter of 2011, when the School Program will need to replace over \$1.1 billion of expiring LOCs. As a result, the cost of the LOCs can be expected to rise.
- **Parity Pricing Provisions:**
Limited supply means that issuers like the NJEDA, who will require participation from multiple LOC providers, will likely be forced to agree to provisions which will require the NJEDA to pay all providers a price matching the highest bidder.
- **Basel III:**
These recent international regulatory changes will force banks to hold larger reserves in order to offer LOCs in the future. These reserve requirements may increase by more than 20 times, further driving up expected LOC prices. The expected cost for a three year LOC is between 185 and 205 basis points.

Proposed Transaction: What is the NJEDA doing?

The NJEDA is proposing to issue several series of refunding bonds for the School Program. Simultaneously, it will eliminate between 25% and 60% of its derivative portfolio and most of its VRDBs. These changes will reduce reliance on the School Program's counterparties and the need for future bank LOCs, as well as maximize the NJEDA's simplified fixed rate debt portfolio for this program. The proposed transactions will not impact the amount of new funding the NJEDA is able to provide for school construction.

Under current market conditions, the proposed transaction includes the following components:

- A traditional fixed rate refunding transaction, with no extension of maturities.
- SIFMA-based Floating Rate Notes issued as part of the refunding transaction. SIFMA is the tax-exempt index at which bonds trade. This transaction assumes that a three year LOC will cost approximately 200 basis points which also represents a measure of credit and basis risk. Extension of maturities is not permitted.
 - The SIFMA based Floating Rate Notes are currently planned to be issued in laddered maturities between years three and six. The Notes will pay interest at a fixed spread to SIFMA.
- Restructuring VRDBs and current swap agreements.
 - There are several maturities of derivatives which can be terminated and the related variable rate bonds, where applicable, simultaneously refunded to traditional fixed rate bonds.
 - The savings/cost of these refunding/terminations will depend highly on the cost to terminate the related derivatives. This cost will be determined in a market bid process which negotiations the State's swap advisor, Lamont Financial, will supervise. The underwriters will not be involved in the negotiation of the swap terminations.

Rationale: Why is the NJEDA undertaking this transaction?

The State is currently in a position of constant risk exposure that makes it difficult to manage the total cost of its debt. Basis risk (changes in interest rate relationships), counterparty risk (exposure to the credit rating of the swap provider), credit risk (exposure to the credit ratings of the banks) and liquidity risk (the risk of non-availability of bank credit for LOCs) have all caused unexpected increases in the State's debt service costs.

- The proposed transaction will significantly reduce the risk to the State of the School Program derivative and variable rate portfolios.
 - The State will eliminate 25% to 60% of the School Program's exposure to the derivatives market (currently estimated as \$1.7 billion terminated).
 - In addition, the State will eliminate up to 100% of the School Program's VRDBs.
- The NJEDA will eliminate up to \$1.8 billion of LOC needs, including all facilities with 2011 expirations.
- The NJEDA will maintain existing statutory "new money" capacity. The NJEDA will not use any statutory bonding authorization.
- No maturities of any series of bonds being refinanced will be extended.

What risks is the NJEDA mitigating, preserving, or incurring?

The NJEDA will reduce its bank exposure (need for LOCs) for the School Program and the possibility of a bank's downgrade affecting the State's debt service costs will also be reduced. The NJEDA will cancel much of its derivatives portfolio for the School Program, eliminating counterparty exposure which is the risk that a financial institution will not perform or will suffer a downgrade that costs the State money. The NJEDA, by canceling these derivatives, will eliminate the State's exposure to shifts in the market by replacing these swaps with traditional fixed rate bonds in most instances. The State will increase the traditional fixed rate debt in the School Program and gain control of its interest rate exposure..

Through this transaction, the State and the NJEDA will reduce their dependence on LOCs and therefore the banks offering them. The LOCs for the remaining VRDBs will not need to be negotiated until a later date. The State's exposure in future years will not increase significantly. The demand for LOCs will be spread over several years, moderating each year's demands.

The NJEDA is not incurring any new risks. While the NJEDA will select candidates in a way that eliminates the **most** cost-effective derivatives, it will not increase the overall cost of its exposure to this market. The proposed transaction presents a practical approach to gain control over costs and minimize the State's and the NJEDA's risk position. In addition, the cost of capital for the Schools Program will be more stable. As of December 3, 2010, the cost to eliminate all of the School Program's synthetic fixed rate swaps was approximately \$584 million. If the proposed transaction were to have occurred as of December 3, 2010, the "mark to market" of the swaps would have declined by approximately 51% from approximately \$584 million to approximately \$288 million.

Expected Results

In exercising the Authority's discretion to approve specific transactions authorized under the resolution being presented to the Board, it is anticipated that the Authorized Officers of the Authority will make decisions on behalf of the Authority, in consultation with the Treasurer and the Swap Advisor, and will select the option(s) that are in the best interests of the State, and will reduce letter of credit needs, thereby reducing credit and rollover risks, and reduce the notional amount of Swap Agreements in effect under the Resolution, thereby reducing counterparty and basis risks. Such determinations will be made by an Authorized Officer of the Authority by Series Certificate executed by such Authorized Officer and approved in writing by the Treasurer pursuant to the terms of the resolution.

The transaction is subject to movement in interest rates. Under today's market conditions, the anticipated results include:

- Issuing \$1.7 billion in fixed rate refunding bonds and \$284 million of SIFMA-based Floating Rate Notes
- Canceling \$1.7 billion of derivatives,
- Canceling \$1.8 billion of LOC needs,
- Eliminating all 2011 LOC renewal needs.

The overall portfolio for the School Program changes from 64% natural fixed rate and 36% synthetic fixed rate to 85% and 15%, respectively.

Future Issues

As discussed above, the proposed transaction mitigates several key risks to the State and the NJEDA, leaving them in a better position for the future:

- The School Program's derivatives portfolio will be substantially reduced. The remaining portion could still be terminated for positive value for the State should interest rates increase.
- The demand for LOCs will also be reduced
- Future LOC needs will be smoothed out, eliminating spikes in demand.
- The impact of the School Program portfolio on the State's financial statements is reduced.



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

To: Members of the Authority
From: Diane Wong, Program Manager *DW*
Real Estate Division
Hearing Officer
Date: 12/21/2010
Re: PAETEC Bid Protest – ISP/VOIP Services, 2010-RFQ/P-037 Contract Award

This memorandum contains my recommendation to the Members of the Authority regarding a contract award protest received from PAETEC Communications, Inc.'s (PAETEC) attorney, Mitchell Kizner of Flaster Greenberg, concerning NJEDA's awarding the contract for the services sought in the Request for Qualifications and Proposal (RFQ/P) for Internet Service Provider (ISP)/Voice Over Internet Protocol (VoIP) services (this RFQ/P is referred to as "2010-RFQ/P-037" or "this RFQ/P") to Data Network Solutions (DNS).

On October 8, 2010, the NJEDA Board approved awarding the 2010-RFQ/P-037 contract to DNS. In its challenge, PAETEC asserts that the award to DNS is without proper basis, is counter to the public interest, and was an ill-considered response to a problem which actually never existed.

PAETEC requested an oral presentation and public hearing; however, in my sole discretion, I have determined that neither is necessary as enough evidence is available to support my findings.

After a thorough review of the evidence in this matter, I have concluded that there was an appearance of impropriety. In response to the appearance of impropriety, the Chief Executive Officer (CEO) chose a remedy that was permissible and within her discretion. She, in conjunction with the NJEDA Board, made an allowable decision to base the award for this RFQ/P on the scores that were free from all appearance of impropriety. I thus uphold the award to DNS.

BACKGROUND

On April 12, 2010, the Authority issued the 2010-RFQ/P-037 for ISP services. This was a rebid from a prior RFQ/P (2010-RFQ/P-035) that was previously terminated.

(It should be noted that DNS unsuccessfully protested the termination of 2010-RFQ/P-035.) The ISP services will be used to support the Authority's data communication needs and are expected to become the foundation for the transition to a VoIP environment for its voice communications. Four (4) responses were received on May 3, 2010, and were publicly opened.

ARC Networks (Rye Brook, NY)

Data Network Solutions (Tinton Falls, NJ)

One Communications (Burlington, MA)

PAETEC Communications (Mt Laurel, NJ)

- *PAETEC is the current VoIP at NJEDA's Commercialization Center for Innovation Technology (CCIT).*

An Evaluation Committee (the "Committee") was assigned to review and score the proposals. The Evaluation Committee for this RFQ/P was comprised of the following individuals from the ITS Division:

Thomas Murphy	Chief Information Officer (CIO)
Alan Dooley	Operations Manager
Raymond Kuntz	Systems Administrator
Patrick McMillan	Systems Administrator

The vendor to be recommended to the Board would be based on certain pre-determined factors, all of which were carefully considered and weighted. While this RFQ/P allowed for site visits, the initial scoring was generated separately by each Committee member based only on the information submitted in the proposal.

The Procurement Officer tabulated the final scores, released the Internal Process Management (IPM) Evaluation Committee Summary to the Evaluation Committee members on May 20, 2010, and prepared an "IPM Recommendation Memo for Award." The memo identified DNS as the highest ranked firm and recommended that the award be made to DNS, accordingly. The Evaluation Committee's scoring and ranking of firms was as follows and can be seen in *Exhibit A*:

<u>Proposing Firm</u>	<u>Score</u>
Data Network Solutions	4.46
PAETEC Communications	4.40

One Communications	2.49
ARC Networks	2.44

The Authority's CIO prepared the memo recommending the award of this RFQ/P contract to DNS, which was to be presented to the Authority's Board for consideration at the June 8, 2010 Board Meeting ("Initial Recommendation"). However, upon reviewing the final recommendation with the CEO, the CEO observed that the two (2) most highly ranked firms had scores which differed only slightly in their scores. The CEO recommended that the Evaluation Committee perform further due diligence. The CEO said that since the companies scored so closely, the Evaluation Team should visit both sites to evaluate the ability of both to ensure both parties could do the work. Given the CEO's suggestion to perform further due diligence, the Committee conducted interviews with and site inspections of both companies: DNS's visit occurred on June 2, 2010, and PAETEC's visit occurred on June 8, 2010.

Following the PAETEC interview/site inspection, the Evaluation Committee considered the information gained during the two (2) meetings and independently re-scored the two (2) bids. Scores regarding the price evaluation criteria were not adjusted.

The re-tabulation of scores, which can be viewed in *Exhibit B*, resulted in the following ranking:

<u>Firm</u>	<u>Score</u>
PAETEC Communications	4.80
Data Network Solutions	4.09

With this information, the Committee decided it was in the best interest of the Authority to amend its recommendation for award and to recommend the award be made to PAETEC at the June 17, 2010 Board Meeting.

After the re-scoring, the Procurement Officer asked the Evaluation Committee to prepare together, as a team, an evaluation comparing and contrasting both bidders. Both vendors were evaluated on the same set of criteria based on the scripted questions asked of both firms and the observations acquired on the site visits. The report concluded that PAETEC substantially surpassed DNS' capabilities. A copy of the summary, submitted to IPM on June 11, 2010, is available in *Exhibit C*.

At the June 17 Board Meeting, the Board voted to hold in abeyance its final decision on awarding the contract for this RFP. During public comment, DNS argued that its protest of 2010-RFQ/P-035 did not have sufficient due process, so the Board decided to hold the vote on the award of 2010-RFQ/P-037 while the process relating to 2010-RFQ/P-035 was completed through an "exceptions" period.

Following this meeting, and out of concern for DNS's challenge of the Evaluation Committee's technical experience, and in the interest of preserving a fair and transparent process for both DNS and PAETEC, the Authority's CEO secured the services and expertise

of several staff members of the State's Office of Information Technology (OIT). Three (3) OIT staff members were assigned to function in an advisory capacity as subject matter experts and to perform the same independent and unbiased interviews and site inspections of the DNS and PAETEC facilities. Both interviews and site inspections were held on the same day, September 8, 2010; EDA's Director of IPM attended both site visits. The participants included:

- Aaron Greenwood OIT - Garden State Network Architect
- Tom Hendricks OIT - Telecommunications Contract Manager
- David Surro OIT - Manager Garden State Networking Services

The OIT staff summarized their findings (*Exhibit D*). While OIT staff did not score the vendors or designate which vendor they would choose, OIT did conclude that both vendors could do the job. OIT stated that while the PAETEC service model seemed far more robust with a vast array of resources at their disposal, the DNS model still seemed well suited to support a network of the proposed size and scope.

Subsequent to the distribution of the OIT report and observations, the CEO learned of the appearance of a potential conflict regarding two (2) members of the Evaluation Committee, based on email communication between these two members and PAETEC. This notification was obtained through a letter from DNS's attorney and included information obtained through OPRA requests.

At the direction of the CEO, the Authority's Ethics Liaison Officer, who coincidentally is the Director of IPM, met with and interviewed both Committee members and determined that no real conflict existed, but rather the circumstances could be interpreted to give the appearance of conflict.

In order to safeguard the procurement process, the CEO determined it proper that these two (2) members of the Committee be recused from the evaluation process. After the recusal, the remaining two (2) Committee members reviewed OIT's assessment and determined that they did not want to make any changes in their scores. The final scores were recalculated after recusal of the two (2) Evaluation Committee members and resulted in the following scores (*Exhibit E*):

<u>Firm</u>	<u>Score</u>
PAETEC Communications	4.85
Data Network Solutions	3.90

After further consideration, the CEO, in consultation with the Attorney General's Office, determined that to further ensure impartiality and objectivity that it was not sufficient to recuse the two members with an appearance of impropriety from the final evaluation but rather that any evaluation in which the two recused members had participated should be disregarded. After a review of the process, the CEO determined that the only evaluation that had occurred

before the members of the committee had conferred with the recused members was at the time of the Initial Recommendation. She therefore determined that the award for the RFQ/P contract should be based on the Procurement Officer's calculation of the two (2) remaining Evaluation Committee member's **original** scores, prior to the interviews and site inspections held on June 2, 2010, with DNS and June 8, 2010, with PAETEC. This recalculation of the two (2) remaining Evaluation Committee members resulted in DNS' receiving a higher score than PAETEC (*Exhibit F*).

<u>Firm</u>	<u>Score</u>
Data Network Solutions	4.48
PAETEC Communications	4.40

Based on these scores, in addition to OIT's confirmation that both firms are capable of performing the required services, the Authority's CEO made her recommendation to the Board. On October 8, 2010, the Board accepted the recommendation to award the contract for the services in this RFQ/P to Data Network Solutions.

CONTRACT AWARD CHALLENGE

On Wednesday, October 27, 2010, the NJEDA received a Contract Award Challenge. On Thursday, October 28, 2010, the Authority's CEO appointed me as the Hearing Officer for this challenge.

RESEARCH AND CONCLUSIONS

As Hearing Officer, I have reviewed the following documents:

- NJEDA 2010-RFQ/P-037 Internet Service Provider (ISP) Services
- Bids received by DNS and PAETEC
- Board Memorandum – October 8, 2010
- Correspondence (E-mails) between PAETEC (David Crafts) and Evaluation Committee members
- DNS's Bid Protest on 2010-RFQ/P-035
- DNS/Bernard Reilly – OPRA findings (Letter dated September 3, 2010)
- Division of Purchase and Property – NJ Administrative Code
- Scoring (Pre and Post Site Inspections and Interviews, with and without recusals)
- Interview notes (Director of IPM/ELO and certain Evaluation Committee Members)

- Internal Process Management documentation (October 7, 2010 Memo)
- Evaluation Committee's "Compare and Contrast" summary (June 11, 2010)
- Job Description – EDA Chief Executive Officer
- OIT Findings (September 10, 2010)
- PAETEC/Flaster Greenberg – Contract award protest (October 26, 2010)
- Reference Checks
- Questions and Answers (Submitted by potential bidders re. the RFQ)

In addition to reviewing the above documents listed above, I also conducted interviews and/or corresponded with the following EDA individuals:

- Caren Franzini - CEO
- Thomas Murphy – Chief Information Officer
- Alan Dooley – Operations Manager
- Patrick McMillan – Systems Analyst
- Raymond Kuntz – Systems Analyst

As the designated Hearing Officer, my primary focus is to objectively and impartially review the facts and determine whether, based on the information gathered, PAETEC's challenge has merit. The purpose of public bidding is to help ensure fair and equitable competition among qualified vendors, reduce favoritism, preferential treatment, or the appearance of impropriety for select bidders, and make the best use of taxpayers' dollars. Best use is decided by the Evaluation Committee based on pre-determined evaluation criteria and weights.

My experience includes a prior role as a Hearing Officer on a Real Estate RFQ/P award protest and also as a previous EDA Ethics Liaison Officer. As for the technical aspects of this RFP/Q, I am relying on the findings of OIT as documented in their summary regarding each firm's technical capabilities. The OIT team consisted of experienced individuals, working for the State of NJ, who had no prior knowledge or background of the circumstances, and performed an objective review. Given the thorough and impartial analysis performed by OIT, I feel confident in their assessment of the technical ability of the two firms, and both vendors' ability to meet the technical and service needs of the EDA.

Taking all of the above into consideration, my findings are provided below, addressing PAETEC's protest points.

Point 1: Appearance of Impropriety – PAETEC argues that nothing in the e-mails submitted by PAETEC indicated that PAETEC was seeking any favoritism or advantage, or that EDA was showing favoritism.

Upon review of the e-mails between EDA employees Raymond Kuntz and Alan Dooley, and PAETEC employee David Crafts, some of the content gives the appearance of impropriety. There are several e-mails, in particular, when read at face value by a reasonable and impartial observer, that appear to give Mr. Crafts additional privileged information and can be construed as attempts to get inside information.

Legal standards for the appearance of impropriety as well as actual conflicts can be found in the New Jersey Conflict of Interest Law. As for the appearance of impropriety, N.J.S.A. 52:13D-23(e)(7) prohibits actions that may "reasonably be expected to create an impression or suspicion among the public having knowledge of [the officer's] acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee." Regarding actual conflicts, N.J.S.A. 52:13D-32(e)(3) prohibits an individual from the "use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others" and N.J.S.A. 52:13D-32(e)(6) requires an individual not to "accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing him in the discharge of his official duties."

Some examples of e-mails that create the appearance of impropriety include:

- 7/30/09 From PAETEC (Crafts) to EDA (Kuntz) – Subject: Dynamic IP Service – I'll go ahead now and price out a DS3 just so we know what we're looking at versus going separate T1's.
- 8/10/09 From EDA (Kuntz) to PAETEC (Crafts) – Subject: Dynamic IP Service – I'm excited about the pricing for that kind of pipe. I'll touch base with you as soon as I check on status with our procurement folks to let you know what's going on.
- 8/10/09 From PAETEC (Crafts) to EDA (Kuntz) – Subject: Dynamic IP Service – We'd obviously love to finally get things moving along.
- 11/4/09 From EDA (Kuntz) to PAETEC (Crafts) - Subject: RFP – Once we are just about ready to publish, I'll be sure to personally reach out to you. I know from experience that PaeTec's service is exactly what we're looking for.
- 5/14/10 From PAETEC (Crafts) to EDA (Dooley) - Subject: MPLS – Alan, any updates?

Some of this communication occurred while EDA was drafting this RFQ/P. Some of these emails were exchanged because as an incumbent vendor, EDA IT staff reached out to PAETEC with telecommunication based questions for future EDA needs. Because of the timing of e-mails concerning subject matter and process of RFP, this raises an appearance of impropriety. Nonetheless, in my review, I found that once Mr. Kuntz became aware that the

Scope of Work for this RFQ/P was close to being issued, he closed off any detailed, technical communication with PAETEC.

Upon review of the correspondence between Mr. David Crafts and EDA staff, there appeared to be a time lag in responses. More specifically, there were numerous occasions that PAETEC would send an e-mail to Mr. Dooley, and Mr. Dooley averaged days or weeks before he responded. Examples of e-mail content from Mr. Crafts to Mr. Dooley included:

- 1/22/09 Getting the sense you are avoiding us...
- 3/18/09 Feel like you are avoiding us...
- 4/22/09 Haven't heard Boo (from you)....
- 5/13/09 Not to "brow beat" you guys or anything but what's going on now? Still hoping to talk to you soon.
- 5/18/09 Still hoping to talk to you soon....
- 5/20/09 Since I can't pin you down about MPLS....
- 1/07/10 Been awhile since we last spoke....

The lack of a clear consistent response from Mr. Dooley asking Mr. Crafts not to continue asking for information related to this RFQ/P contributes to the appearance of impropriety. The one exception was a golf outing invitation sent via e-mail on June 8, 2009, to which Mr. Dooley responded immediately on June 9, 2009, informing Mr. Crafts that this type of invitation is against EDA's ethics policies, and as such Mr. Dooley could not accept his request. Although not apparent on the record, in my independent review as Hearing Officer I did not find that Mr. Dooley or Mr. Kuntz attended any PAETEC events or that these email exchanges led to any special treatment.

The emails sent by PAETEC included some sent in the normal course of its business, extending perks to its customers. PAETEC is a current EDA vendor at CCIT, and has been since 2007. Several e-mails were received by EDA staff from PAETEC; however, they appear to be part of a general blast made to a large group of people. EDA was not singled out. Again, with the one exception listed above, Mr. Kuntz and Mr. Dooley did not respond, but they also did not attend.

Again, on June 18, 2010, Mr. Crafts invited Mr. Kuntz and Mr. Dooley to join PAETEC's annual golf event; this invitation was sent to their non-EDA work e-mail addresses. The use of personal email addresses raises the appearance of impropriety. Again I found that neither Mr. Kuntz nor Mr. Dooley responded or attended this event.

It should be noted that Mr. Kuntz and Mr. Dooley worked with PAETEC on a project outside of the EDA in 2008/2009. They were contracted by a Technology Center tenant to perform computer work. Mr. Kuntz and Mr. Dooley reviewed their proposed outside work with the EDA Ethics Liaison Officer at the time to ensure there was no conflict of interest. The Ethics Liaison Officer approved this activity. Because of this external relationship, e-mails have been

exchanged between Mr. Dooley's and Mr. Kuntz's private email addresses and Mr. Crafts. The project ended in 2009.

Although an appearance of impropriety existed, in my independent review, as mentioned above, I did not find any actual impropriety or favoritism exhibited by EDA staff. The following additionally supports this statement:

- The majority of e-mails from PAETEC to Mr. Dooley and Mr. Kuntz were written in early to mid 2009, before this RFP/Q was issued. For example, on 3/18/09 there was reference to possible subsidy dollars from PAETEC, which would result in cost savings to EDA as an incentive for future products or services.
- EDA's Ethics Liaison Officer separately interviewed both Mr. Kuntz and Mr. Dooley. The results of his questioning do not demonstrate any unethical behavior of either individual. One, or both staff members, may have written statements that could be misconstrued, but at no point was any vendor extended privileged information.
- Although EDA IT staff reached out to PAETEC, because of its status as an incumbent vendor, with telecommunication based questions for future EDA needs; EDA IT staff research extended beyond this inquiry. For example, they researched white pages, read various periodicals, discussed with Cisco Systems. Staff reviewed findings from an IT systems and architecture study conducted in early 2008, and also discussions with the VoIP hardware vendor.
- The requirements in this RFQ/P's Scope of Work are industry standard and not specific to any one firm. Although based on interviews with EDA IT staff and later expanded by them, the initial draft was written by an EDA Procurement Officer with 30 years of experience, based on interviews she had with Tom and Ray.
- One of the PAETEC e-mails referenced that their RFQ/P responders were annoyed with the requirements of the RFQ/P, and the work involved.

Based on the above reasoning, there is sufficient justification to demonstrate that preferential treatment or favoritism was not extended by the EDA to PAETEC, but that an appearance of impropriety did exist.

Point 2: PAETEC argues that the Board disregarded the results of the EDA's careful review process and based its award upon an initial evaluation which occurred prior to the careful study that was later conducted. PAETEC argues further that the award to DNS is without proper basis, is counter to the public interest, and was an ill-considered response to a problem which actually never existed.

Based on the content of the e-mails between PAETEC and two Evaluation Committee members, the CEO was concerned about removing all doubts of impropriety. Therefore, she chose to use the initial, independent scoring of the other two (2) Evaluation Committee members. The CEO acted within her range of discretion in doing

so. There was sufficient evidence to support the appearance of impropriety. Even though it was determined there was no actual bias or favoritism, to an outside observer the perception could be construed as such. She acted in a manner consistent with protecting the process from any taint of the appearance of impropriety.

Once the CEO became aware of the appearance of impropriety, she acted to ensure the integrity of the process by removing any evaluation that could have been tainted by the appearance of impropriety. Thus, she recommended to the Board that the initial highest scoring bidder be selected with the scores of the two (2) Evaluation Committee Members who were not recused.

While the EDA does not have a specific policy regarding bid protests, it did look to the State of New Jersey's Division of Purchase and Property's (DPP) Administrative Code for guidance. Since DPP accounts for a significant part of the State's purchasing, and given that EDA's CEO, together with the Board, has similar discretion as the Director of DPP, DPP's policies were used as a basis for the CEO's authorization to initiate a recusal. Their regulations provide clear rules on RFQ/P evaluations and bid challenges. As a guide, N.J.A.C. 17:12-2.7 states that the Director retains the discretion to reject a proposed member, remove a sitting member or add additional members(s) to an evaluation committee. The EDA has referred to DPP's regulations in prior procurement concerns. The CEO also consulted with the Attorney General's office throughout the entire process.

After reviewing all of the above, the CEO decided she could not recommend the outcome of any scores to which an appearance of impropriety could be attached. The EDA Board reviewed her rationale and agreed with her assessment. The October 8, 2010 Board Memo is shown in *Exhibit G*.

Finally, while the CEO's job description does not specifically state what actions she can take in a specific procurement process, it does affirm that she oversee operations to ensure production efficiency, quality, service and cost effective management of resources. It provides a review of organizational performance to determine progress toward planned objectives and make revisions as required. Therefore, if the CEO has concerns regarding a recommendation, she has the duty to make a decision in the best interest of the Authority.

The NJEDA has followed proper procurement protocols:

- All existing EDA procurement procedures have been properly followed
- The procurement score sheets were complete and accurate
- No improprieties or preferential treatment was given to any company
- No improper actions or behaviors were taken by any employee of the EDA
- The CEO has the ability to make recommendations for the betterment of the Authority

In summary, there was indeed an appearance of impropriety. To a reasonable outside observer, the e-mail exchanges could create a suspicion that not all activities were above-

board. The CEO, as leader of the NJEDA, took all factors into consideration, discussed possible remedies with the Attorney General's Office, examined DPP's rules as a reference, and chose a certain remedy. By awarding the contract for the services in this RFQ/P, the NJEDA Board approved the remedy. The remedy chosen was legitimate, proper and permissible.

Point 3: PAETEC argues that the EDA should re-issue the RFP and that both bids should be rejected and the matter should be re-bid.

With the RFP, the EDA received four (4) proposals. After reviewing and scoring the proposals, the selection was narrowed to two (2) bidders. **Given the information supplied on the proposals, the information obtained during the site visits, the independent third-party findings of OIT, and that the NJEDA Procurement process was followed properly, there is no logical, cogent or compelling reason that the RFP should be reissued.**

The legal standard for rejecting all proposals is that such rejection must not be arbitrary or capricious, and once bids have been opened rejection of bids should only occur for cogent or compelling reasons. *Penpac, Inc v. Morris County Mun. Utilities Authority*, 299 N.J. Super. 288 (App. Div. 1997); *Bodies by Lembo, Inc. v. County of Middlesex*, 286 N.J. Super. 298 (App. Div. 1996).

Additionally, the case cited by PAETEC in its protest letter, *Cardell, Inc. v. Woodbridge Twp.*, addressed an RFP process in which all bids had been rejected by the municipality in an attempt to obtain lower priced bids. This is different than what EDA faced in this RFQ/P. EDA did not reject any bids or "bypass" any particular bidder. Rather, EDA selected legitimate remedies to address the valid concern of an appearance of impropriety. Once the remedy was accomplished, the highest scoring bidder was recommended to the Board for the award of this RFQ/P contract.

SUMMARY AND RECOMMENDATION

Based on the above information and analysis, although there does not appear to have been any preference extended to PAETEC, an appearance of impropriety existed. In order to remove possible doubts, the CEO made the decision to recuse the scoring of the two Evaluation Committee members with the appearance of impropriety to mitigate the possibility of any perceived impartiality.

The CEO has a fiduciary responsibility to this organization. When the two bidding firms scored so closely, she was well within her rights to suggest further investigation. A written proposal can meet requirements on paper, yet seeing an organization's site first-hand and obtaining input from current customers can be informative. In addition, obtaining a neutral, independent review from subject matter expert(s) was a valid request.

This was the first time the CEO faced this situation. There were no prior situations at the Authority whereby a similar situation occurred with close scoring.

In summary, the CEO acted within her scope of responsibilities and discretion. As the leader of the New Jersey Economic Development Authority, the CEO has discretion to effectuate an assessment that is in the best interest of the Authority. The CEO was correcting a procurement process in which the appearance of impropriety was uncovered. The CEO does not work in a vacuum. The Board of Directors reviewed her recommendation, and endorsed her decision.

EXHIBIT A

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (NJEDA) MEMBER EVALUATION COMMITTEE SCORES

RFP / BID #		2010-RFQP-637													
Title		Internet Service Provider (ISP) - RE-BID													
Requestor		Thomas Murphy													
		PROPOSER 1		PROPOSER 2		PROPOSER 3		PROPOSER 4		PROPOSER 5		PROPOSER 6			
		ARC Networks (Rye Brook, NY)		Data Hallway's Solutions (Trison Falls, NJ)		One Communications (Burlington, MA)		PAETEC Communications (Mt. Laurel, NJ)							
Item #	EVALUATION CRITERIA	Weight (percentage of total)	TOTAL Score (out of # of locations)	TOTAL Score (out of # of locations)	TOTAL Score (out of # of locations)	TOTAL SCORE (weighted out of # of points)	TOTAL Score (out of # of locations)	TOTAL SCORE (weighted out of # of points)	TOTAL Score (out of # of locations)	TOTAL SCORE (weighted out of # of points)	TOTAL Score (out of # of locations)	TOTAL SCORE (weighted out of # of points)	TOTAL Score (out of # of locations)	TOTAL SCORE (weighted out of # of points)	
1	Proposer's detailed approach and plan including Service Level Agreements to perform the services required by the "Scope of Work" section of the RFQP	20.0%	10	5	19	1.8	11	2.2	12	2.4	0	0	0	0	
2	Proposer's qualifications and experience in the Programming Field, with emphasis on demonstrated experience in working with and successfully completing work for contracts of similar size and scope	1.0%	11	1.1%	11	0.55	11	0.55	20	1	0	0	0	0	
3	Has Proposer a demonstrated experience in successfully completing contracts of similar size and scope for other areas of similar size with multiple locations in the State required of this RFQP to those required by this RFQP	10.0%	10	1	8	0.8	4	0.8	18	1.8	0	0	0	0	
MANDATORY FEE SCHEDULE															
4	Proposer's PRICE as accomplished by the prices submitted for the following:				0		0		0		0		0		
A	Minimum Minimum-Billed Monthly ISP Rate (per location) to provide those internet services (ISP) services at each of the locations. This is the Proposer's "Minimum Billed Monthly Fee" which are listed and then divided by the number of locations that are included in a "Standard Monthly Rate". This same formula will apply to the Proposer's "Monthly Rates" Proposer must include monthly rates for EACH location listed in the solicitation, and propose rates in all locations using one of the listed rates. The Authority will select the monthly rate, or "billed" fee, which provides the lowest possible monthly rate. (reference Exhibit B - Section 1A-10)	30.0%	4	1.2	20	6	12	1.6	20	6	0	0	0	0	
B	Local Calling Rates - price per minute (reference Exhibit B - Section 10)	12.5%	20	2.5	20	2.5	4	5.5	20	2.5	0	0	0	0	
C	Long Distance Calling Rates - price per minute (reference Exhibit B - Section 10)	7.5%	15	1.2	20	1.5	4	0.3	20	1.5	0	0	0	0	
D	International Calling Rates - price per minute (to the extent (1%) locations indicated in the solicitation "Scope of Work" / Deliverables - Item 00 - Local / Long)	1.5%	10	0.8	20	1	4	0.2	10	0.8	0	0	0	0	
E	"Standard Hourly Rates," for each (subdivided) position expected to perform work against the resulting contract (reference Exhibit B - Section 1A-4 (M))	2.0%	5	2.2	8	0.7	20	0.5	4	0.4	0	0	0	0	
OPTIONAL FEE SCHEDULE															
F	Connection Charge to INITIATE Service at a given site - (if applicable) (reference "Fee Schedule - Exhibit B - Section 2A")	2.5%	3	0.1	20	0.8	20	0.6	20	0.6	0	0	0	0	
G	Connection Charge to CHANGE Service at a given site - (if applicable) (reference "Fee Schedule - Exhibit B - Section 2B")	2.5%	4	0.1	20	0.4	20	0.8	20	0.4	0	0	0	0	
H	Disconnection Charge to CANCEL Service at a given site - (if applicable) (reference "Fee Schedule - Exhibit B - Section 2C")	2.5%	4	0.1	20	0.5	20	0.4	20	0.6	0	0	0	0	
Percentage Total		100%													
TOTAL PROPOSER SCORE			2.64	4.40	2.80	4.40	0.80	0.80	0.80	0.80	0.80	0.80	0.80	0.80	

On a scale of 1 - 5, evaluate and score the above proposal as follows: 1 - Poor 2 - Fair 3 - Good 4 - Very Good 5 - Excellent

EXHIBIT B

EXHIBIT C

From: Raymond J. Kuntz
Sent: Friday, June 11, 2010 11:24 AM
To: Geraldine M. Stout
Cc: Fred Cole; Alan Dooley; Patrick McMillan; Thomas Murphy
Subject: RE: Evaluation Committee Concerns

Gerry, below please find our contrast in evaluation of both prospective internet and voice services providers Data Network Solutions and PAETEC:

Staffing Concerns:

- DNS - Limited quantity of technical staff

PAETEC – Several network engineers working onsite as well as a 24/7 Network Operations Center
- DNS - Lack of technical coverage

PAETEC - All technical staff equally trained for coverage
- DNS - Lack of voice expertise

PAETEC – All technical staff adept in configuring, troubleshooting and supporting VoIP technologies for their customers

Capacity Concerns:

- DNS - Much less robust service provider environment at Point Of Presence (POP) located in Pennsauken, NJ which is where the majority of our services would be provided

PAETEC – Complete and resilient service provider environment for POP and Service Provider core, including very redundant power and cooling systems
- DNS - 'Bursting' data traffic traveling to peered carriers is marked 'discard eligible' making it very likely dropped traffic upon peak traffic times would occur (DE bit for Frame Relay & CLP bit for ATM)

PAETEC – PAETEC only peers with one other carrier in which QoS markings are honored, otherwise customer traffic remains on PAETEC's network
- DNS - Changes in provider backbone protocols and technologies could lead to an unstable environment

PAETEC – PAETEC employs multiple redundant routing and switching platforms to ensure customer traffic can be rerouted during maintenance windows

- DNS - Major infrastructure changes may impact service for all customers due to current infrastructure size

PAETEC – The size and capabilities of PAETEC’s infrastructure allows for planned infrastructure changes without impacting service for all customers

- DNS - From the Newark POP, all (9) TDM voice hand-off PRI circuits to the PSTN are terminated from the same DS-3 circuit

PAETEC – PAETEC utilizes several IP SoftSwitches as well as multiple SESS TDM switches which terminate to various DS3 circuits for complete redundancy

- DNS - From the Pennsauken POP, only (2) TDM voice hand-off PRI circuits exist

PAETEC – The POP which would be used by NJEDA is located in Philadelphia and hosts several IP SoftSwitches as well as multiple SESS TDM switches

- DNS - Questionable presence for international voice hand-offs

PAETEC – PAETEC only hands off international voice traffic which isn’t routed directly by them to one other trusted peered carrier

Hardware Concerns:

- DNS - Hardware age (end of life equipment)

PAETEC – No end of life equipment was noted. Most equipment observed was new as older equipment is constantly being phased out

- DNS - Absence of available service contracts for aged hardware (Cisco TAC configuration assistance and failed hardware replacement)

PAETEC – All core provider Cisco equipment is covered by a current Cisco service contract. Service contracts for other platforms exist as well

- DNS - Lack of onsite standby hardware

PAETEC – A standby chassis unit onsite for all critical hardware as well as standby blades, power supplies, supervisor modules, etc.

- DNS - Lack of redundant hardware in production (VRRP, GLBP, HSRP)

PAETEC – Core and Aggregation layer equipment employs HSRP for hot-standby redundancy

- DNS - Single points of failure promote a greater risk of extended voice/data service outages upon catastrophic failure

PAETEC – Great attention has been given to eliminate any possible single points of failure. No single point of failure was observed throughout their infrastructure

- A reactive, manual failover strategy for voice could potentially cause extended voice service outages upon circuit failure

PAETEC – Automated failover of voice utilizing DTO (Direct Trunk Overflow) which is configured and available from the time service begins

- Evaluation Team

EXHIBIT D

NJEDA 2010-RFQ/P-037 (ISP)

Here is a brief recap on our vendor visits on Wednesday 9/8/2010.

The two vendors under review, DNS (Data Network Solutions) and Paetec are capable of providing, Data, ISP and Voice services. After the conclusion of the site visits and interviews, it was obvious that each vendor resides at extreme opposite sides of the Service Provider spectrum. DNS is a small "mom and pop" level service provider with about 10 full time employees as compared to Paetec which is a medium sized and nationally expanding CLEC, Competitive Local Exchange Carrier, with five (5) East Coast Regional Data Center's/Internet POP's and approx 4000 employees.

The solutions proposed by each vendor are very similar, each offering an MPLS core network with Ethernet services interconnecting the five distributed NJEDA facilities. Similarly, on the voice services side they provide options from a completely hosted solution to just terminating the PSTN traffic. From a purely technical perspective, the NJOIT participants believe that both vendors are capable of providing a viable solution. Due to the numbers of available Data Network Solutions resources, their ability to provide support, particularly if NJEDA experiences a multi-location outage, may be an issue. On the other hand, Paetec has substantial resources, including three (3) Network Operations Centers (NOC's), available mobile response units and if the appropriate priority and service levels are maintained, they should be capable of delivering and supporting the proposed solutions. NJOIT recommends that NJEDA contact each vendor's list of client references to fully assess each vendor's level of service delivery, support and responsiveness during times of unexpected outages.

Following are some notes and observations from each vendor visit.

Data Network Solutions:

1. Small business (10 employees) located in Tinton Falls NJ.
2. They lease data center space in Newark and Pennsauken NJ.
 - a. 7/24 support with Hot Hands support
3. They are a CLEC in NJ, NY and PA
4. Early adopter of Ethernet services
5. Provide redundant Internet and Voice facilities
6. They own and maintain their own redundant VoIP softswitch and Voice gateways
7. Proposed MPLS core network with Ethernet services to the five sites
8. Proprietary billing solution. They claim that it can provide billing info down to location and user level. They indicated they are moving to a new billing platform in the coming months. Platform includes CRM and customer portal.
9. Competitive International rates
10. Limited support staff but claim that a tech will be assigned within 1 hour of reporting initial trouble and dispatched within 4 hrs if required
11. No major outages in last 2-3 years but have experienced some denial of service attacks
12. Using 3rd party for E-911 support
13. They have relevant experience over the last 10 years.
 - a. Most recent experience (6 site MPLS network), City of Irvington in 2009
 - b. ISP Services to Old Bridge Township schools in 2009

Pros:

1. Small Business who is nimble and can be very responsive
2. Good examples of relevant experience
3. They own and maintain their own redundant VoIP Softswitch and Voice Gateways
4. Redundant Internet connections
5. Competitive pricing on International Rates
6. Higher quality RFP response
7. DC Facilities: The Newark based data center presence is located in a "Carrier Hotel". The assumption (not confirmed) is that the Newark facility is a Tier III or Tier IV facility, highly secure, controlled access, redundant power and cooling, minimal or no down-time due to maintenance at the facility, minimal down-time per year. The Pennsauken, NJ facility was formerly operated by Sprint, no definitive data regarding its resiliency.
8. Customer Site Routers, circuit availability, voice services are monitored by PRTG software. Technicians are alerted during periods of system unavailability by e-mail/pages directed to mobile devices, phones.

Cons:

1. Small Business, if they experience accelerated growth could impact level of service and support
2. Significant reliance on their network providers (Verizon, Level3, etc.)
3. Changeover to new billing system
4. Staff levels, potential loss of 1-2 key resources could have a major impact
5. Support Staff: "One person" is always available at the office during business hours to accept calls and to provide support.

Paetec:

1. Medium sized CLEC, with National footprint (~4000 employees)
2. Cisco Powered network
3. Genband VoIP platform (they have experience providing service provider level switching platforms)
4. IP E-911 support model similar to TDM model
5. Monitor QOS on the network to the edge device
6. Support spans two regional teams (NY and PHL)
7. Provide redundant Internet and Voice facilities
8. Proposed MPLS core network with Ethernet services to the five sites
9. Proprietary billing solution. They claim that it can provide billing info down to location and user level.
10. Competitive International rates
11. Customer Portal interface to manage account

Pros:

1. Medium sized business with substantial infrastructure and resources to support this implementation
2. The Philadelphia data center located within the same facility that houses the Sun Guard DR services provider. The data center is supported by redundant power generators, cooling facilities and approximately 8 hours of battery backup. The data center has not yet been rated by the Uptime Institute as being tier III or IV facility.
3. Redundant Internet connections
4. Competitive pricing on International Rates
5. Experience with providing five 9's carrier grade voice and data solutions
6. Many vendor options for terminating voice traffic
7. Paetec maintains three (3) Network Operations Centers, which provide 7x24x365 monitoring, incident response and escalation services.
8. Customer Portal available for Billing, Problem Ticket creation and status, Availability and Performance data.
9. Availability of many "man in the van" resources for mobile support.

Cons:

1. Medium sized business could get lost in the shuffle. Would we be there top priority? They are projecting significant infrastructure growth over the next year.
2. Concern with Support spanning two regional teams (NY and PHL). Hand offs/continuity could be a challenge
3. They have been more of a legacy service provider (voice); Voice IP services are newer to them
4. Did not provide written examples of relevant experience
5. Cisco CM experience?
6. RFP response lacked detailed information

EXHIBIT E

EXHIBIT F

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY INDIVIDUAL MEMBER EVALUATION COMMITTEE SCORES														
2010-RFQP-037														
Internet Service Provider (ISP) - RE-B3D														
Requestor: Thomas Murphy														
PROPOSER #1: ARC Networks (Rye Brook, NY)														
PROPOSER #2: Data Network Solutions (Tinton Falls, NJ)														
PROPOSER #3: One Communications (Burlington, MA)														
PROPOSER #4: PAETEC Communications (Mt. Laurel, NJ)														
PROPOSER #5: [Blank]														
PROPOSER #6: [Blank]														
Item #	EVALUATION CRITERIA	Weight (percentage of proposal)	TOTAL SCORE (out of 100)	TOTAL SCORE (percentage of total)	TOTAL SCORE (out of 100)	TOTAL SCORE (percentage of total)	TOTAL SCORE (out of 100)	TOTAL SCORE (percentage of total)	TOTAL SCORE (out of 100)	TOTAL SCORE (percentage of total)	TOTAL SCORE (out of 100)	TOTAL SCORE (percentage of total)	TOTAL SCORE (out of 100)	TOTAL SCORE (percentage of total)
1	Proposer's detailed approach and plans (including Service Level Agreements) to perform the services required by the "Scope of Work" section of this RFQP	20.0%	4	0.4	10	2	6	1.2	6	1.2	0	0	0	0
2	Proposer's qualifications and experience of the Proposer's firm, its employees and subcontractors in carrying out work successfully completing work of similar size and scope	1.0%	6	0.3	4	0.2	5	0.25	10	0.5	0	0	0	0
3	Has the Proposer demonstrated experience in successfully completing contracts of similar size and scope to the other items of similar size and scope as those in other sections of this RFQP to those required by this RFQP?	10.0%	6	0.6	4	0.4	3	0.3	9	0.9	0	0	0	0
MANDATORY FEE SCHEDULE														
4	Proposer's PRICES are submitted for the prices submitted for the following:		0		0		0		0		0		0	
A	Maximum Non-Advised Monthly SP Fee ("Fee Schedule") to provide these services (reference Exhibit B) Services at each of the locations As to the Proposer's "Maximum Monthly SP Fee" which are defined and then defined by the number of connections when reference to other "Maximum Monthly SP Fee" this same definition will apply to the "Proposer's Monthly Rates". Proposer's cost include monthly rates for EACH connection listed which the Authority may require based on the frequency monthly, and a third party fee monthly will limit the monthly rates, no other, for other proposed services identified herein. (reference Exhibit B - Section 1.4.1)	30.0%	2	0.6	10	3	6	1.8	10	3	0	0	0	0
B	Local Calling Rates - cents per minute (reference Exhibit B - Section 1.4)	12.0%	10	1.25	18	1.25	2	0.25	15	1.25	0	0	0	0
C	Long Distance Calling Rates - per-minute (reference Exhibit B - Section 1.4)	7.0%	8	0.8	10	0.75	2	0.15	13	0.75	0	0	0	0
D	International Calling Rates - price per minute (in the eleven (11) locations indicated in the section "Scope of Work / Deliverables - Item #1 - Local / Long Distance")	1.0%	8	0.4	10	1.5	2	3.1	9	0.4	8	0	0	0
E	"Standard Hourly Rate," for each individual / position assigned to perform work against the remaining contract (reference Exhibit B - Section 1.4.4.1)	2.0%	4	0.1	4	0.1	18	0.28	2	0.08	3	0	0	0
OPTIONAL FEE SCHEDULE														
F	Connection Charge to SPRINT Service at a given site - (if applicable) (reference "Fee Schedule - Exhibit B - Section 3A")	2.0%	2	0.66	18	0.75	18	0.25	10	1.28	8	0	0	8
G	Connection Charge to CHANGEL Service at a given site - (if applicable) (reference "Fee Schedule - Exhibit B - Section 3B")	2.0%	2	0.66	18	0.75	18	0.25	16	1.25	9	0	0	4
H	Connection Charge to CANCEL Service at a given site - (if applicable) (reference "Fee Schedule - Exhibit B - Section 3C")	2.0%	2	0.66	18	0.75	18	0.25	12	1.25	9	0	0	0
Percentage Total		100%												
TOTAL PROPOSER SCORE			2.48		4.48		2.83		4.48		6.00		6.00	

On a scale of 1 - 5, indicate and score the above proposal as follows: 1 - Poor 2 - Fair 3 - Good 4 - Very Good 5 - Excellent

EXHIBIT G



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: Internet Service Provider (ISP) / Voice Over Internet Protocol (VoIP) Services
2010-RFQ/P-037 Contract Award.

DATE: October 8, 2010

Summary:

I am recommending the Members approve entering into a contract for Internet Service Provider (ISP) / Voice Over Internet Protocol (VoIP) services with Business Automation Technologies, Inc. - d/b/a Data Network Solutions (Tinton Falls, NJ) for data and voice services for the following locations: (i) NJEDA Headquarters, Trenton; (ii) Waterfront Technology Center, Camden; (iii) NJEDA Satellite, Newark; (iv) Commercialization Centre for Innovative Technologies (CCIT) (1st site); and (v) Commercialization Centre for Innovative Technologies (2nd site). This matter was shared with the Audit Committee at their October 5th meeting and they concurred with this recommendation.

Background:

This is a re-bid of 2010-RFQ/P-035 for which all bids were rejected. That RFQ/P was terminated by final action of the board. On April 12, the Authority issued its second Request for Qualifications and Proposal (RFQ/P) to provide ISP and VoIP services to the Authority (designated as 2010-RFQ/P-037). These critically important services will be used to support the Authority's data communication needs and are expected to become the foundation for the Authority transitioning to a Voice over Internet Protocol (VoIP) environment for its voice communications.

Four (4) proposals in response to 2010-RFQ/P-037 were received and publicly opened:

- ARC Network - a subsidiary of Broadview Network (ARC)
- CTC Communications Corporation d/b/a One Communications (CTC)

- Business Automation Technologies, Inc. - d/b/a Data Network Solutions (DNS)
- PAETEC Communications (PAETEC)

The evaluation committee, comprised of the Authority's Chief Information Officer, ITS Operations Manager and both Systems Administrators, performed a comprehensive evaluation and scoring analysis of the four (4) proposals received. Following the Evaluation Committee's review and scoring of proposals, scores were tabulated and a scoring summary was prepared on May 20. Considering price and other factors, the summary resulted in DNS scoring slightly higher than PAETEC. ARC and CTC scored significantly lower than DNS and PAETEC. It is noted that this original scoring is the only scoring that was conducted by evaluation committee members completely independently and before they gathered to work as a group.

Because of the closeness of the scores for DNS and PAETEC, I determined that the evaluation committee should perform interviews and site visits for the top two (2) proposers, as allowed by the RFQ/P. The Authority's Director – Internal Process Management (IPM) scheduled an interview and site inspection with DNS which took place on June 2. All four (4) Evaluation Committee members, along with the Director of IPM, participated in the interview and site visit together as a group. The PAETEC interview and site inspection took place on June 8, at PAETEC's data center, located in Philadelphia, PA. As with DNS, the four (4) Evaluation Committee members and Director of IPM participated in the interview and site visit together as a group.

Based on the information obtained from proposals, interviews and site visits, the evaluation committee re-scored the three (3) evaluation criteria not related to price. Fee proposals were not discussed at interviews and accordingly, no changes were made to scores relative to price. The post-interview and site inspection scoring matrix showed that, taking into account price and other factors, PAETEC scored higher than DNS.

A memo to the board recommending PAETEC as the winning bidder was prepared and presented at a special board meeting in June based on scoring by all four evaluation committee members after the interviews and site visits. The board decided to table this award due to notification issues related to 2010-RFQ/P-035 raised by DNS principal Isaac Fajerman at the June special board meeting. The Authority voted to hold in abeyance any award of contract under 2010-RFQ/P-037 to allow DNS an "exceptions" period to respond to the hearing officer's report and decision on 2010-RFQ/P-035.

During the exceptions period that was afforded to DNS, to further assure that the winning bidder is capable of providing these critical communication services, I requested that the New Jersey Office of Information Technology (OIT) provide assistance in an advisory capacity to the Evaluation Committee by completing an independent review of the proposals and the facilities and operations of the two (2) highest scoring bidders.

In September, OIT conducted its review and made its report of findings to the evaluation committee and answered any questions that the evaluation committee members had. The OIT report concluded that although PAETEC has better operations and equipment, both firms are

capable of providing the ISP and VoIP services the Authority needs. After OIT provided its report and answered questions, the evaluation committee (consisting of only two members as discussed below) again re-scored both the DNS and PAETEC proposals. The evaluation committee's decision was to recommend PAETEC.

Also in September, the Authority received notification from DNS' attorneys that DNS had conducted Open Public Records Act (OPRA) requests for certain Authority documents. The records included email correspondence between PAETEC representatives and two (2) members of the evaluation committee. DNS' attorney asserted that the emails show PAETEC had an improper influence on the preparation of the bid specification and that two (2) members of the evaluation committee have a bias towards PAETEC.

The Director of IPM (who is also the Authority's Ethics Liaison Officer) interviewed the two (2) staff members involved in the emails requested through OPRA and found that although there is an appearance of possible improper influence and an appearance of possible bias, there is no evidence of actual influence or bias. Based on these findings by the Director of IPM and after conferring with the Attorney General's Office, I concluded it is appropriate to recuse the two (2) evaluation committee members identified in the emails. I also concluded, in order to eliminate any possible influence by the two (2) recused evaluation committee members, the contract award should be based on the original round of scoring (i.e. the May 20th scoring) that was performed before the evaluation committee gathered together for interviews and site visits. The final scoring of proposals uses only scoring by the two (2) remaining members. Using this scoring method, the two top (2) bidders scored as follows:

- Business Automation Technologies, Inc. - d/b/a Data Network Solutions 4.48
- PAETEC Communications, Inc. 4.40

Accordingly, I am recommending the award of this contract to Business Automation Technologies, Inc. - d/b/a Data Network Solutions. Although the scores are close, it is noted that the OIT report confirms that both firms are capable of performing the required services. Also, DNS is the lowest priced bidder. Price is a material factor in this RFQ/P and is 65% of the total evaluation criteria. While this RFQ/P was not designated as a Set-Aside solicitation and no preferential consideration was given during the evaluation of proposals, it should be noted that DNS is registered with the New Jersey Department of Treasury - Division of Minority and Women Business Development as a Category 2 Small Business Enterprise.

This recommendation for award to DNS is not the evaluation committee's recommendation. In order to maintain the highest level of integrity around the evaluation process in light of these unusual circumstances, the final recommendation is based on the first round of scoring which is the only round of scoring where evaluation committee members worked completely independently and without possible influence by other members of the evaluation committee and the OIT report which concludes that DNS is capable of providing the VoIP services.

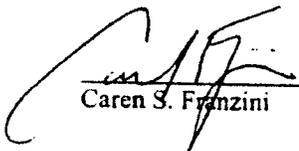
Subject to approval of this recommendation by the Members of the Authority, the Authority will enter into a contract with DNS to provide ISP/VoIP services for a term of one (1) year with an

additional four (4) one-year renewal options, to be exercised at the Authority's sole discretion, at the same terms and conditions. Pricing will remain unchanged for the first two (2) years (i.e. the initial contract term and the first extension option), should the Authority elect to exercise this extension. Pricing for the subsequent three (3) remaining extension options, if so exercised, will be exercised based on the monthly rates stated in the Firm's "Fee Schedule" (i.e. prices applicable to the first two (2) years of the contract) plus a price escalator equal to the average of the preceding six (6) months Consumer Price Index (CPI). A single contract will be entered into by the Authority for all sites. The attached "form of contract" is in substantially final form. The final document will be subject to revision, although basic terms and conditions will remain consistent with those in the attachment.

Under the contract, DNS will be paid a fixed amount for providing the Multiprotocol Label Switching circuits to our various sites, to carry both our data and voice services. The main return on investment will be realized through a reduction in the Authority's monthly telephone bills. In addition, combining the administrative costs of managing the present four (4) telephone and internet services vendors into a single monthly bill will ease the management of our voice and data services, allowing us to leverage many new cost saving technologies and adhere to our green initiatives by deploying new energy efficient hardware. The cost of the contract (estimated to be \$150,000 per year) will be paid out of the Authority's operating budget.

Recommendation:

In summary, I am requesting the Members' approval to execute a contract for ISP/VoIP services with Business Automation Technologies, Inc. - d/b/a Data Network Solutions for a term of one (1) year with an additional four (4) one-year renewal options. The final form of contract will be subject to review and approval of the Chief Executive Officer and the Attorney General's Office.


Caren S. Franzini

Attachments