STATE OF INDIANA
BEFORE THE SECURED SCHOOL
SAFETY BOARD

IN RE:	)	**CAUSE NO.**
	)	
SOUTHWESTERN	)	**DHS-1740-SSSB-003**
CONSOLIDATED SCHOOL	)	
DISTRICT	)	
	)	

NOTICE OF NON-FINAL ORDER

You are hereby notified that the attached document entitled **Findings of Fact, Conclusions of Law, and Non-Final Order** has been entered by the Administrative Law Judge in accordance with Ind. Code § 4-21.5-3-27.

The ultimate authority in this matter is the Indiana Secured School Safety Board. Ind. Code § 4-21.5-3-29(d) requires any party seeking to preserve an objection to this order for judicial review to file a written objection that:

1. identifies the basis of the objection with reasonable particularity; and
2. is filed with the Board within fifteen (15) days (or any longer period set by statute) after this order is served.

In the absence of an objection from a party or notice from the Secured School Safety Board of its intent to review any issue related to this order, the Secured School Safety Board shall affirm this order in accordance with Ind. Code § 4-21.5-3-29(c). **This order will be considered by the Secured School Safety Board at its next meeting on October 16, 2018 at 10:00 a.m. (EDT) at the Indiana Government Center South, 302 W. Washington Street, Indianapolis, IN 46204.**

Date: September 21, 2018

HON. CHELSEA E. SMITH
Administrative Law Judge
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FOR THE PETITIONER
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FOR THE RESPONDENT
Michelle Allen
Attorney
Indiana Department of Homeland Security
Indianapolis, IN

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER

The Petitioner in this matter, Southwestern Consolidated School District, appealed the decision of the Respondent, the Indiana Secured School Safety Board, denying Petitioner's application for a Fiscal Year 2018 (FY 2018) Secured School Safety Grant (SSSG). Based on the evidence presented and for the reasons set forth below, the Administrative Law Judge (ALJ) concludes that the Petitioner's application for a FY 2018 SSSG should be **APPROVED**.

PROCEDURAL BACKGROUND

On November 2, 2017, the Petitioner filed a Petition for Review of Respondent's denial of Petitioner's application for a FY 2018 SSSG. The Indiana Department of Homeland Security (IDHS) granted the Petition for Review as timely on behalf of the Respondent on November 8, 2017. The undersigned ALJ was appointed to adjudicate the appeal.

An initial prehearing conference was held in this matter on December 6, 2017. Dr. Paula Maurer appeared on behalf of the Petitioner and Michelle Allen appeared on behalf of the Respondent. The parties advised at that time that they wished to pursue informal resolution. A status conference was held on February 14, 2018, with Interim ALJ, Hon. Stephanie J. Mullaney, presiding. At that time, the parties discussed their efforts towards informal resolution, including a "re-score" of Petitioner's application by the Respondent. The parties discussed deadlines for additional deliverables for potential informal resolution. ALJ Mullaney also held status

conferences on March 16th, March 21st, and April 16th. During the April 16th status conference, the parties advised that informal resolution would not be possible and agreed to file a joint stipulation of evidence on May 7, 2018. The parties met for another status conference on May 9, 2018, over which the undersigned ALJ presided. During the status conference, the Petitioner requested that the evidence and arguments in this case be submitted through written briefs and documentary evidence and the ALJ approved of the requested form of proceeding. The ALJ then issued a briefing schedule, which stated that Petitioner's brief would be due on June 8, 2018. Petitioner timely filed its brief on June 8, 2018. Respondent timely filed its brief on July 9, 2018.

BURDEN AND STANDARDS OF PROOF

Ind. Code § 4-21.5-3-14(c) provides that at each stage of an administrative review, "the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense." That burden rests upon the agency when the agency is, in essence, prosecuting a petitioner for a regulatory violation. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751, 754 (Ind. Ct. App. 1991). However, when the petitioner is seeking an agency action or claims entitlement to an exemption from regulatory requirements, the burden rests upon the petitioner. See Ind. Dep't of Natural Res. v. Krantz Bros. Constr. Corp., 581 N.E.2d 935, 938 (Ind. Ct. App. 1991). In this appeal, the Petitioner is asking the Respondent to approve its application and award it a FY 2018 SSSG; therefore, it is asking the Respondent to take action. Accordingly, the Petitioner bears the burdens of proof and production. Id; see also Ind. Code § 4-21.5-3-14(c).

Proceedings held before an ALJ are *de novo*, per Ind. Code § 4-21.5-3-14(d), which means the ALJ does not—and may not—defer to an agency's initial determination. Ind. Dep't of Natural Res. v. United Refuse Co., Inc., 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as fact-finder, the ALJ must independently weigh the evidence in the record and matters officially noticed, and may base its findings and conclusions only upon that record. Id.; see also Ind. Code § 4-21.5-3-27(d). At a minimum, the ALJ's findings "must be based upon the kind of evidence that is substantial and reliable." Ind. Code § 4-21.5-3-27(d). "[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision." St. Charles Tower, Inc. v. Bd. of Zoning Appeals, 873 N.E.2d 598, 601 (Ind. 2007). It is "something more than a scintilla, but something less than a preponderance of the evidence." State ex rel. Dep't of

Natural Res. v. Lehman, 177 Ind. App. 112, 119, 378 N.E.2d 31, 36 (1978) (internal footnotes omitted). Therefore, in order to succeed in this appeal, the Petitioner must demonstrate, by presenting substantial and reliable evidence, that it is entitled to approval of its FY 2018 SSSG application.

FINDINGS OF FACT

Present in the record of proceedings are the orders and notices issued by the ALJ in this matter. The parties also submitted as stipulated exhibits the FY 2018 SSSG Notice of Funding Opportunity, Petitioner's FY 2018 SSSG Application, Budget #13499 relating to Petitioner's Application, raw scores assigned to Petitioner's Application, average scores and final score sheet, Denial Letter, the Petition for Review, Public and Private School Funding Spreadsheet, Board meeting minutes from September 11, 2017, Board meeting minutes from October 26, 2017, Board meeting minutes from January 9, 2018, Board meeting minutes from February 14, 2018, Petitioner's FY 2017 SSSG Application, Petitioner's FY 2017 Contract for Receipt of Grant Funds, Petitioner's FY 2016 SSSG Application, Petitioner's FY 2016 Budget, an email from Michelle Allen to Paula Maurer regarding FY 2018 scoring and documentation, the affidavit of Dennis Leonardo, and a modified Public and Private School Funding Spreadsheet.[1]

Petitioner also submitted as evidence emails regarding its FY 2018 SSSG Intent to Apply, the email with its FY 2018 SSSG Application, an email regarding the Explanation of Excluded Grant Scores, emails to and from Tayler Workman, and the Indiana School Safety Guidelines for Emergency Response Systems.[2] The Respondent also submitted as evidence the affidavit of Kimberly Snyder.[3] Based solely on that evidentiary record and any additional items specifically noted below, the ALJ hereby issues the following findings of fact:

1. The Secured School Grant Fund (the Fund) was established in 2013 by Senate Enrolled Act 1-2013 for the purpose of improving safety in Indiana schools. (Stip. Ex. 1 at 1.)
2. The Fund provides matching grants to Indiana schools to establish programs under which the school may employ a school resource officer (SRO), conduct

[1] These Exhibits are marked and admitted as Stipulated Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, respectively.
[2] These exhibits are marked and—in the absence of any objections—admitted as Petitioner's Exhibits 20, 21, 22, 23, and 24, respectively.
[3] This exhibit is marked and—in the absence of any objections—admitted as Respondent's Exhibit 20 (also referred to in Respondent's Brief as "Exhibit A").

a threat assessment, or purchase equipment to restrict access to school property or expedite notification of first responders, per Ind. Code § 10-21-1-2(a). (Stip. Ex. 1 at 1.)

3. The Respondent, Secured School Safety Board, was established to approve or disapprove SSSG applications, per Ind. Code § 10-21-1-3(a).

4. The Fund is administered by the IDHS, per Ind. Code § 10-21-1-2(b).

SSSG Application and Scoring Process

5. As part of its administration of the Fund, IDHS created the Notice of Funding Opportunity (NOFO) for the FY 2018 Secured School Safety Grant Program, which details the application procedures and criteria for FY 2018 SSSG applications. (Resp. Br. at 2, Stip. Ex. 1.)

6. Per Section III of the NOFO, in order to be eligible to receive a SSSG, an applicant must: (1) be a school corporation, accredited non-public school, charter school, or coalition of schools; (2) be located in a county that has a County School Safety Commission; (3) apply for funds up to $50,000 if average daily membership (ADM) is 1,000 or more, or up to $35,000 if ADM is less than 1,000; (4) commit to providing a 50% match of any funds awarded; (5) provide a plan for sustaining its school safety program in the event that state funding is no longer available; and (6) register as a bidder with the State of Indiana through the Indiana Department of Administration website in order to complete the electronic signature of the grant agreement. (Stip. Ex. 1 at 1-2.)

7. Section IV of the NOFO required applicants to submit a Letter of Intent by July 7, 2017 via email, and Proposals/Budgets (applications) by August 9, 2017 via iGMS. (Stip. Ex. 1 at 3.)

8. Section V of the NOFO explains what information applicants were required to provide in their applications. These items are discussed in further detail in Appendix C (Sample Proposal). (Stip. Ex. 1 at 3.)

9. Section VI of the NOFO explains the funding guidelines pertaining to each category for which applicants could apply: School Resource Officer, Equipment, or a Threat Assessment. This section also notes that the following costs are "unallowable": (1) costs related to construction; (2) personnel expenses for any other school staff; and (3) any staff training beyond the 40 hour SRO certification course. (Stip. Ex. 1 at 5.)

10. After the IDHS received all of the SSSG applications, a Sub-recipient Proposal Scoring Committee conducted an initial screening of the applications to check for completeness. Then the Committee reviewed and scored each application using the score sheet that is included with the NOFO in Appendix B. (Resp. Br. at 2, Resp. Ex. 20, Stip. Ex. 1 at 5.)

11. The IDHS then averaged the scores to achieve a "final score." (Resp. Ex. 20 at 2.)

12. The applicant's final score was based on the strength of its application and IDHS used these scores to rank the applicants in order to allocate the grant

funds, with the highest final scores representing the strongest applications. (Resp. Ex. 20.)

13. The IDHS then temporarily allocated the funding, starting with the highest final score and all of the available funds, and then moving down the list of applications until all of the funds were allocated. The score at which all the funds are temporarily allocated (where the funds run out) is the "threshold score." (Resp. Ex. 20 at 2.)

14. Initially, IDHS determined that it would recommend denial of applicants scoring below the threshold score and approval of those who scored above the threshold. (Resp. Ex. 20 at 3.)

15. After IDHS initially determined which applicants it believed should be recommended for approval based on the threshold score, those applications were reviewed a second time by the IDHS grants staff. Based on that review, IDHS determined which applications it would ultimately recommend to the Respondent for approval and which it would recommend for denial. (Resp. Ex. 20 at 3.)

16. The IDHS's recommendations to the Respondent regarding whether to approve or deny applications for funding are not final decisions, but serve as guidance for the Respondent in making its final decisions. (Resp. Ex. 20 at 3.)

17. The IDHS presented its recommendations to the Respondent during its September 11, 2017 meeting, and the Respondent then voted on whether to approve or deny the applications. (Stip. Ex. 9.)

18. The Respondent did not review the reasoning behind each individual recommendation for denial. The IDHS did, however, provide a general explanation regarding the most common reasons for its recommendations for denial. (Stip. Ex. 9.)

19. During the meeting, Respondent entertained a motion to "deny all schools recommended for denial that were requesting equipment or new SRO programs . . ." The motion was seconded and carried. (Stip. Ex. 9.)

20. To assist with the administration of the Fund, the IDHS utilized an excel spreadsheet (the spreadsheet) to compile and review SSSG application data pulled from iGMS. (Stip. Ex. 8, 18, and 19.)

21. The spreadsheet contains data regarding each applicant's final score, the amount of funds requested and intended use, the status of the application (approved, initial, or submitted), and application submission dates, among other things. (Stip. Ex. 8, 18, and 19.)

22. The status of "initial" means that no action was taken on the application or it was denied. (Stip. Ex. 18.)

Petitioner's FY 2018 SSSG Application

23. Petitioner is a public school corporation; is located in Shelby County, which has a County School Safety Commission; Petitioner has an ADM of

approximately 600 and applied for $35,000 in FY 2018 SSSG funds; Petitioner included in its budget the $35,000 for equipment it was requesting, and the $35,000 it would put towards equipment to match the award; and Petitioner stated in its application that, because it has purchased permanent security infrastructure with SSSG funds, it should not be difficult for it to sustain its school safety plan in the event state funding is not available. (Stip. Ex. 2.)

24. Petitioner timely submitted its Letter of Intent to IDHS via email and its application (Proposal and Budget) via IDHS iGMS as required by the NOFO. (Pet. Br. at 2, Pet. Ex. 20, Stip. Ex. 8.)

25. Petitioner stated in its application under the "Project Summary" section that it was working to develop each classroom into a safe room with "hardened doors and ballistic rated window [*sic*] where staff can communicate their safety status to law enforcement by use of a call station." This section further states that the Petitioner is continuing to secure its entrances with bollards outside of the doors and ballistic rated glass in the doors and windows. Petitioner has already installed similar equipment in the Petitioner's high school using previous years' SSSG funds. Petitioner intends to install this equipment in its elementary school to match the security system in the high school as part of an ongoing project. (Stip. Ex. 2 at 2-3.)

26. Petitioner's application received a final score of 83 and its status was listed as "initial" in the spreadsheet. (Stip. Ex. 8 and 19.)

27. On September 26, 2017, Respondent sent a letter to the Petitioner advising that its application was denied; no reason was initially provided. (Stip. Ex. 6.)

28. IDHS later advised the Petitioner that it recommended its application for denial, despite its application scoring above the threshold, because it "demonstrated little to no need for grant funding." (Stip. Ex. 17.)

29. Under Section III, Part D. "Challenges/Risks," Petitioner's application states "Our biggest challenge continues to be funding to complete the system at the elementary." Furthermore, under the same section in Part E. "Continuation," Petitioner's application states that it has used all of its grant money every year it has received the grant for this "extensive security project." (Stip. Ex. 2 at 4.)

30. On October 27, 2017, Hannah Cowles sent an email to Dr. Maurer advising her that the Petitioner could seek administrative review of the Respondent's decision to deny Petitioner's application. (Pet. Ex. 21.)

31. On November 1, 2017, Petitioner filed a Petition for Review of Respondent's decision to disapprove its application for a FY 2018 SSSG. (Stip. Ex. 7.)

32. During the process of seeking informal resolution, the IDHS re-scored Petitioner's SSSG application. Petitioner's application received a score of 87.67; however the IDHS again recommended that the Respondent deny Petitioner's application. In this instance, that recommendation was based on IDHS's belief that the equipment Petitioner sought to purchase with the funds was "unallowable." (Stip. Ex. 17.)

FY 2018 SSSG Application Review and Recommendations

33. For FY 2018, IDHS received $9 million from an appropriation to the Fund. Of that $9 million, $1 million was allocated to the Indiana Department of Education by statute, and $500,000 was required to fund private or charter schools, so $7.5 million was available for funding awards under the SSSG program to public schools. (Resp. Ex. 20 at 1.)

34. There were 247 applications submitted for the FY 2018 SSSG. Out of those applications, IDHS recommended 217 applications to the Respondent for funding and recommended 30 for denial. (Resp. Ex. 20 at 3.)

35. Respondent voted to approve the applications IDHS recommended for approval and voted to deny the applications IDHS recommended for denial. (Stip. Ex. 9, 10, and 11.)

36. Petitioner's application was one of the 30 IDHS recommended for denial. (Resp. Ex. 20 at 4.)

37. The spreadsheet shows IDHS recommended 115 applicants that requested funding for equipment, in whole or in part, to be approved for funding. (Stip. Ex. 8 and 19.)

38. The threshold score established for FY 18 SSSG was a final score of 75. (Resp. Ex. 20.)

39. Of the 115 applicants recommended to be approved for funding for equipment, 34 applicants had a final score below Petitioner's score of 83, and 4 of those applicants had a final score *below* the threshold score of 75. (Stip. Ex. 8 and 19.)

40. Of the 155 applicants recommended to be approved for funding for equipment, 30 of those applicants sought to use the grant funds to purchase equipment relating to securing interior and exterior windows and doors, such as window and door safety film, locks, new doors, window coverings, and ballistic glass. (Stip. Ex. 8 and 19.)

41. Overall, 68 applicants that IDHS recommended for funding received a lower final score than Petitioner and 18 of those applicants scored *below* the threshold score of 75.[4] (Stip. Ex. 8 and 19.)

SSSG Funding for Equipment

42. With respect to applications requesting funding for equipment, the NOFO states that equipment must be used "in the advancement of safety within the school," that it must "restrict access or expedite the notification of first responders," that it cannot impede exit from a space and must not require the use of a key or special knowledge to exit, that an inventory of the equipment purchased with

[4] The statistics referenced in Findings of Fact # 34-41 are based on the information in the spreadsheet (Stipulated Exhibits 8 and 19) and utilize Petitioner's initial final score of 83. This does not take into account the second round of scoring where Petitioner received a final score of 87.67 (Stip. Ex. 17).

grant funds must be kept, and "all equipment must be properly used and maintained." (Stip. Ex. 1.)

43. Petitioner began its current project starting at the junior/senior high school in the fall of 2013, which included the installation of the same or similar equipment it is now seeking funding to continue installing in its elementary school. (Stip. Ex. 2, 13, 15, and 16.)

44. Petitioner stated in its application that, as part of its overall project, its goal is to develop each elementary school classroom into its own safe room with hardened doors and ballistic rated windows. (Stip. Ex. 2 at 7.)

45. Petitioner identified the need for hardened doors and ballistic glass in each of its classrooms through a security analysis of Petitioner's buildings, which was conducted by a local sheriff in May 2013. In response to that analysis and recommendations from the U.S. Department of Homeland Security, Petitioner partnered with the Indiana Sheriff's Association and NetTalon to install a security system in its buildings. (Stip. Ex. 2 at 3.)

46. The full security system, which is described in Section III of Petitioner's application, is substantially complete in the high school, but is not yet complete in the elementary school. (Stip. Ex. 2 at 3.)

47. Petitioner began requesting funds to install the ballistic rated doors and windows in its elementary school in FY 2016 and made a similar request in apparent continuation of the project in FY 2017, and again in FY 2018. (Stip. Ex. 2, 13, 15, and 16.)

48. Petitioner was awarded the SSSG in FY 2017 and FY 2016. (Stip. Ex. 13, 15, and 16.)

49. In July 2017, the IDHS issued Indiana School Safety Guidelines for Emergency Response Systems (Guidelines), in accordance with Ind. Code § 10-21-1.5-4. (Pet. Ex. 24.)

50. These Guidelines establish minimum standards and approve best practices for a school emergency response system, which was created through collaboration between the IDHS and other "school safety subject matter experts throughout Indiana." (Pet. Ex. 24 at 1.)

CONCLUSIONS OF LAW

Applying the law set forth in this decision to the factual findings supported by the evidence, the ALJ hereby reaches the following conclusions of law with respect to the issues presented:

1. The Respondent is the ultimate authority in this case.

"Ultimate authority" means an individual or panel of individuals in whom final authority of an agency is vested by law or executive order. Ind. Code § 4-21.5-1-15. The Respondent, Secured School Safety Board, is created by statute and is empowered to approve or disapprove applications for matching grants to fund

programs, as described in Ind. Code § 10-21-1-2(a). As the "panel of individuals" in whom final authority is vested with respect to the approval or disapproval of SSSG applications, the Respondent is the ultimate authority in this matter.

2. **The IDHS is responsible for administering the Fund.**

Per Ind. Code § 10-21-1-2(b), the IDHS shall administer the Fund. The IDHS fulfills this responsibility by providing application information, receiving, reviewing, and scoring the applications, and making recommendations to the Respondent based on its review of the applications and scoring, in accordance with the established SSSG criteria, per Ind. Code § 10-21-1-3(c). The Respondent considers the IDHS's recommendations, but makes the final decision as the ultimate authority for SSSG applications.

3. **Petitioner is entitled to approval of its FY 2018 SSSG application.**

In order to demonstrate that it is entitled to approval of its application for a FY 2018 SSSG, Petitioner must present substantial and reliable evidence that it met all of the eligibility requirements, deadlines, and funding guidelines set out in the NOFO and Ind. Code § 10-21. In addition, it must also show that its application complied with the proposal instructions in the NOFO and Ind. Code § 10-21-1-5, and that its final score was above the established threshold score for funding. The Petitioner has presented such evidence.

A. <u>Petitioner met all of the requirements set out in the NOFO.</u>

As part of its administration of the Fund, the IDHS issued a NOFO, which provided prospective applicants with an overview of the Fund, award information, eligibility requirements, deadlines, specific instructions for submitting the proposal (application), funding guidelines, contract and application requirements, and details regarding the selection process, award notification, reporting, monitoring, and contact information for the IDHS grants staff.

The NOFO also contained a copy of the score sheet that IDHS utilized for scoring the grants and ultimately providing recommendations to the Respondent, which was included as Appendix B. Furthermore, Appendix C discusses each section of the scoresheet in detail to show what a complete application should contain.

The Petitioner accurately argues in its brief that it met all of the grant requirements stated in the NOFO, including eligibility requirements, deadlines, proposal instructions, and funding guidelines.

B. <u>The final score of Petitioner's application exceeded the threshold score.</u>

Section V of the NOFO and Ind. Code § 10-21-1-5 explain what information must be included in a SSSG application. Upon reviewing the application

(Stipulated Exhibit 2) it is clear that the Petitioner provided the required information in each section, as reflected in Stipulated Exhibit 5, which contains Petitioner's average scores for each section of the application, and its final score of 83.

Not only did Petitioner's application receive a final score of 83 in the initial scoring of the application, but, as part of this appeal, the application was scored a second time. During the second round of scoring, Petitioner's application received a final score of 87.67. (Stip. Ex. 17.)

In its brief, Respondent argues that the scores Petitioner received are irrelevant to this appeal because this review is *de novo*, per Ind. Code § 4-21.5-3-14(d), and therefore the ALJ "should not rely on the scores Petitioner received but the award criteria (statutes and FY18 NOFO) and information provided in Petitioner's application as well as other reliable and relevant evidence presented . . ." (Resp. Br. at 4.)

The Indiana Supreme Court provides guidance regarding the nature of a *de novo* review as it applies in administrative appeals in *Indiana Department of Natural Resources v. United Refuse Co.*, where it states that "Ind. Code § 4-21.5-3-27 requires the ALJ to make findings of fact based on the evidence presented at the hearing. This requires the ALJ to independently weigh the evidence presented at the hearing and to base recommendations exclusively on that record." 615 N.E.2d at 104.

In this appeal, the record reflects that Petitioner achieved scores of 83 and 87.67. The record also reflects that the scoring of SSSG applications is an important step in IDHS's process of reviewing applications prior to making a recommendation to the Respondent. The Respondent seems to be arguing that the ALJ should essentially rescore the application; however, it is not the ALJ's role to create new facts. It is the ALJ's role to evaluate the evidence that is already in the record, and only that evidence.

With respect to *de novo* review, it *would* be improper for the ALJ to evaluate whether the Respondent's initial determination was reasonable or proper. However, it *is not* improper for the ALJ to apply the relevant law, rules, and procedures (i.e. statutes and FY 18 NOFO) to the facts that are in the record. In fact, that is exactly what the ALJ is charged with doing, per Ind. Code §§ 4-21.5-3-14 and -27.

Turning back to Petitioner's final scores, based on the scoring process, whereby the IDHS assigned final scores of 83 and, upon a second round of scoring, 87.67, to Petitioner's application, Petitioner's application was placed in an initial status of being recommended for approval pending further review. However, IDHS stated that after a second review, it decided to recommend Petitioner's application for denial. This happened during both "rounds" of scoring, but different reasons were given each time.

The first time, which was the initial review, the IDHS recommended denial because "the applicant demonstrated little to no need for grant funding." For the second round of scoring, which occurred as a result of this appeal, the IDHS again recommended denial, but this time it was because the items for which Petitioner requested funding "appeared to be unallowable." (Stip. Ex. 17.)

First, under Section III, Part D. "Challenges/Risks," Petitioner's application states "Our biggest challenge continues to be funding to complete the system at the elementary." Furthermore, under the same section in Part E "Continuation," Petitioner states that it has used all of its grant money every year it has received the grant for this "extensive security project." (Stip. Ex. 2 at 4.) It is unclear how Petitioner could have better communicated that it has a need for this grant money. It has been working on this project since 2013, and appears to have been working on it in phases based on when it receives SSSG funds.

Second, with respect to IDHS's statement that it recommended Petitioner's application for denial the second time because the items it sought to purchase with the funds appeared to be "unallowable," there is no evidence or explanation as to *why* the items are unallowable or what that even means in this context. It appears the IDHS believed this was an improper use Petitioner's application indicates, and the spreadsheet reflects, that it sought the SSSG funds to purchase "hardened doors and ballistic glass" so that it could make each classroom into its own safe room. This use complies with the funding guidelines in the NOFO and Ind. Code §§ 10-21-1-2 and -4, so it is unclear how or why purchasing these items would appear to be an improper use of SSSG funds.

In its brief, Respondent argues that the Petitioner failed to provide a concise description of its security needs in its application. It states that Petitioner does not explain the need or purpose for hardened doors and ballistic rated windows in Section III, Part A. "Project Summary." However, Petitioner states in this paragraph that "Each classroom would be developed into its own safe room with hardened doors and ballistic rated window [*sic*] where staff can communicate their safety status by use of a call station." (Stip. Ex. 2 at 2.) The Petitioner's application reiterates at multiple points that the purpose of the equipment is to secure classrooms. In fact, it makes this point no less than four (4) times in sections II and III alone. (Stip. Ex. 2 at 2 and 3.)

The application also indicates in Section III, Part B. "Needs Assessment," that a security analysis of Petitioner's buildings was conducted by a local sheriff in May 2013 and, in response to that analysis and recommendations from the U.S. Department of Homeland Security, Petitioner partnered with

the Indiana Sheriff's Association and NetTalon to install a security system in its buildings. (Stip. Ex. 2 at 3.) The application further indicates that hardened doors and ballistic glass are part of the security system, which has already been installed in Petitioner's high school, but is still incomplete at the elementary school.

The Respondent also argues that Petitioner does not explain the need for the doors or where Petitioner intends to install the doors. While it is well taken that Petitioner could have provided more detail, such as how many doors and/or windows/glass it intended to purchase and a more detailed description of where the doors and/or windows/glass would be placed, it stated in several places throughout its application that the doors would be installed in the elementary school classrooms, as the high school/jr. high phase of the project is substantially complete. (Stip. Ex. 2.)

With respect to both of Respondent's arguments regarding specific sections of the application, it is worth noting that the SSSG applications are scored and ranked presumably because there is no expectation that all, or even most, applicants will answer each section of the application perfectly. If this was the expectation, IDHS would likely not be recommending many applications for approval. Based on the information in the spreadsheet, there was not a single applicant the achieved a perfect final score; in other words, every SSSG application was deficient in some way. While the Petitioner's answers for these sections were not perfect, Petitioner still provided the required information – it did not score a zero in any category, as is shown in Stipulated Exhibits 4 and 5. Most importantly, Petitioner *met* all of the grant application requirements and, on both rounds of scoring received final scores that are well above the threshold score of 75.

C. Petitioner's intended use of the funds was proper.

Pursuant to Ind. Code §§ 10-21-1-2 and -4, the Respondent may award a matching grant from the Fund to enable a school to purchase equipment to restrict access to school property.

School property is defined as any property owned, rented, leased, or operated by a nonpublic school, public school, or an approved post-secondary educational institution, per Ind. Code § 10-21-1.5-3. Classrooms are considered school property pursuant to this definition.

Petitioner stated throughout its application that it was seeking to purchase and install hardened doors and ballistic glass with the 2018 SSSG funds. The Petitioner's application states that the hardened doors and ballistic glass are intended to help secure classrooms, which would each serve as a "safe room." (Stip. Ex. 2 at 2.)

This type of protected space is discussed in the Indiana School Safety Guidelines for Emergency Response Systems and is characterized as a

"location to which occupants can retreat, that provides enhanced levels of protection from an attack when evacuation is not prudent." This type of space would be protected by "hardened doors that prevent breaching by persons or projectiles, treated glass with ballistic laminate or ballistic glass." (Pet. Ex. 24 at 7.)

Based on the definition of a "protected space," as provided in the Guidelines, the purpose of hardened doors and ballistic glass is to keep an unwanted intruder from entering a classroom and to also provide protection from projectiles.

Furthermore, under the "Life Safety Considerations" section, the Guidelines list questions schools should consider when reviewing their school safety posture. These questions include the following: "Can your classroom doors effectively keep out unwanted visitors?" (Pet. Ex. 24 at 4.)

Under a subsection titled "Protection of the Classroom Door and Window Vision," the Guidelines state as follows: "At a minimal level, the door must be resistant to breach for 1-2 minutes. Ultimately, a hardened door should be considered to where any breach attempt can only occur with great difficult [*sic*] over an extended period of time." (Pet. Ex. 24 at 16.)

The NOFO lists certain costs as being unallowable; however, hardened doors and ballistic glass are not included in that list. Furthermore, IDHS recommended the approval of several applications that sought funding for similar items, such as "door replacement," "impact-sustaining window film," "electronic locks," "ballistic film and secure windows and doors," "Ascott Window Tinting," "Protective 8m/ 3M Armourcoat window covering," "shatterproof window film," and "classroom door locks." (Stip. Ex. 19.) The Respondent has yet to articulate a valid reason why the items Petitioner sought to purchase with FY 2018 SSSG funds are unallowable. Based on Ind. Code § 10-21, the NOFO, Petitioner's 2016 and 2017 SSSG applications, the Guidelines, and the spreadsheet, it appears that the purchase of hardened doors and ballistic windows is a proper use of SSSG funds, as they are clearly equipment that restricts access to school property.

4. Respondent's approval or disapproval of SSSG applications must comply with Ind. Code § 10-21.

Respondent argues that it "has discretionary authority to award or deny applications requesting use of the Fund," per Ind. Code §§ 10-21-1-3 and 4(a). (Resp. Br. at 3.) In essence, Respondent is arguing that, even if Petitioner's application meets all of the requirements, it can still be denied. While it is true that the Respondent has discretion in its decision to approve or deny SSSG applications, that discretion is not unlimited; the decision must comply with Ind. Code § 10-21.

Ind. Code § 10-21-3 states that the "board is established to approve or disapprove applications for matching grants to fund programs described in section 2(a) of this chapter," and section 4(a) states as follows:

> The board *may* award a matching grant to enable a school corporation or charter school (or a coalition of schools applying jointly) to establish a program to employ a school resource officer, provide school resource officer training described in IC 20-26-18.2-1(b)(2), conduct a threat assessment, or purchase equipment to restrict access to the school or expedite the notification of first responders in accordance with section 2(a) of this chapter.

Ind. Code § 10-21-1-4(a) (emphasis added). The use of the word "may" empowers the Respondent to award these types of grants. It does not, however, provide the Respondent unlimited discretion in how the grant applications are evaluated and ultimately approved or disapproved. If that was the intention of the legislature in drafting this statute, the Respondent would also have the discretion to approve applications seeking to use the funds for any purpose it sees fit. As Ind. Code § 10-21-1-2(a) provides that the Fund "may" be used to employ an SRO, conduct a threat assessment, or purchase equipment to restrict access to school property or expedite notification to first responders. It does not appear that the Respondent has interpreted section 2(a) to allow for any use of the funds, so it is unclear why it would interpret section 4(a) to grant complete discretion in how it approves or disapproves awards from the Fund.

As stated above, Ind. Code § 10-21-1-3(a) establishes the Respondent board and its primary purpose (approve or disapprove SSSG applications), Section 3(b) discusses the specific makeup of the board, and Section 3(c) states that "The board *shall* establish criteria to be used in evaluating applications for matching grants from the fund." Ind. Code § 10-21-1-3(c) (emphasis added). It goes on to state that the criteria must be consistent with the Fund's goals and provide for an equitable distribution of grants to school corporations and charter school located throughout Indiana. In other words, the Respondent is empowered to approve or disapprove of SSSG applications, but the approval or disapproval must be based on criteria that is consistent with the Fund's goals and provides for equitable distribution of grants from the Fund, per Ind. Code § 10-21-1-3(c).

Therefore, Respondent correctly argues that it has discretion to approve or disapprove SSSG applications; however, the use of "may" in Section 4(a) does not give Respondent free reign to deny an applicant for any reason. The distribution must be equitable and the best way to ensure that it is equitable is to utilize the same process and criteria for all applicants. Furthermore, from a policy perspective, applicants should be able to rely on the established process being followed. In this case, that would mean applicants who meet the eligibility criteria and the submission deadlines, follow the proposal instructions, comply with the funding guidelines, and all of the other requirements in the NOFO, and receive a final score that is above the threshold,

should be approved. Petitioner has demonstrated in this appeal that it did exactly that; therefore, Petitioner's FY 2018 SSSG application should be approved.

DECISION AND NON-FINAL ORDER

The Petitioner demonstrated by substantial and reliable evidence that it met all of the requirements set out in the NOFO and Ind. Code § 10-21, its application exceeded the threshold score, and its intended use of the funds is proper. Therefore, the ALJ finds that the Petitioner is entitled to approval of its FY 2018 SSSG application for the full amount requested of $35,000.00.

The Indiana Secured School Safety Board is the ultimate authority in this matter. It will consider this non-final order in accordance with the provisions of Indiana Code §§ 4-21.5-3-7 thru -29 and the Notice of Non-Final Order also issued today.

Date: September 21, 2018

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A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

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