

## **General Requirements for Federally-funded Construction Projects**

As a pass-through entity for Federal Education funds, the New Hampshire Department of Education (NHDOE) has prepared this **General Requirements for Federally-funded Construction Projects Information Sheet** to assist Federal program subrecipients (grantees) in the development, bidding and management of proposed construction activities when using Federal funds. This information is being provided by the NHDOE as general compliance guidance only. Subrecipients of Federal funds should refer to the full text of the regulations cited below when planning and completing any construction project that includes Federal grant funds.

The information contained herein is purposefully general in its presentation and may not be all inclusive. Please contact your NHDOE Federal Program Administrator for specific details relative to their oversight and management of construction related Federal grant award activities.

### **Requirements Prior to Bidding the Work**

#### **34 CFR 75.601 Applicant's assessment of environmental impact.**

A grantee shall include with its application to the NHDOE its assessment of the impact of the proposed construction on the quality of the environment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 and Executive Order 11514 (34 FR 4247).

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

#### **34 CFR 75.602 Preservation of historic sites must be described in the application.**

(a) A grantee shall describe in its application to the NHDOE the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is: (1) Included in the National Register of Historic Places; or (2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places. (b) In deciding whether to make a grant, the Secretary considers: (1) The information provided by the applicant under paragraph Requirements for Completion of the Work (a) of this section; and (2) Any comments by the Advisory Council on Historic Preservation.

*CROSS REFERENCE: See 36 CFR part 800, which provides for comments from the Council. (Authority: 20 U.S.C. 1221e-3 and 3474)*

### **34 CFR 75.616 Energy conservation.**

(a) To the extent feasible, a grantee shall design and construct facilities to maximize the efficient use of energy.

(b) The following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) are incorporated by reference in this section:

(1) ASHRAE-90 A-1980 (Sections 1-9).

(2) ASHRAE-90 B-1975 (Sections 10-11).

(3) ASHRAE-90 C-1977 (Section 12).

Incorporation by reference of these provisions has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552 (a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Grants and Contracts Service, rm. 3636 ROB-3, 400 Maryland Avenue, SW., Washington, DC 20202-4700 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_location\\_s.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_location_s.html). These standards may be obtained from the publication sales department at the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, Georgia 30329.

(c) A grantee shall comply with ASHRAE standards listed in paragraph (b) of this section in designing and constructing facilities built with project funds.

*(Authority: 20 U.S.C. 1221e-3 and 3474, 42 U.S.C. 8373(b), and E.O. 12185) [57 FR 30339, July 8, 1992, as amended at 69 FR 18803, Apr. 9, 2004]*

### **2 CFR 200.326 Bonding requirements.**

For construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **34 CFR 75.603 Grantee's title to site.**

A grantee must have or obtain a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

#### **34 CFR 75.607 General considerations in designing facilities and carrying out construction.**

(a) A grantee shall insure that the construction is: (1) Functional; (2) Economical; and (3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee shall, in developing plans for the facilities, consider excellence of architecture and design and inclusion of works of art. The applicant may not spend more than one percent of the cost of the project on inclusion of works of art.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

#### **34 CFR 75.608 Areas in the facilities for cultural activities.**

A grantee may make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities that are adaptable for artistic and other cultural activities.

*(Authority: 20 U.S.C. 1221e-3 and 3474) [57 FR 30339, July 8, 1992]*

#### **34 CFR 75.604 Availability of cost-sharing funds.**

A grantee shall ensure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

#### **34 CFR 75.609 Comply with safety and health standards.**

In planning for and designing facilities, a grantee shall observe:

(a) The standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See 36 CFR part 1910); and

(b) State and local codes, to the extent that they are more stringent.

(Authority: 20 U.S.C. 1221e-3 and 3474)

### **34 CFR 75.610 Access by the handicapped.**

A grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are:

(a) For non-residential facilities - 41 CFR subpart 101-19.6.

(Authority: 20 U.S.C. 1221e-3 and 3474)

### **34 CFR 75.611 Avoidance of flood hazards.**

In planning the construction, a grantee shall, in accordance with the provisions of Executive Order 11988 of February 10, 1978 (43 FR 6030) and rules and regulations that may be issued by the Secretary to carry out those provisions:

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with the construction.

(Authority: 20 U.S.C. 1221e-3 and 3474)

### **Flood Disaster Protection Act of 1972**

A grantee shall comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

### **General Environmental Standards**

Comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

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### **Wild and Scenic Rivers Act of 1968**

The grantee shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

### **Section 504 of the Rehabilitation Act of 1973**

The grantee shall comply with the requirement that any facilities constructed under this program will be consistent with overall State construction plans and standards and with the requirements of Section 504 of the Rehabilitation Act of 1973 in order to ensure that the facilities are accessible to and usable by individuals with disabilities.

### **Section Department of Education Rule - Ed 321.13 - Fire Safety Requirements**

(a) All construction of school facilities shall meet the requirements of the state fire code under Saf-C 6000 (now Saf-Fmo 300). The drawings and specifications of public school construction shall be evaluated by the state fire marshal according to the state fire code. Pursuant to RSA 153, the state fire marshal shall judge the drawings and specifications according to other related parts and standards of the Life Safety Code under NFPA Doc. No. 101, and the state building code under RSA 155-A.

(b) The certificate of substantial completion shall not be issued to the construction contractor prior to receipt of a letter of approval of the design from the state fire marshal.

(c) Variances for the provisions of Ed 321.13 may be granted by the state fire marshal in accordance with the provisions of Saf-C 6005.

*N.H. Code Admin. R. Ed 321.13*

*#8265, eff 1-22-05; ss by #10363, eff 6-15-13*

### **34 CFR 75.613 Relocation assistance by the grantee.**

A grantee is subject to the regulations on relocation assistance and real property acquisition in 34 CFR part 15.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

### **34 CFR 75.605 Beginning the construction.**

(a) A grantee shall begin work on construction within a reasonable time after the grant for the construction is made. (b) Before construction is advertised or placed on the market

for bidding, the grantee shall get approval by the NHDOE of the final working drawings and specifications.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

## **Requirements During the Work**

### **Federal Prevailing Wage Requirements (Davis-Bacon and Related Acts)**

The grantee shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally-assisted construction sub-agreements.

### **Lead-Based Paint Poisoning Prevention Act**

The grantee shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

### **34 CFR 75.612 Supervision and inspection by the grantee.**

A grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

## **Requirements for Completing the Work**

### **34 CFR 75.615 Operation and maintenance by the grantee.**

A grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

### **34 CFR 75.614 Grantee must have operational funds.**

A grantee shall insure that, when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

### **34 CFR 75.606 Completing the construction.**

- (a) A grantee shall complete its construction within a reasonable time.
- (b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.

*(Authority: 20 U.S.C. 1221e-3 and 3474)*

### **Federal Compliance Monitoring**

As part of the NHDOE's annual Federal Compliance Monitoring program, staff from the NHDOE's Bureau of Federal Compliance will review whether subrecipients are meeting their Federal compliance obligations when using Federal Funds for construction related activities. The Bureau of Federal Compliance will use the requirements of 2 CFR 200, 34 CFR 75, 34 CFR 76 and other applicable Federal Codes and requirements when completing such reviews.

### **Technical Assistance**

Please feel free to contact the Bureau of Federal Compliance staff should you have any questions relative to the contents of this document.

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