

(f) Prior to any final award of bids for construction contracts the borrower shall submit for the Department's review and approval the final construction contracts with work specifications detailing any changes made since the Department's previous design approval.

1. The borrower shall provide a tabulation of bids received and name the party to be awarded the construction contract for the project. In the event contracts are not proposed to be awarded to the contractor submitting the lowest bid, the borrower shall provide adequate justification for said award.

2. The Department reserves the right to require the borrower to readvertise the bid specifications for the project if the certifications required in (f)3 below are deemed unsatisfactory by the Department.

3. The borrower shall certify to the Department the following:

i. The borrower's compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34;

ii. That all contracts for the project will be awarded to the qualified, responsible and responsive bidder submitting the lowest acceptable bid; and

iii. That the bid prices included in the bid specifications are reasonably balanced.

(g) The borrower shall forward copies of the executed construction contracts and subcontracts and associated documents to the Department within 10 days of their execution.

As amended, R.1983 d.534, effective November 21, 1983.
See: 15 N.J.R. 1307(a), 15 N.J.R. 1940(a).

(b)5, (f) and (g) added; under (d), "total cost" language added, "maximum specified in the loan award document" deleted; under (e), project "application" added.

As amended, R.1984 d.232, effective June 18, 1984.
See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Eligible project costs" was formerly codified at N.J.A.C. 7:1A-2.14. (a)1: eligible project costs broadened to include interconnections and resolution of contamination problems; deleted former (a)7 concerning organization and operating expenses; (a)8 made 7, "administration" and "construction" of project inserted; (b)4: exception added; (f)1: "tabulation of bids received" and award justification added.

Emergency amendment, R.1988 d.479, effective September 19, 1988 (expires November 18, 1988).

See: 20 N.J.R. 2470(a).

Substituted "address" for "resolve".

Adopted concurrent proposal, R.1988 d.574, effective November 18, 1988.

See: 20 N.J.R. 2470(a), 20 N.J.R. 3129(a).

Provisions of emergency amendment R.1988 d.479 readopted without change.

Amended by R.1992 d.252, effective June 15, 1992.

See: 24 N.J.R. 707(a), 24 N.J.R. 2245(a).

Reference to public water systems added; reference to Local Public Contract rules added.

Administrative correction to (f)3i.

See: 24 N.J.R. 4368(a).

Amended by R.1997 d.223, effective May 19, 1997.

See: 29 N.J.R. 7(a), 29 N.J.R. 2268(a).

In (a)1, substituted "facilities" for "transmission system" following "inadequately operating water supply".

7:1A-2.14 Unused loan funds

Funds saved from projects whose actual eligible implementation costs are less than the estimated eligible costs, shall be retained by the State and deposited in the applicable fund to be applied to new water supply rehabilitation, interconnection or contamination projects, as appropriate, pursuant to the act and this chapter.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Unused loan funds" was formerly codified at N.J.A.C. 7:1A-2.15.

"interconnection or contamination projects, as appropriate," added.

Emergency amendment, R.1988 d.479, effective September 19, 1988 (expires November 18, 1988).

See: 20 N.J.R. 2470(a).

Substituted "applicable fund" for "Water Supply Fund".

Adopted concurrent proposal, R.1988 d.574, effective November 18, 1988.

See: 20 N.J.R. 2470(a), 20 N.J.R. 3129(a).

Provisions of emergency amendment R.1988 d.479 readopted without change.

7:1A-2.15 Recycling of funds

(a) Subject to Federal and/or State law, funds from repayment of loans issued under the authority of the Water Supply Bond Act of 1981 and this chapter shall be deposited in the Water Supply Fund created pursuant to the Water Supply Bond Act of 1981 and shall remain available for further disbursements as new loans to be awarded pursuant to this chapter.

(b) Funds from repayment of loans issued under the authority of acts other than the Water Supply Bond Act of 1981 or other bond acts shall be deposited in the Water Supply Replacement Trust Fund and shall remain available for further disbursement as new loans to be awarded pursuant to this chapter.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Recycling of funds" was formerly codified at N.J.A.C. 7:1A-2.16.

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Emergency amendment, R.1988 d.479, effective September 19, 1988 (expires November 18, 1988).

See: 20 N.J.R. 2470(a).

Defined Act and added (b).

Adopted concurrent proposal, R.1988 d.574, effective November 18, 1988.

See: 20 N.J.R. 2470(a), 20 N.J.R. 3129(a).

Provisions of emergency amendment R.1988 d.479 readopted without change.

7:1A-2.16 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer loans, award contracts and subcontracts pursuant to the loans free from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall notify the Administrator immediately after such allegation or evidence comes to its attention, and shall periodically advise the Administrator of the status and ultimate disposition of any matter.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Fraud and other ... practices" was formerly N.J.A.C. 7:1A-2.17.

7:1A-2.17 Loan conditions

(a) The following requirements, in addition to such other statutes, rules, terms and conditions as may be applicable to particular loans, are conditions of each loan and conditions precedent to each payment under a loan award document:

1. The borrower shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the loan award document.
2. The borrower must submit proof of it and its contractors, and subcontractors, compliance with all hazard insurance requirements of the loan award document and certify that the insurance is in full force and effect and that the premiums have been paid.
3. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with accounting principles required by New Jersey law.
4. The borrower shall certify that it and its contractors and their subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules and regulations promulgated pursuant thereto.
5. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project.

i. This performance bond or guarantee shall remain in effect until the Department's final inspection of the project and determination in writing that the project is satisfactorily completed.

ii. The performance bond or performance guarantee shall be both nondiscriminatory and financially satisfactory to the Department, and meet all statutory requirements.

6. The borrower shall certify that it is in compliance with all other requirements and conditions of the loan award document.

7. Bid specifications shall require that water supply project elements which constitute ineligible project costs be bid as separate line items in the total bid specifications from water supply project elements which constitute eligible project costs.

8. Bid specifications shall require that each general contractor bidding on the water supply project name the principal subcontractors at the time of his bid submission to the borrower.

As amended, R.1983 d.534, effective November 21, 1983.

See: 15 N.J.R. 1307(a), 15 N.J.R. 1940(a).

(a)1: "borrower shall certify that the" inserted; "was initiated" replaced "must have been initiated".

(a)5: "certify that the borrower" inserted; "and meet all statutory requirements" added to ii.

(a)8 and 9 added.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Loan conditions" was formerly codified at N.J.A.C. 7:1A-2.18.

Deleted former (a)7 concerning certification of compliance with all applicable laws and regulations; (a)8 and 9 made 7 and 8, "water supply project" replace "rehabilitation project".

Amended by R.1992 d.252, effective June 15, 1992.

See: 24 N.J.R. 707(a), 24 N.J.R. 2245(a).

Reference to Division changed to Department.

7:1A-2.18 Administration and performance of loan

The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with these rules and the loan agreements to achieve loan objectives and to insure that the purposes set forth in the Water Supply Bond Act of 1981, and amendments, and the recommendations of the New Jersey Statewide Water Supply Plan are fully executed.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Administration and performance of loan" was formerly codified at N.J.A.C. 7:1A-2.19.

7:1A-2.19 Access

(a) The borrower and its contractor and subcontractors shall provide access to the Department personnel and any authorized representative of the Department to the facilities, premises and records related to the project.

1. All contracts executed by the borrower and its contractors and subcontractors shall contain provisions allowing for departmental access to any facilities, premises and records related to the project.

2. The borrower shall submit to the Department such documents and information as requested by the Department.

i. All borrowers, contractors and subcontractors may be subject to a financial audit.

ii. Records shall be retained and available to the Department for a minimum of three years after issuance of the final payment by the Department.

As amended, R.1983 d.534, effective November 21, 1983.

See: 15 N.J.R. 1307(a), 15 N.J.R. 1940(a).

(a)1 added.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Access" was formerly codified at N.J.A.C. 7:1A-2.20.

7:1A-2.20 State payment

State funds shall be released to the borrower upon completion of the entire project to the satisfaction of the Department, or, on an interim basis. If interim payments are made, they will be equal to the loan amount corresponding to the percent of the total project completed. Ten percent of all payments shall be withheld until the whole project has been completed to the satisfaction of the Department. No payments shall be made until the Department receives satisfactory cost documentation which shall include all forms and information required by the Department and completed in a manner satisfactory to the Department. In the case of interconnection loan projects, the ten percent final payment shall not be made until an Operation and Maintenance Manual for the interconnection project has been approved and a final agreement between interconnected parties for carrying out Operation and Maintenance responsibilities has been executed and approved by the Department.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"State payment" was formerly codified at N.J.A.C. 7:1A-2.21.

Final payment exception concerning interconnection projects added.

7:1A-2.21 Assignment

The right to receive payment from the State under a loan may not be assigned, nor may payments due under a loan be similarly encumbered.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Assignment" was formerly codified at N.J.A.C. 7:1A-2.22.

7:1A-2.22 Publicity and signs

(a) Press releases and other public dissemination of information by the borrower concerning the project work shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the Department, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Publicity and signs" was formerly codified at N.J.A.C. 7:1A-2.23.

Amended by R.1992 d.252, effective June 15, 1992.

See: 24 N.J.R. 707(a), 24 N.J.R. 2245(a).

Reference to Division changed to Department.

7:1A-2.23 Debarment

(a) No borrower shall enter into a contract for work on a water supply loan project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Borrowers shall insert in every contract for work on a water supply loan project a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the State and the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) Bid Specifications prepared by the borrower shall require bidders to submit a sworn statement of the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified bidders. Bid specifications shall also state that the borrower will immediately notify the Department whenever it appears that a bidder is on the Treasurer's list. The Department reserves the right, in such circumstances, to immediately suspend such bidder from Department contracting, and to take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the borrower may take into account the loss of Department loan funds under these regulations which would result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the borrower may advise prospective bidders that these procedures will be followed.

(e) Any person included on the Treasurer's List as a result of action by a state agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a loan under this chapter may present information to the Department why this section should not apply to such person. If the Commissioner of the Department determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may make an exception from the application of this section with respect to a particular contract in keeping with N.J.A.C. 7:1-5.9. In the alternative the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Debarment" was formerly codified at N.J.A.C. 7:1A-2.24.

7:1A-2.24 Project changes and loan modifications

(a) A loan modification means any written alteration of the loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) Due to the limited amount of funds available for water supply projects there shall be no loan modification increasing the loan amount. Increased costs resulting from a loan modification shall be the responsibility of the borrower.

(c) The borrower shall promptly notify the Administrator in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objective of a project;
4. Significant, changed conditions at the project site;
5. Deceleration in the time for the performance of the project or any major phase thereof;
6. Changes which may increase or substantially decrease the total cost of a project;
7. Changes in key personnel identified in the loan award document or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department decides a formal loan amendment is necessary, it shall notify the borrower and a formal loan amendment shall be prepared in accordance with N.J.A.C. 7:1A-2.25. If the Department decides a formal loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:1A-2.26 or 2.27, as applicable.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Project changes and loan modifications" was formerly codified at N.J.A.C. 7:1A-2.25.

(d): N.J.A.C. references changed.

7:1A-2.25 Formal loan award amendments

(a) The Department shall require a formal loan award amendment to change principal provisions of a loan where project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) The Department and borrower shall effect a formal loan award amendment only by a written amendment to the loan award document.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Formal loan award amendments" was formerly codified at N.J.A.C. 7:1A-2.26.

7:1A-2.26 Administrative loan changes

Administrative changes by the Department, such as change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, or a change in the payment schedule for loans for planning, design, and construction of water supply projects, constitute changes to the loan award document (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the borrower.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Administrative loan changes" was formerly codified at N.J.A.C. 7:1A-2.27.

7:1A-2.27 Other changes

All other project changes, which do not require formal loan award amendment, require written approval of the Administrator.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Other changes" was formerly codified at N.J.A.C. 7:1A-2.28.

7:1A-2.28 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any loan conditions, requirement of this chapter, or loan award document requirement or specifications, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:1A-2.29;
2. Withhold loan funds pursuant to N.J.A.C. 7:1A-2.30;
3. Order suspension of the project work pursuant to N.J.A.C. 7:1A-2.31;
4. Terminate or annul a loan pursuant to N.J.A.C. 7:1A-2.32 and 7:1A-2.33.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Noncompliance" was formerly codified at N.J.A.C. 7:1A-2.29. N.J.A.C. references changed.

7:1A-2.29 Notice of noncompliance

When the Department determines that the borrower is in noncompliance with any condition or requirement of these rules or with any loan award document specification or

requirement, it shall notify the borrower of the noncompliance. The Department may require the borrower, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the borrower, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop work order or withhold payment. The Department may, however, withhold payment pursuant to N.J.A.C. 7:1A-2.30 or issue a stop work order pursuant to N.J.A.C. 7:1A-2.31 without issuing a notice pursuant to this section.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Notice of noncompliance" was formerly codified at N.J.A.C. 7:1A-2.30.

N.J.A.C. references changed.

7:1A-2.30 Withholding of funds

The Department may withhold a loan payment or any portion thereof when it determines in writing that a borrower has failed to comply with any loan condition, provisions of this chapter, or loan award document specification or requirement.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Withholding of funds" was formerly codified at N.J.A.C. 7:1A-2.31.

7:1A-2.31 Stop work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the borrower or noncompliance with the terms and conditions of the loan. The Department shall limit use of a stop work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the borrower an opportunity to discuss the stop work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop work orders shall contain:

1. The reasons for issuance of the stop work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the borrower for materials or services;
4. Guidance as to action being taken on subagreements;
5. Other suggestions to the borrower for minimizing costs.

(c) The Department may, by written order to the borrower (certified mail, return receipt requested) require the borrower to stop all, or any part of, the project work for a period of not more than 45 days after the borrower receives the order, and for any further period to which the parties may agree.

(d) Effect of stop work order.

1. Upon receipt of a stop work order, the borrower shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

- i. Rescind the stop work order, in full or in part;
- ii. Terminate the work covered by such order;
- iii. Authorize resumption of work.

2. If a stop work order is cancelled or the period of the order or any extension thereof expires, the borrower shall promptly resume the previously suspended work. An equitable adjustment shall be made in the loan period, the project, or both of these, and the loan award document shall be modified accordingly within discretion of the Department.

As amended, R.1984 d.232, effective June 18, 1984.

See: 16 N.J.R. 631(a), 16 N.J.R. 1479(a).

"Stop work orders" was formerly codified at N.J.A.C. 7:1A-2.32.

7:1A-2.32 Termination of loans

(a) The Department may terminate a loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include but not be limited to substantial failure to comply with the terms and conditions of the loan, or default by the borrower.

1. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate a loan in whole or in part at least 10 days prior to the intended date of termination, stating reasons for the proposed termination.

2. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested) terminate the loan in whole or in part.

(b) A borrower shall not unilaterally terminate the project work for which a loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The borrower shall promptly give written notice to the Administrator of any complete or partial termination of the project work by the borrower. If the Department determines that there is good cause for the termination of all or any portion of a project for which the loan has been awarded, the Department may enter into a termination agreement or unilaterally terminate the loan effective with the date of cessation of the project work by the borrower. If the Department determines that a borrower has ceased work on a project without good cause, the Department may unilaterally terminate the loan pursuant to this section or annul the loan pursuant to N.J.A.C. 7:1A-2.33.