

13. The borrower shall certify the following to the Department before the borrower awards any contract on a bid.

i. The borrower is in 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. All contracts for the project will be awarded to the qualified, responsible and responsive bidder who submits the lowest acceptable bid; and

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

14. The borrower shall insert in all contracts or subcontracts that the borrower awards pursuant to this chapter the Department's subcontractor certification form as included in the loan award agreement.

15. The borrower shall submit one copy of the executed construction contract and subcontracts and associated documents to the Department within 10 days of their execution.

7:24A-4.3 Formal amendments to loan award agreement

(a) A formal amendment means any written alteration of any term or condition, budget or project scope or construction method or other administrative, technical or financial provision of the loan award agreement.

(b) A formal amendment shall not increase the loan amount. Any increased costs resulting from a formal amendment pursuant to (a) above shall be the sole responsibility of the borrower.

(c) The borrower shall promptly notify the Administrator in writing (certified mail, return receipt requested) of any event or proposed project change which may require a formal amendment, including, but not limited to:

1. Rebudgeting;
2. Any changes in approved technical plans or specifications for a project;
3. Any changes in the approved scope or objective of a project;
4. Any significant, changed conditions at the project site;
5. Any delay in the time for the completion of the project or any major phase thereof;
6. Any changes which may increase or substantially decrease the total cost of a project; and
7. Any changes in personnel identified in the loan award agreement or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department determines that a formal amendment to the loan award agreement is necessary, it shall

notify the borrower and prepare the formal amendment. If the Department determines that a formal amendment is not necessary, N.J.A.C. 7:24A-4.4 or 4.5 shall apply.

7:24A-4.4 Other changes to loan award agreement

If the Department determines that a proposed project change does not require a formal amendment to the loan award agreement, the Administrator shall provide the borrower with written approval of such a change.

7:24A-4.5 Modification of administrative provisions

The Department may effect a modification of an administrative provision of the loan award agreement by notifying the borrower by letter (certified mail, return receipt requested). Such a modification of an administrative provision may include a change in the designation of key Department personnel, a change in address to which a report is to be transmitted by the borrower, or a change in the payment schedule.

7:24A-4.6 Loan disbursements

(a) Loan disbursements shall be made only to the local government unit as sole borrower or as co-borrower, unless otherwise indicated in the loan award agreement.

(b) 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 disbursements are made, each will be equal to the loan amount corresponding to the percentage of the total project completed. Two percent of each disbursement shall be withheld until the whole project has been completed to the satisfaction of the Department. No disbursement shall be made until the Department receives the necessary information to document project cost. The information shall include all forms and documentation required by the Department as specified in the loan award agreement.

Amended by R.2000 d.119, effective March 20, 2000.

See: 31 N.J.R. 3898(a), 32 N.J.R. 1015(a).

In (b), substituted "Two" for "Ten" at the beginning of the third sentence.

7:24A-4.7 Unused loan funds

Unused loan funds for a project for which actual allowed implementation costs are less than the amount appropriated for the loan shall be retained by the State and deposited in the Fund to be applied to other dam restoration and inland waters projects, as appropriate, pursuant to the Act and this chapter.

7:24A-4.8 Assignment

The right to receive disbursements from the State pursuant to a loan award agreement under this chapter shall not be assigned.

7:24A-4.9 Publicity and signs

(a) Any press release or other public dissemination of information by the borrower concerning the project shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblems of the State and 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.

7:24A-4.10 Access

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

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

2. The borrower shall submit to the Department any documents and information related to the project as requested by the Department.

7:24A-4.11 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer the loan and shall award contracts and subcontracts pursuant to the loan award agreement, free from bribery, graft, and other corrupt practices. The borrower bears primary responsibility for prevention and detection, and shall cooperate 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 such matter.

7:24A-4.12 Debarment

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

(b) Each borrower shall insert in every contract for work on a project a clause that states 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) Each borrower shall prepare bid specifications which 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 prepared by the borrower shall also state that the borrower will immediately notify the Department whenever 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, in determining whether such bidder is the lowest responsible bidder pursuant to law, the loss of Department loan funds under these rules which would result from awarding a contract to such bidder. The borrower may advise prospective bidders that the procedures of (c) above and (e) below will be followed.

(e) Any person included on the Treasurer's list of debarred, suspended and disqualified bidders 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 submit information to the Department to demonstrate why this section should not apply to such person. If the Commissioner determines that contracting with such a bidder 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 bidder pursuant to 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.

7:24A-4.13 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of a borrower's, contractor's or subcontractor's noncompliance with any requirement of this chapter, or term or condition of the loan award agreement, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:24A-4.14;
2. Withhold loan funds pursuant to N.J.A.C. 7:24A-4.15;
3. Order stoppage of the project work pursuant to N.J.A.C. 7:24A-4.16; or
4. Terminate or annul a loan pursuant to N.J.A.C. 7:24A-4.17 or 4.18, respectively.