

**7:24-2.21 Access**

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

(b) The grantee shall submit to the Department such documents and information as requested by the Department.

(c) All grantees, contractors and subcontractors may be subject to a financial audit.

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

**7:24-2.22 State payment**

(a) State funds shall be released to the grantee upon completion of the entire project to the satisfaction of the Department, or on an interim basis.

1. If interim payments are made they will be equal to the State's share of the percent of the total project completed.

2. Ten percent of all payments shall be withheld until the whole project has been completed to the satisfaction of the Department.

(b) No payments shall be made until the Department receives satisfactory cost documentation which shall include all forms required by the Department and completed in a manner satisfactory to the Department.

**7:24-2.23 Assignment**

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

**7:24-2.24 Publicity and signs**

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

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State grant support.

**7:24-2.25 Debarment**

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

(b) Grantees shall insert in every contract for work on a dam restoration project a clause stating that the contractor may be debarred, suspended or disqualified from contracting with 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 grantee 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 as a result of action by any state agency other than the Department of Environmental Protection.

(d) Bid Specifications shall also state that the grantee 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.

(e) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the grantee may take into account the loss of Department grant funds under this chapter 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 grantee may advise prospective bidders that this procedure will be followed.

(f) 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 grant under this chapter may present information to the Department why this section should not apply to such person.

1. 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 grant 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.

2. 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.

**7:24-2.26 Project changes and grant modifications**

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

(b) Due to the limited amount of funds available for dam restoration projects there shall be no grant modification increasing the grant amount. Increasing costs resulting

from a grant modification shall be the responsibility of the grantee.

(c) The grantee shall promptly notify the Chief, Bureau of Flood Plain Management, in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant 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. Changes 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 grant award document or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department decides a formal grant amendment is necessary, it shall notify the grantee and a formal grant amendment shall be prepared in accordance with N.J.A.C. 7:24-2.27. If the Department decides a formal grant amendment is not necessary, it shall follow procedures of N.J.A.C. 7:24-2.29.

#### 7:24-2.27 Formal grant amendments

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

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

#### 7:24-2.28 Administrative grant changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the grantee, or a change in the payment schedule for grants for planning, design, and construction of dam restoration facilities, constitute changes to the grant award document (but not necessarily to the project work) and do not affect the substantive rights of the Department or the grantee. 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 grantee.

#### 7:24-2.29 Other changes

All other project changes, which do not require a formal grant amendment, require written approval of the Chief, Bureau of Flood Plain Management.

#### 7:24-2.30 Noncompliance

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

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:24-2.31;
2. Withhold grant funds pursuant to N.J.A.C. 7:24-2.32;
3. Order suspension of project work pursuant to N.J.A.C. 7:24-2.33;
4. Terminate a grant pursuant to N.J.A.C. 7:24-2.34.

#### 7:24-2.31 Notice of noncompliance

When the Department determines that the grantee is in noncompliance with any condition or requirement of the Natural Resources Bond Act, P.L. 1980, v. 70, this chapter, or any provision, term, condition or requirement of the grant award document, or any other applicable State laws and regulations, it shall notify the grantee, its engineer, and/or the contractor of the noncompliance. The Department may require the grantee, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the grantee, 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. 7:24-2.32 without issuing a notice pursuant to this section.

#### 7:24-2.32 Withholding of funds

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

#### 7:24-2.33 Stop-work orders

(a) Use of Stop-Work Order: The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the grantee or noncompliance with the terms and conditions of the grant. 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 consideration.

(b) Contents of stop-work orders: Prior to issuance, the Department shall afford the grantee 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. Instruction as to the issuance of further orders by the grantee for materials or services;
4. Guidance as to action being taken on sub-agreements;
5. Other suggestions to the grantee for minimizing costs.

(c) Issuance of stop-work order: The Department may, by written order to the grantee (certified mail, return receipt requested) require the grantee to stop all, or any part of, the project work for a period of not more than 45 days after the grantee 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 grantee shall immediately comply with the order to minimize the incurrence of costs allowable 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 grantee shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant period, the project, or both of these, and the grant award document shall be modified accordingly within the discretion of the Department.

#### 7:24-2.34 Termination of grants

(a) Termination by Department:

1. The Department may terminate a grant 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:
  - i. Substantial failure to comply with the terms and conditions of the grant;
  - ii. Default by the grantee; or
  - iii. The grant was obtained by fraud.

2. The Department shall give written notice to the grantee (certified mail, return receipt requested) of intent to terminate a grant in whole or in part at least 10 days prior to the intended date of termination.

3. The Department shall afford the grantee 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 grant in whole or in part.

(b) Project termination by grantee: The grantee shall not terminate the project work except with the consent of the Department. The grantee must show good cause and give prompt written notice to the Department of any proposed complete or partial termination of the grant project by the grantee.

1. If the Department determines there is good cause for the termination of all or part of the grant project the Department may enter into a termination agreement or unilaterally terminate the grant, effective with the date of cessation. The determination to terminate the grant shall be solely within the discretion of the Department and if the Department determines not to terminate the grant, the grantee shall remain bound by the terms and conditions of the grant award document.

2. If the Department determines that a grantee has ceased work on a project without good cause, the Department may unilaterally terminate the grant pursuant to this section.

(c) Termination by mutual agreement: The Department and grantee may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and grant, basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party.

(d) Effect of termination:

1. Upon termination, the grantee shall refund or credit to the State of New Jersey that portion of grant funds paid to the grantee and allowable to the terminated project work, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination and as may be otherwise allowable. The grantee shall make no new commitments without Department approval.

2. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the Department the balance of funds awarded under the grant. The Department shall make the final determination of the allowability of termination costs.

#### 7:24-2.35 Administrative hearings

(a) The Commissioner shall decide all disputes arising under a grant. When a grantee so requests, the Department shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the grantee.

(b) A grantee may request a hearing within 15 days of a decision by the Commissioner. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402. Where required by law the Department shall grant a hearing based upon such request.

(c) The Commissioner shall grant and conduct such hearings in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and any rules promulgated pursuant to those Acts.

Administrative change in (b).  
See: 23 N.J.R. 3325(b).