



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

August 27, 2007

MEMORANDUM

TO: Impact Aid Section 8007(b) Discretionary Construction Grant Recipients

FROM: Catherine Schagh, Director *Catherine Schagh*
Impact Aid Program

SUBJECT: Section 8007(b) Discretionary Construction Grant Management Guidance
Memorandum #2007-04

The purpose of this memo is to review the Section 8007(b) Discretionary Construction Grant administrative and management requirements. In closing out a number of grant projects and reviewing findings from annual State audits for Impact Aid Discretionary Construction Program grant recipients, we have found a few grantees that have deviated from certain grant requirements. This memo highlights and provides additional information on some of the relevant provisions.

Please remember that all local educational agencies (LEAs) that receive Impact Aid construction assistance under section 8007(b) of the Impact Aid Program must comply with all of the terms of their approved section 8007(b) discretionary grants. We strongly recommend that you review the assurances and certifications that were signed by the authorized representative of your LEA and included in the original application. In addition, grantees must comply with a number of Education Department General Administrative Regulations (EDGAR). In particular, please ensure that your grant activities comply with the following requirements.

Indian Preference- Section 7(b) of the Indian Self-Determination Act specifies that the recipient of a grant awarded for the benefit of Indians must "to the greatest extent feasible" give preference to Indians. The grantee must also provide Indians opportunities for training and employment in connection with the administration of the grant. Indian organizations and Indian-owned economic enterprises must receive preference in the award of contracts and subcontracts at any level of administration of the construction project.

Any LEA that receives an Impact Aid Section 8007(b) Discretionary Construction grant and that educates children living on Indian lands is considered to have received a grant award primarily for the benefit of Indians and is subject to these provisions throughout the

administration of its grant. In particular, during the solicitation for bid process, grantees must express in bidding documents that Indian Preference applies to these grant awards. We are attaching a copy of guidance on the Indian Preference Requirements for Construction Grants – Memorandum #2002-1, which provides an explanation of these requirements. (See P.L. 93-638.) This requirement is also referenced in Assurance #30, signed with your original grant application.

Davis-Bacon Act- The General Education Provisions Act specifies that “all construction and minor remodeling projects currently assisted under any applicable program” (meaning all ED programs) are subject to the Davis-Bacon prevailing wage requirements. (See 20 U.S.C. 1232b Labor Standards.) This requirement is also referenced in Assurance #13, signed with your original grant application.

This requirement applies to all approved construction contracts in excess of \$2,000 financed by federal assistance (such as an 8007(b) grant) using laborers and mechanics must include language that acknowledges that all contractors and subcontractors will adhere to these provisions and pay wages that are not less than those established for the locality of the project (prevailing wage rates).

The U.S. Department of Labor (DOL) determines and publishes Davis-Bacon wage rates for the various regions of the country. If you need information about the prevailing wages in your community you should contact the DOL regional office serving your district. A list of the regional offices with contact information can be found at the following website:

<http://www.dol.gov/esa/contacts/whd/america2.htm#content>. Those offices may also provide guidance as to where the required weekly payroll submissions referenced in the Davis-Bacon regulations (see 29 CFR 3.3 and 3.4 for example) should be sent. Your state Department of Labor (or equivalent) may also provide further guidance on these types of issues.

Allowable Costs, including Administrative – You can find allowable cost provisions in Subpart E of 34 CFR Part 75 and Subpart C in 34 CFR Part 80 of EDGAR. You should also review 34 CFR section 75.530 and section 80.22, as well as OMB Circular A-87. This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally recognized Indian tribal governments. Circular A-87 provides basic guidelines for determining allowable costs relating to your Federal grant (such as whether the costs are necessary and reasonable for the proper and efficient performance and administration of your grant). It also contains more detailed advice on specific cost items. A copy of OMB Circular A-87 can be downloaded at http://www.whitehouse.gov/omb/circulars/a087/a87_2004.html#43.

Indirect Costs—Impact Aid Discretionary Construction Program grantees must comply with all applicable EDGAR provisions. Specifically, 34 CFR section 75.564 prohibits grantees from charging indirect costs to construction grants. This applies to all projects, including those that

involve only renovations or remodeling and not new construction. In addition, although your LEA may have a negotiated Indirect Cost Rate (ICR) with the Federal government, please be aware that you may not apply this rate to federal construction grants such as those under 8007(b).

Supplanting/Maintenance Costs -- Assurance #34 signed with your original application references the Impact Aid Program section 8007(b) statute that requires all grantees to supplement, and not supplant, non-Federal funds that in the absence of this grant would be used to carry out emergency repair or modernization projects. If you need additional guidance as to how this provision applies to other pending repair or renovation projects that your district may have, you can find several examples in our program regulations at 34 CFR 222.174. The statute also prohibits grantees from using these grant funds for maintenance costs associated with your school facilities.

An LEA that has facilities maintenance staff or a facilities manager typically cannot charge the in-house facility staff member's salary or benefits in whole or in part to the grant award funds. In very limited circumstances, a grantee may request permission from the Impact Aid Program to use grant funds to pay for district personnel for the administration of or possibly portions of the labor associated with its construction grant. In all cases, this type of request must be: in writing, approved in advance, and consistent with all State and local laws, including procurement standards. One of the factors that we consider essential in granting any of these rare requests is whether the grantee would be able to complete its project successfully without the exception. Further, the LEA may not violate the supplanting or maintenance prohibitions outlined above.

A grantee that receives an exception to this prohibition must still comply with all appropriate grant administration requirements in EDGAR and the A-87 circular. For example, after receiving prior approval to pay an in-house facilities manager to oversee a roof renovation, the grantee must keep explicit records clearly specifying the amount of time (e.g. five percent) that the manager spends on the project. Staff members performing this work should complete and sign time and attendance forms documenting the project-specific work on at least a monthly basis. (For more detail on all of these requirements, see generally OMB Circular A-87, Attachment B, Item 8, Compensation for personal services, and in particular Item 8H re: Support of salaries and wages.)

Records/Document Management -- The records requirements for grant projects are addressed in 34 CFR sections 75.730-75.732 and section 80.40-80.42. Specifically, grantees must maintain complete records that show the total amount of the grant funds, how the funds were used, the share of any costs provided from other (non-Federal) sources, and other records that will facilitate an effective audit. See 34 CFR 75.730. Grantees should use generally accepted accounting practices relating to grant management and fiscal control and accounting procedures that ensure that the Federal funds are properly accounted for and disbursed. (See 34 CFR 75.702.) The Impact Aid Program may ask to review these grant records, including invoices and payment certification requests.

Funds Release Request/Cash Management -- As with other Federal grants, grantees are prohibited from accruing interest on grant funds. Grantees should minimize the time elapsing between receiving the Federal funds transfer and disbursing payments to contractors (See 34 CFR 80.20(b)(7).) Please do not request to draw down more funds than are owed to contractors. Further, each request should contain the PR Award number of the grant, the names of the contractors and the requested draw down amount.

We hope that you will find this information helpful. If you have any questions or need additional explanation of the guidance contained in this document, please contact Kristen Walls-Rivas of the Impact Aid Program at 202-260-3858.

Attachment: Indian Preference Requirements for Construction Grants –Memorandum #2002-1

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.