

School Construction with Federal Funds Guidance

Background

Local Education Agencies (LEAs) that intend to use federal funds, including ESSER I, ESSER II and ARP-ESSER (ESSER III) funds, for construction or minor remodeling projects must also comply with all applicable federal requirements. Uniform Guidance ([2 CFR 200.439\(b\)\(3\)](#)) requires LEAs to receive prior approval from the Vermont Agency of Education (AOE) for construction projects.

Construction projects, including minor remodeling projects, as recently defined by the US Department of Education (USED) require prior approval.

The AOE requires LEAs to submit a two-part application consisting of Concept Approval and Project Approval through the Grants Management System (GMS). Failure to obtain prior written approval (Project Approval stage) before breaking ground on the proposed project may make the costs associated with the construction project unallowable to the federal grant.

This document provides information intended to guide LEAs through the application process.

The AOE understands that each construction project may involve unique circumstances that are not directly addressed in this guidance. LEAs should request clarification from the AOE as needed. Questions regarding the use of federal funds for construction projects, the applicable regulations or the approval process should be emailed to the AOE Federal Construction Team at AOE.FederalConstruction@vermont.gov

Please note: The AOE cannot provide legal advice to school districts. District officials must rely on the specific advice of their own legal counsel.

Overview of Application Review Process

Below are the general steps for receiving approval for any construction project utilizing federal funding.

1. Project identification.
2. Determine ownership of the property.
3. Determine the source(s) of funding for the project and the timeline (start and end date) for the project.
4. Complete the requirements for Concept Approval in the [GMS Application for Construction with Federal Funds](#) (Project Narrative and Concept Approval Assurance Tabs) and submit
5. Apply for federal funds in grant application (Please note: all projects included in ARP ESSER must meet the Interim Final Rule requirements for meaningful consultation)
6. Complete plan development and obtain all required permits
7. Complete Project Approval requirements in the [GMS Application for Construction with Federal Funds](#) and submit as an amendment

Project Identification

For ESSER, ESSER II and ARP-ESSER, the United States Department of Education (USED) has confirmed that it will be applying the Impact Aid definition for Construction and the Uniform Guidance definition for maintenance. In addition, USED has released a third definition for minor remodeling.

The AOE has developed a prior approval process that works for both construction and minor remodeling projects, eliminating the need to make the distinction between the two. The AOE's use of the word construction in this document is intended to encompass projects that meet the definitions of both "Construction" and "Minor Remodeling" projects, per USED definitions below. The term does not include work that meets the definition of maintenance.

Definitions

Construction: "(A) the preparation of drawings and specifications for school facilities; (B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities; (C) inspecting and supervising the construction of school facilities; and (D) debt servicing for such activities." [34 CFR §222.176\(a\)](#)

Minor remodeling: "Minor alterations in a previously completed building, for purposes associated with the coronavirus. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building.

Maintenance: "Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable..." [2 CFR § 200.452](#)

If the project is determined to be maintenance, please enter the maintenance work on the appropriate ESSER grant application in the GMS. In addition, though the project may not be considered construction it may involve the purchase of equipment and/or other capital expenditures that may require prior written approval (see [2 CFR 200.439](#)).

If the project is determined to be construction, please continue with the steps identified below.

Ownership Determination

The next step requires the LEA to determine ownership of the property. [Per 34 CFR §75.603](#), the LEA "must have or obtain a full title or other interest in the site, including right of access, that is sufficient to ensure the grantee's undisturbed use and possession of the facilities for 50 years or the useful life of the facilities, whichever is longer."

If the LEA determines it does not meet the above condition of ownership, please email the AOE ESSER Construction Team at AOE.FederalConstruction@vermont.gov to discuss further options. Otherwise, continue to the next step.

Project Funding Source(s) / Project Timeline

Allowability

An LEA must determine the appropriate funding source(s) available for the full scope of the project. Each funding source may have a different period of performance and the LEA should ensure that each element of the project is aligned with the appropriate funding source. Period of performance end dates should also be considered when determining the funding source as some elements of the project may be completed at different times.

For example:

1. The full project scope may be allowable to one federal funding source.
2. The full project scope may be allowable to multiple federal funding sources.

The full project scope may contain some project elements that are eligible for a federal grant program(s), while other components of the project are not allowable to the federal grant program and will require a non-federal source of funding.

Adequacy of Funding

It is also critical to determine the amount of federal grant dollars available in the LEA's allocation to fund the project.

For example:

1. An LEA may have adequate funds in one federal grant award.
2. An LEA may choose to budget some dollars from multiple federal grant awards.
3. An LEA may not have enough funds in any/all of the federal grant awards and may need to supplement with non-federal dollars.

Project Timeline

The LEA must consider:

1. Its ability to complete the project within the period of performance associated with the funding source(s).
2. Required time for necessary voter approval has been included in the timetable, if local funding is needed.
3. The Vermont bid law prequalification requirement (at least 60 days prior to the proposed bid opening) if construction project exceeds \$500K.

Concept Approval (GMS Application for Construction with Federal Funds Phase I)

The Application for Construction with Federal Funds will appear under the Central Data Collections in GMS. LEAs should complete a separate application for each proposed construction project.¹

The application consists of two approval phases, the first of which is Concept Approval.

Concept Approval

After the LEA has determined the need for and scope of the work, and it has identified the proposed source(s) of federal funds, the LEA must seek concept approval from the AOE to ensure that the project is allowable under that Federal funding source. Below is a list of the information required by the Concept Approval stage of the [Application for Construction with Federal Funds in GMS](#).

1. A description of the proposed project that includes the scope of work and enough detail to allow the review team to determine whether the project is reasonable, allocable and necessary.
2. An explanation of how the project allows the LEA to prevent, prepare for, or respond to COVID-19.
3. The estimated total project cost and cost breakout for each funding source that will be used within the project.
4. The anticipated timeline for completion including the planned start and the estimated completion dates.
5. Agreement to a set of assurances related to the planning, development, financing and bidding of the project (Appendix A).

The Application for Construction with Federal Funds must be submitted by the LEA Superintendent.

Please note: If the project involves ARP-ESSER, meaningful consultation with stakeholders must be completed prior to submitting the concept approval application.

Determination

The GMS system will generate a generic approval message. The AOE will send an official, signed letter for Concept Approval shortly thereafter. Please keep this approval letter with your grant records.

The [AOE Education Recovery School Construction web page](#) includes links to assist LEAs in gathering additional information and facilitating communication with other Vermont Agencies/Departments that may be involved in the construction project such as:

¹ Instructions for creating multiple applications in GMS: When the applicant first opens the Access/Select screen, they should scroll down to the very bottom, the Available section, to create an application or data collection. Once the data collection or application has been created, it will appear near the top, in the Created section. In cases where the applicant needs to create more than one, they should scroll down to Available to create another one. For questions, please contact AOE.gms-help@vermont.gov

1. Historic Preservation²
2. Fire Safety School Project Worksheet with Regional Contact Map
3. Natural Resources information
4. ACT 250 Review

Caution: The Concept Approval of a project is only a first step in the overall required approvals for a construction project funded with any federal funds. Once the LEA has obtained the Concept Approval, they may begin to develop the project, enter the project into a grant(s) application, bid the project and enter into contracts. However, the LEA must receive Project Approval before starting the project (breaking ground). Failure to receive additional Project Approval may make these costs unallowable.

Plan Development and Permits

Once the construction project has received Concept Approval the LEA should begin developing the project, including:

1. Procure architectural and engineering (A&E) services.
2. Develop plans and specifications.
3. Obtain all required permits.

Procurement of Architect / Engineer Services:

All plans and specifications must be developed by a licensed architect or engineer. While the State bid law (16 VSA §559) does not apply to architect or engineering services, federal procurement does apply. The LEA must procure the services of the architect and/or engineer per the Uniform Guidance procurement regulations at [2 CFR §200.318-327](#). For A&E contracts exceeding the simplified acquisition threshold, LEA may use a qualifications based approach as identified in [2 CFR §200.320\(b\)\(2\)\(iv\)](#). As always, the LEA must document the federal procurement activity.

Develop Plans and Specifications

The LEA must meet the following federal design requirements as applicable:

- a. is functional, economical, and 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. ([EDGAR 34 CFR §75.607](#))
- b. meets the standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See 36 CFR part 1910); and State and local codes, to the extent that they are more stringent. ([EDGAR 34 CFR §75.609](#))

²Due to the amount of anticipated number of projects that will be funded with ESSER funds statewide the AOE will be assisting Historic Preservation with a preliminary determination on review eligibility for the project.

As a first step, LEA must submit the following form (link) to the AOE.

The AOE will review your submission and determine if a more in-depth review by Historic Preservation is required. If the AOE determines a more in-depth review is required, the LEA must work directly with Historic Preservation. The LEA must secure a final determination letter prior to applying for Project Approval.

- c. complies with all Federal regulations on handicapped accessibility that apply to construction and alteration of facilities. For non-residential facilities these regulations are found at 41 CFR subpart 101-19.6. ([EDGAR 34 CFR §75.610](#))
- d. avoids flood hazards by evaluating any flood hazards in connection with the construction and as practicable avoid uneconomic, hazardous or unnecessary use of flood plains in connection with the construction ([EDGAR 34 CFR §75.611](#))
- e. maximizes the efficient use of energy to the extent feasible ([EDGAR 34 CFR §75.616\(a\)](#))
- f. follows standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) ([EDGAR 34 CFR §75.616\(a\)](#))
 - i. ASHRAE-90 A-1980 (Sections 1-9).
 - ii. ASHRAE-90 B-1975 (Sections 10-11).
 - iii. ASHRAE-90 C-1977 (Section 12).

Obtain All Required Permits and Documentation

During plan development, the LEA will need to determine which state and local permits the project will require and work with the applicable state agencies and local zoning boards to receive all required permits. The list of required documents and information is included in the Project Approval Application Process section.

Procurement and Bidding

At this stage, the LEA may also put the project out for public bid, but should ensure that all federal and state regulations are followed, including:

[2 CFR Part 200, Appendix II](#) Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

- Equal Employment Opportunity
- Davis-Bacon Act
- Byrd Anti-Lobbying Amendment
- Debarment and Suspension
- Clean Air Act
- Contract Work Hours and Safety Standards Act

Project Approval Application Process (Application for Construction with Federal Funds Phase II)

Once the LEA has determined that the project plans have been finalized and all permits are in place, the LEA must amend its original application to complete the Project Approval stage in the Application for Construction with Federal Funds in GMS.

Project Approval

The AOE requires that LEAs submit the required permits, information and assurances prior to breaking ground on a proposed project.

Project Approval Application will require:

1. An updated budget, reflecting any changes to funding source(s)
2. Proof of Title to the site ([EDGAR 34 CFR §75.603](#))
3. Final plans
4. Historic Preservation Project Review Form
5. Historic Preservation Determination if required ([EDGAR 34 CFR §75.602](#))
6. Written approval of the local school board
7. Signature of superintendent

Determination

The GMS system will generate a generic approval message. The AOE will send an official, signed letter for Project Approval shortly thereafter. Please keep this approval letter with your grant records.

Please Note: Once the LEA has obtained Project Approval, they may break ground on their project. LEAs are strongly encouraged to maintain all required documents, permits, approvals, etc., in case of future audit.

Appendix A: Assurances for Application for School Construction with Federal Funds

The LEA assures that they will follow federal procurement requirements 2 CFR §200.318-327 for all architectural and engineering services.

The LEA assures they will follow applicable contract provisions per 2 CFR Part 200, Appendix II.

The LEA understands that this Concept Approval is offered solely for the project concept as presented in this application and will seek approval for any substantive changes to the project.

The LEA assures that all plans, specifications, and assessments will be completed by appropriately licensed professionals, as required.

The LEA must assure that their plans and specifications for the proposed project:

- a. is functional, economical, and 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. ([EDGAR 34 CFR §75.607](#))
- b. meets the standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576) (See 36 CFR part 1910); and State and local codes, to the extent that they are more stringent. ([EDGAR 34 CFR §75.609](#))
- c. complies with all Federal regulations on handicapped accessibility that apply to construction and alteration of facilities. For non-residential facilities these regulations are found at 41 CFR subpart 101-19.6. ([EDGAR 34 CFR §75.610](#))
- d. avoids flood hazards by evaluating any flood hazards in connection with the construction and as practicable avoid uneconomic, hazardous or unnecessary use of flood plains in connection with the construction ([EDGAR 34 CFR §75.611](#))
- e. maximizes the efficient use of energy to the extent feasible ([EDGAR 34 CFR §75.616\(a\)](#))
- f. follows standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) ([EDGAR 34 CFR §75.616\(a\)](#))
 - i. ASHRAE-90 A-1980 (Sections 1-9).
 - ii. ASHRAE-90 B-1975 (Sections 10-11).
 - iii. ASHRAE-90 C-1977 (Section 12).

The LEA assures that prior to starting the project (breaking ground) it will receive all applicable state and local permits.

The LEA assures that prior to starting the project (breaking ground) sufficient funds are available to meet any non-federal share of the cost of constructing the facility.

The LEA agrees to maintain competent supervision and inspection at the construction site to ensure that the work conforms to the approved drawings and specifications. ([EDGAR 34 §75.612](#))

The LEA understands that it is subject to the regulations on relocation assistance and real property acquisition in [34 CFR part 15](#) . ([EDGAR 34 §75.613](#))

The LEA assures that when construction is completed, sufficient funds will be available for effective operation and maintenance of the facilities. ([EDGAR 34 §75.614](#))

The LEA agrees to operate and maintain the facilities in accordance with applicable Federal, State, and local requirements. ([EDGAR 34 §75.615](#))

The LEA 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.

The LEA assures that it will receive all applicable state and local permits prior to starting the project (breaking ground) and agrees to comply with all state law regarding the project.

The LEA proposes to follow its own bonding policy: Y/N

If (N) The LEA agrees to follow the minimum requirements of [2 CFR 200.326](#).

The LEA understands that it is subject to the regulations on relocation assistance and real property acquisition in [34 CFR part 15](#). ([EDGAR 34 §75.613](#))

The LEA agrees to follow the equipment management requirements for 2 CFR 200.313 for any equipment purchased as part of the construction project.

If the LEA has been previously made aware of the presence (PCB detections in the past) of PCBs in their school facility, or if during construction PCBs are identified, the LEA assures that it will contact the Department of Environmental Conservation per [Sec. E.709.2 10 V.S.A. § 1283\(g\)\(3\)](#) and [§ 6602\(17\)](#) at sov.pcbssampling@vermont.gov .

The LEA agrees that prior to starting the project (breaking ground) it will submit the following required documentation in the Project Approval stage to AOE:

- Proof of Title to the site
- Written approval of the School Board
- Final Plans
- Historic Preservation Project Review Form
- Historic Preservation Determination (as applicable)