



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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Office of Facilities Planning Newsletter #103 – March 2010

Housekeeping reminders

- We have been having problems with many submissions recently where paperwork is not complete, requiring staff to contact the designer, requesting the remaining items. Please double check your submissions before sending to make sure the submission is complete. We reserve the right to return incomplete submissions.
- We need correct building numbers on all letters of intent, so that we may process your request for a new project number.
- When sending a submission to us, please make sure to separate all projects by building. Within those individual buildings/projects, please collate and staple multi-page forms. We have been receiving a lot of submissions as one large batch of papers with one large staple holding all forms together.

Qualified Zone Academy Bonds 2010 Allocation

The 2010 Allocation for the Qualified Zone Academy Bonds has been released by the Internal Revenue Service for distribution to the Public School Districts and Charter School in New York State. We have completed our remaining outstanding allocations and have \$ 45,078,239 remaining for distribution. Please visit our website at:

http://www.emsc.nysesd.gov/facplan/QZAB/letter_to_supt_re_qzab.html

for further information and applications for the 2010 QZAB Allocations.

Construction by school staff

We recently received calls from a concerned taxpayers and district employees, questioning the construction of new space inside an existing instructional building by district staff. After discussions with district personnel, it was learned that the construction was of non-compliant materials (wood studs in a Class A structure) and needed to be removed, even before the paint dried. Before engaging in any DIY remodeling, reconstruction or other construction activity in any of your buildings – no matter how minor – please call Facilities Planning first to discuss your project! Questions: call or e-mail your project manager or one of the architects here at FacPlan.

FP-FIs and documentation required

A reminder to submit two executed copies of FP-FIs. We also need full backup documentation attached to the FP-FIs for projects approved prior to 2007 (will have “07-XXXX” review numbers). In 2007 we started requiring voter authorization documentation with project submissions and have this information on file. For projects prior to 2007, we don’t have this information on hand. What we require is: 1) a copy of the bond resolution(s) budget referendum(referenda) for the project and, 2) a clerk-certified copy of the public vote tally. For questions or further information, please contact your project manager.

SHPO responses

When planning your project submissions, please take into account any SHPO review requirement for your project. SHPO review and approval is required for projects that involve ANY new construction (building, additions, storage sheds, press boxes, etc.), as well as construction on all buildings 50 years old or older. When SHPO clearance is required, please consider sending your request to SHPO as soon as possible so response is sufficiently timely as to be included with your final submission. For questions or further information, please contact your project manager.

EXCEL projects

Please note that when you have sent in your SA-139 on an EXCEL project, it will be certified to the Dormitory Authority for payment. Once the certification has been made, no revisions – other than under very special circumstances and adhering to very specific rules – may be made to the project. Please consider this very carefully when initially submitting your EXCEL project or before attempting to change an already certified EXCEL project. Please review the June 2009 joint memo from Andrea Hyary of State Aid and Carl Thurnau of Facilities Planning regarding these issues. The memo can be seen at:

https://stateaid.nysed.gov/build/html_docs/excelmemo_june2009.htm

Issues Affecting Electronic Reviews

As we gain more experience with the Electronic Review process, we have continued to identify ways in which you can help the review process through your submissions. Taken collectively over hundreds of projects, these items will save significant time. Please take these into account for future submissions.

- 1) Rotate the drawings so that when opened they are in the proper orientation.
- 2) Address every comment provided by SED - Either provide an addendum design document change or a clarification/response letter (signed by the A/E of record).

If a change is required – Update the actual Drawing or Specification. Cloud all changes.

[Note that small changes (to specifications for example) can be done by an Addendum, in written format, that is submitted in the electronic review system.]

If a change is not required – Provide a clarification/response in a separate letter.

[Provide in pdf format. Upload to an appropriate “Pending Addenda” folder on the electronic review system.]

Do Not provide a separate list of comments and responses for all comments.

Do Not provide extensive Addenda in written format.

Example: "Drawing E101 – Add Exit Sign at Door 1/101"

Instead, add the exit sign (with arrows and faces) on the drawing, and cloud it.

- 3) Backup information [such as calculations, spreadsheets, correspondence (Fire Department, DOH, DEC, utility companies, etc)] is acceptable. Provide in pdf format. Upload to an appropriate "Pending Addenda" folder on the electronic review system.

Please review the instructions provided by Dataflow on a regular basis for updates.

Please see the following link for additional reminders:

<http://www.emsc.nysesd.gov/facplan/documents/Feb2010-ElectronicReviewReminders.pdf>

These issues will save SED time during the electronic reviews.

Please direct questions or responses to this article to Dan Westbrook: dwestbro@mail.nysesd.gov

Measurement and Verification for Energy Performance Contract Projects:

Measurement and verification (M&V) must be performed in accordance with the "North American Energy Measurement and Verification Protocol" (March 1996) (NEMVP) for every Energy Performance Contract (EPC) project.

The protocol contains three general options for M&V (Options A, B, and C). The options require varying degrees of data acquisition and work on the part of the Energy Service company (ESCO) and the school district. The option chosen is a decision by the school district. In selecting an option, there is a cost/benefit (or cost/risk) decision the school district must make. In essence, how much should they spend to verify the guaranteed energy savings are actually accrued.

The minimum monitoring and verification required is Option A. In the past we have accepted the term stipulated savings as an equal term for the Option A measurement and verification protocol where the ESCO has certified that the measurement and verification techniques for determining cost savings will be performed in accordance with the NEMVP. Recently we have received contracts where both sets of terms (stipulated savings and Option A) have appeared. This implies that the minimum monitoring and verification may not be performed for the stipulated savings.

For all future projects and for all projects awaiting or under review that have not been approved, the contracts must remove all reference to stipulated savings. It must be clear in the contracts that M&V must comply at a minimum with the requirements of Option A.

Regardless of which M&V option is chosen, the ESCO must guarantee recovery of the costs of the project from energy savings realized by the school district during the term of the contract, which shall not exceed 18 years, or the useful life of the equipment being installed.

M&V requirements under "Option A" consist of: baseline conditions that have been properly defined; the equipment/systems specified meet the quantity, quality, and rating required to produce

the energy savings; the equipment/systems have been installed; the installed equipment/systems operate and perform in accordance with the specifications and meet all functional tests; the installed equipment continues to operate in accordance with the specified criteria throughout the term of the contract.

All requirements except the last one should be completed within a short time after the completion of installation. Typically, the last item is included in the contract as the responsibility of the school district. (If the district doesn't operate and maintain the equipment/systems exactly as stipulated the energy savings guarantee is not valid.

"Option B" includes all items under Option A plus it determines an energy and cost savings value using measured data taken throughout the term of the contract.

"Option C" includes all items under Option A plus it determines an energy savings value using measured utility meter data taken throughout the term of the contract.

We have made comments on EPC projects, regarding the limited benefits to school districts of paying for ongoing M&V costs, where we have seen in the contract that Option A is used; or the savings are proposed to be calculated, but all the input parameters to the formulas are stipulated ahead of time. Such calculations always provide the same answer, and in essence are nothing more than Option A.

It may be of benefit to the school district, where Option B or C is selected, to pay for a limited number of years collecting energy data. If the energy savings are met in each year, then it may be assumed (based upon the equipment continuing to operate in accordance with the specified criteria throughout the term of the contract) that the savings will be met each year. If the energy savings are not met in any one year, then it may be assumed (based upon the equipment continuing to operate in accordance with the specified criteria throughout the term of the contract) that the savings will not be met each year. The Contract would need to include wording for the ESCO to pay the school district for the remainder of the contract term for the difference between savings claimed and the actual savings.

Regardless of which M&V option is chosen, the ESCO must guarantee recovery of the costs of the project from energy savings realized by the school district during the term of the contract, which shall not exceed 18 years, or the useful life of the equipment being installed.

Measurement and verification costs paid by the school district must be included in the determination of whether the project meets the payback criteria.

Please direct questions or responses to this article to Marty Doyle: mdoyle@mail.nysed.gov

Third Party Certification for Energy Performance Contract (EPC) Projects

Energy Performance Contract (EPC) projects are difficult and time consuming for SED staff to review. We are required not only to review the technical documents for code compliance; we review the Contract, Audit, and certification statements for compliance with the requirements of various

laws and regulations. In an effort to reduce our backlog of projects, we are implementing a voluntary certification process in lieu of our review of the Audits for EPCs on a trial basis.

We have developed a certification statement to be submitted by a third party, NYS licensed professional engineer. If the school district wishes, they may hire a professional engineer with appropriate experience to review the Contract, Audit, design documents, buildings, and building systems. Based upon their review, the documents may be revised such that they are able to certify to the statements in the document entitled “INDEPENDENT 3RD PARTY CERTIFICATION FOR EPC PROJECTS” (SED Form FP-EPC-IC)

With the certification form as part of the project package, we will limit our review of the Audit to spot checks.

The certification form may be found at the following website address:

<http://www.emsc.nysesd.gov/facplan/documents/EPC-ThirdPartyCertification03-10.doc>

The cost for the certification service must be included in the total project cost to the school district when determining whether the project meets the payback criteria.

One of the issues that we see quite often in our reviews are discrepancies between the equipment and set points used to develop savings in the Audit and the equipment and set points specified in the design documents. Frequently, energy savings are based upon the proposed installation of equipment with a certain efficiency and the design specifies equipment of a lesser efficiency. This is one of the problems that currently should easily be picked up prior to submission, but is regularly missed.

Revisions for all EPC submissions:

In an effort to reduce the amount of time it takes to review EPC projects, assist the third party certifiers, and assist the school districts we are requiring the following revisions. Revisions will apply to all projects submitted to our office with signed Contracts, dated after April 1, 2010.

- Contract revisions:
 - The costs, and savings for both the proposed capital work and non-capital work must be broken out separately, for each energy saving measure at each building, in the Contract.
 - Separate energy saving guarantees for both the capital and non-capital work must be provided. (Payback criteria must be met for both capital and non-capital work separately.)
- Design submissions:
 - We just want to see designs for capital installation work. We do not care to see designs for scope items that are non-capital in nature and do not involve code issues. Scope items such as: replacement of incandescent lamps with compact fluorescent lamps; replacement of T-8 lamps and ballasts with more efficient T-8 lamps and ballasts; installation of occupancy sensors for vending machine control; and replacement of weather stripping, do not need to be reviewed for code compliance. It is assumed that the replacement devices will be listed and labeled for the application.

- Cost estimates on the FP-F forms will only include those values associated with the capital work. (Please note all measurement and verification costs associated with the capital work in the project must still be broken out by building.)
- [Audit revisions \(Audit revision\(s\) will apply to all Audits, dated after April 1, 2010\)](#) :
 - Baseline year must coincide with school district's fiscal year (typically July 1 through June 30). This will, also coincide with time frame for published heating (and cooling) degree day data.

The reasons we are requesting the separation of capital and non-capital work in the contract is as follows:

- Non-capital work may proceed ahead of capital work, especially if they are in separate contracts,
- School districts will have a better understanding of the costs of the project(s) for which there will be no building aid.

EPC reminders: (These reminders apply to all projects currently awaiting approval and all future projects.)

- It is impossible to achieve energy savings from equipment that was not operating during the base year.
- The baseline time period must be provided in the Contract.
- Separate payback calculations must be provided for both capital and non-capital work.
- Savings may not be claimed for assumed operating conditions (including) run hours that do not reflect actual operating conditions during the baseline year.
- Maintenance/replacement costs for all new equipment must be included in payback calculation. New systems typically include, but are not limited to: energy management control devices, occupancy sensors, boiler controllers, photovoltaic systems, etc.
- Every now and then a project comes in that claims savings on the avoidance of future capital costs. It is not acceptable to include the initial cost of replacing a piece of equipment as an operational and maintenance savings. There is no way a school district saves the cost of replacing a piece of equipment in the future, by replacing it now. The school district is still spending the funds to replace the equipment. They are only doing it now rather than later.
- The cost and savings associated with each energy saving measure must be broken out by building for our review. If a measure includes both capital and non-capital components, the costs and savings must be broken out by component and by measure for each building.

Information requested from School Districts using third party certification process

As a tie in to the third party certification for (EPC) projects, School Districts must agree to send to us, upon our request, energy consumption data on a fiscal year basis for each building in the project for each of the three years following the substantial completion of the project. Energy consumption data includes a summary of both electric energy usage and thermal energy usage by building, together with copies of utility bills. We may not ask for the information, but we reserve the right to receive the information as a means to audit the certifications.

Please direct questions or responses to this article to Marty Doyle: mdoyle@mail.nysesd.gov

Single prime contract submissions – aka “expedited reviews”

During some previous construction years, we experienced approval backlogs that reached 30 weeks in some cases. This was a function of large volumes of project submissions as a result of various funding incentives over the last several years and a limited staff. Currently, our submission queue is much smaller. Architectural reviews are currently being completed in about four weeks.

Engineering approvals are currently at a 10 12 week backlog. Based on this situation, we have determined we will suspend our expedited review process for single trade projects until such time as the workload dictates otherwise. As usual, we will be pleased to expedite true emergency projects.

Please direct questions or responses to this article to your project manager at FacPlan

Maintenance equipment purchased as part of a capital project

We have begun to notice maintenance items and equipment included in capital projects. This is inappropriate. Districts and consultants are advised not to procure these items through a capital project, but through a separate procurement bid, state contract or similar method compliant with Law.

Examples include trucks, plows, tractors, lawn or turf maintenance equipment, man lifts, fork lifts, etc. When new space is created either through new construction, or the renovation of existing space to an approved new use, the original furnishings and equipment germane to the use of the space is an eligible FF & E expense under the incidental cost allowance. Examples include science beakers, thermometers, gas (Bunsen) burners, laboratory scales, etc, for use in the science curriculum.

Another Example would be a computer classroom with appropriate desks, tables, chairs, printers, shelving, etc for use in the classroom.

Maintenance equipment such as man lifts for changing light bulbs in atrium spaces, or reaching HVAC equipment are not a capital expense and are not required for the educational use of the space. Similarly for those districts installing synthetic turf, tractors used for maintenance, cleaning and grooming of synthetic turf are maintenance equipment unrelated to the capital expense of installing the turf system.

These maintenance expenses are not eligible for building aid, and should not be procured as part of a capital project. District and consultants will be asked to remove those items prior to approval, or to identify the cost at the time of the final cost report.

Please direct questions or responses to this article to your project manager at FacPlan

Persons/Firms eligible to perform the Building Condition Survey

We have received several complaints of unqualified firms offering to perform the Building Condition survey. Specifically, it has been brought to our attention that several Construction Management (CM) firms may be offering what can be considered architectural or engineering services to clients in order to perform the BCS. The ability to offer A/E services in NY is closely regulated by the Department. Most CM firms are General Business Corporations(GBC), and GBC's may not offer professional services. Offering architecture or engineering services through a GBC may be seen as a violation of the New York State Education Law.

Typically, the CEO of the CM providing the services is not a licensee, i.e. an architect or engineer. Only a licensee may offer, or offer to render, professional services. Such services may not be brokered by a third party. Therefore even if a CM firm has licensees on staff who are providing the professional services, the services are being passed through an unlicensed corporation creating issues relating to illegal practice as well as unlawful profit sharing and fee splitting. Additionally, the GBC cannot subcontract the professional services to a licensee because to do so would cause the GBC to be providing professional services through the unlicensed corporation. Even if a CEO is licensed, the professional services must be provided through an appropriate corporate entity, and the survey conducted by a licensed individual. Additionally, all firms offering engineering services in the State must have a valid Certificate of Authorization issued by the Department

While the contracts between Owner, Architect/Professional Engineer, and Contractor may be memorialized into a single document for the design and construction of a project, the professional services and compensation of the Architect/Professional Engineer should flow directly between the Owner and Architect/Professional Engineer. Pass through agreements, where professional services are offered through third parties, are generally unlawful in New York.

The BCS must be contracted directly between the district and the professional, and in accordance with Commissioner's regulation, at least one professional must participate in the actual physical inspections. Specifically, section 155.4(b)(1)(i) states: *The physical inspections required to complete the survey shall be conducted by a team that includes at least one licensed architect or engineer.*

Please bear in mind that providing unlicensed professional services is a Class E Felony under Education Law. The Office of facilities planning will work with the State aid unit to ensure that all aid claims for the BCS were performed by appropriately licensed firms or individuals prior to the authorization of building aid for the survey. Aid must be denied if the surveys are not conducted in accordance with the law or regulation.

Please direct questions or responses to this article to Carl Thurnau: cthurnau@mail.nysed.gov

Please send any general comments, requests, or questions to FacPlan at emscfp@mail.nysed.gov or 518-474-3906

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<http://www.emsc.nysesd.gov/facplan/NewsLetters.htm>.