

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING
December 7, 2009

CHANGE OF SCOPE GUIDELINES

PURPOSE OF REPORT

To clarify guidelines for school districts to follow in order to avoid a potential Material Inaccuracy (MI) due to a change of scope in a project.

BACKGROUND

At the September 23, 2009 State Allocation Board (SAB) meeting, Board members asked how a district can proceed with a change of scope and how it can be handled without resulting in an MI.

Staff has identified two issues of concern for SFP projects that are apportioned, but later result in a scope change. First, these projects may result in a disadvantage to other projects that are in line for funding. Second, since the scope change might affect the funding that a district would have received; this may result in a funding advantage.

AUTHORITY

Education Code (EC) Section 17072.20(b) states, "The application shall include, but not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any."

SFP Regulation Section 1859.21 states, "A School District seeking funding for a modernization or new construction project shall complete and file with the OPSC, the Form SAB 50-04."

EC Section 17070.51 states, "If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a material inaccuracy, the Office of Public School Construction shall notify the board..."

EC Section 17072.30 states, "...the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services (DGS) pursuant to the Field Act..."

EC Section 17072.32 states, "For any project that has received an apportionment pursuant to Section 17072.30, funding shall be released in amounts equal to the amount of the local match upon certification by the school district that the school district entered into a binding contract for completion of the approved project."

EC Section 17072.35 states, "A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project..."

EC Section 17074.16 states, "The board shall release disbursements to school districts with approved applications for modernization, to the extent state funds are available for the state's 60-percent share, and the school district has provided its 40-percent local match."

EC Section 17267 requires that the governing board of a school district shall, before letting any contract for the construction of a school building as defined in EC Section 17283 according to the plans and specifications, file a set of the plans and specifications with the DGS, accompanied by a fee in the amount fixed by EC Section 17300.

EC Section 17297 states, "...before letting any contract for any construction or alteration of any school building, the written approval of the plans, as to safety of design and construction, by the Department of General Services shall be first had and obtained."

EC Section 17307 states that no contract for the construction of any school building is valid and no public money shall be paid for any work done under a contract unless the plans and specifications and estimates comply with the provisions and requirements of the Division of the State Architect (DSA), as representative of the Department of General Services, and that approval has first been obtained in writing.

DISCUSSION

In 2005, the Office of Public School Construction (OPSC) published an article in the Advisory Actions newsletter about how to proceed with change of scope requests. The article discusses what steps a district should take if a change of scope exists for a School Facility Program (SFP) modernization or new construction project.

A change of scope in any project receiving new construction grants includes, but is not limited to, any of the following:

- Addition/Deletion of Classrooms
- Addition/Reduction of Minimum Essential Facilities (MEF) Area
- Addition/Deletion of MEF Area
- Addition/Deletion of Non-Classroom Non-MEF Area
- Permanent to Modular Construction
- Modular to Permanent Construction
- Changing the Placement of a Building
- Site Re-configuration
- Any other material changes which affect funding (An example would be changing multi-story buildings to single story).

If a district has an upcoming change of scope to a project there are steps that should be taken to ensure that the change is brought to the OPSC's attention and that the project doesn't result in an MI finding. Below are some general guidelines as to the process a district should follow depending on which phase the project is in:

Scenario A. Change of scope after original California Department of Education (CDE) and/or DSA Approval(s), but prior to OPSC submittal:

The district must obtain the appropriate DSA approval of the revisions related to the scope change. Also, a district may need to receive a revised CDE approval, if the original plans were already CDE approved. This will establish an approval of the new project scope and it will be ready for submittal to OPSC.

Scenario B. After submittal to OPSC, prior to SAB approval:

The OPSC can only review and recommend approval based on the final scope of the project as it will be constructed; therefore, a district in this situation must withdraw and resubmit the application for funding when it is able to obtain the necessary DSA and/or CDE approvals capturing the new scope of the project. If a district does not withdraw and resubmit the project, it disadvantages others waiting for apportionment and makes the project subject to a potential MI.

Scenario C. After apportionment, prior to fund release:

It is recommended that a district notify the OPSC immediately. So that the OPSC can best aid the district in navigating the change of scope process at this point in the project timeline, districts must notify the OPSC of the scope change, and receive DSA/CDE scope change approvals, prior to the

fund release. If a district does not notify OPSC prior to the fund release, it risks a potential MI related to the information entered on the *Fund Release Authorization* (Form SAB 50-05). If a district cannot obtain the DSA/CDE scope change approvals prior to the time limit on fund release, it must rescind the application, and re-apply.

At this stage, any scope changes that decrease the funding amount associated with the final scope must be decreased from the original apportionment accordingly. The district must provide the OPSC with the proper DSA and CDE approvals related to the new scope of the project. The revised item containing the new scope of the project would be presented to the SAB for an adjustment to the original apportionment.

If the changes increase the scope of a project, the district can opt to rescind the original apportionment to then reapply for the increased funding, or accept the original apportionment as-is. If a district chooses to resubmit the application, the classrooms in the project cannot yet be occupied. The district will also need to provide the OPSC with the proper DSA and CDE approvals related to the new scope of the project. After these approvals are received, Staff will review the scope change, determine the effects to the original apportionment, and present the application (with scope changes) to the SAB for approval.

Scenario D. After fund release:

As soon as the district is aware that there will be a change of scope at this point in the project's timeline, the district must notify the OPSC as quickly as possible so that the OPSC can assist in keeping the project moving forward without the danger of a potential MI. The OPSC must be notified no later than 60 days after the change of scope is approved by the district. If the district does not notify OPSC within 60 days, Scenario E will apply.

- If the project would have received *fewer* funds due to the scope change, then a district would be required to return the excess funds associated with the change, plus interest. The district must also provide the appropriate DSA and/or CDE approvals associated with the new scope. Staff would prepare an SAB item to request the return of the excess funds, and the seek approval of the amended application.
- If the project would have an *increased* apportionment due to the scope change, then a district can either rescind the original project, and resubmit the project for processing once again, or accept the apportionment as-is without the additional funds. In either case, the district must also provide the appropriate DSA and/or CDE approvals associated with the new scope. Note that if a district chooses to resubmit the project, the classrooms in the project cannot yet be occupied. Also, the original project must be rescinded, and a district must return the funds, plus interest.

Scenario E. After OPSC audit begins:

Education Code Section 17072.35 states that, "A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project...." If the OPSC audit determines 1) that a school district did not construct the *approved* project (i.e. the project requested on the *Application for Funding*), or 2) the DSA/CDE/SAB did not approve the scope change, then Staff will recommend that the school district return any funding associated with the unapproved scope change. For example, when a school district does not construct all approved classrooms for which it received funding, and does not receive the necessary scope change approvals, Staff would recommend that a district return the excess funding associated with the unhoused pupils, including interest, and that the SAB restore the pupil grants to a district's baseline eligibility. Finally, during the audit, if Staff concludes that a school district received a funding advantage and that it falsely certified the *Application for Funding*, then Staff is required by law to notify the Board of a potential MI.

The following illustration depicts the major stages of a typical State funded project. The letters at the top correspond to the scenarios discussed in the item.

