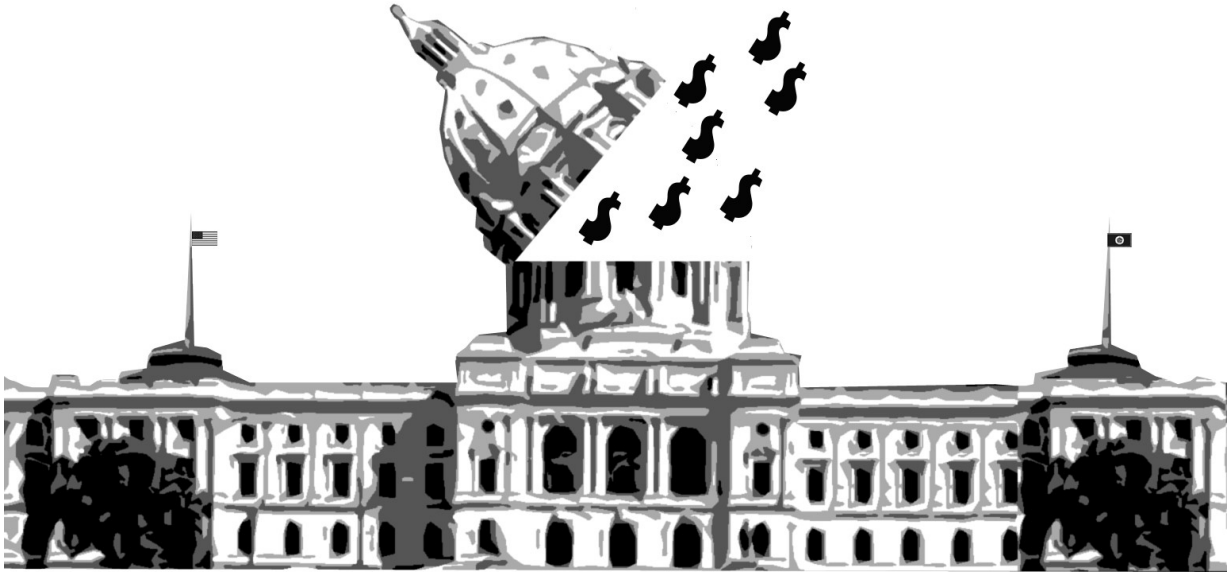
STATE OF MINNESOTA CAPITAL GRANTS MANUAL



A step-by-step guide that describes what grantees need to do to receive state capital grant payments

Revised November, 2020

The *State of Minnesota Capital Grants Manual* was prepared by Minnesota Management and Budget (MMB) in cooperation with the Department of Administration, Department of Employment and Economic Development and Department of Education.

This manual is intended as a general guide for local grantees who wish to receive state capital grant funds from state agencies and how local units of government may submit capital budget requests directly to the state. Local government units who are granted an appropriation will receive their appropriation through a state agency. Individual state agencies may impose additional requirements with respect to their capital grant programs or projects or for projects of local government units administered by those agencies.

This manual highlights the steps grantees and local government units need to follow in order to receive state capital grants. It offers some guidance for submitting a capital budget request, but is primarily intended to describe the steps required after a capital budget request has been submitted and after the Legislature has approved an appropriation for a project or grant program and the Governor has signed the legislation into law.

Further information regarding how local units of government may submit capital budget requests may be obtained from the granting agency or MMB. A link to this information on MMB's website is provided on page 24.

This manual and other state capital budget documents referred to in the manual are available at the links shown on page 24.

TABLE OF CONTENTS

Purpose of this Capital Grants Manual 1

Roles and Responsibilities in the Project Review Process 2

Capital Project Checklist 4

Qualified Capital Expenditures 9

Total Project Funding 12

Predesign and Design Review 15

Management and Budget Approval of Use Agreements 17

Operating Budget Review 19

Preparation of Grant Agreements 20

Cancellation Report to the Legislature 22

Statutes Applicable to Capital Projects 23

Additional Information 24

PURPOSE OF THIS CAPITAL GRANTS MANUAL

The State of Minnesota Capital Grants Manual is intended to provide local government officials and grantees with information regarding what they need to do prior to receiving state capital grant funds. This primarily involves projects that are one-time special appropriations or are otherwise not part of ongoing state grant programs. These include capital grants funded from state bond funds and the state general fund.

The Minnesota Legislature frequently appropriates state funding to local governments for a variety of capital projects. Funding may be approved through the state bonding bill or other state appropriation bills. Funding may come from bond proceeds or from the general fund. Agencies, local governments and other grantees need to be aware of the source of funding because requirements and limitations on spending can vary.

State agencies often receive calls from local government officials who have received legislative approval for their capital project who ask, "When do I get the state's check?" Unfortunately, it's not that easy.

Capital projects financed wholly or in part by general obligation bonds ("**bond financed property**") are subject to requirements of the Minnesota Constitution, state statutes, the specific language of the appropriation bill, federal tax regulations, and state accounting policies. Depending on the size and type of project, certain steps must be followed before state funds can be released.

This may include predesign and design reviews. All additional project funding must be documented. State agencies must draft grant agreements for review by local grantees. Use agreements are required for capital projects that will be used or operated by non-profit organizations or other entities which are not governmental entities. All of these topics are covered by separate sections of this manual.

Each section of this manual provides general information that local officials and agency staff will need to understand the grant making process. Read each section carefully. Call the grant administrator at the granting agency if you have questions. The state agency making the grant will discuss any requirements that differ from those contained in this manual.

All of the documents referenced in this manual can be found at the web sites listed at the end of the manual.

ROLES AND RESPONSIBILITIES IN THE PROJECT REVIEW PROCESS

Grantees should be aware of the roles and responsibilities of various parties in the project review process. Each has requirements that must be followed in order to receive state grant funds.

Role of the Governor

- ✓ Prepare a 6-year Strategic Capital Budget Plan

Role of the State Legislature

- ✓ Enact legislation that authorizes funding for the capital project
- ✓ Review project design documents prior to bidding

Role of the Department of Administration

- ✓ Review project predesign documents prior to the design phase

Role of Management and Budget (MMB)

- ✓ Coordinate the governor's capital budget process
- ✓ Review information submitted for capital projects
- ✓ Approve use agreements
- ✓ Confirm total project funding and satisfaction of match requirements
- ✓ Prepare the cancellation report for capital appropriations more than four years old which have not been spent or otherwise encumbered
- ✓ Place appropriations for capital projects in the state accounting system (this allows granting agencies to disburse state funds)
- ✓ Approve sales of land or facilities that received general obligation bond proceeds ("bond-financed property")

Role of the State Agency Making the Grant

- ✓ Prepare grant agreements for review and approval of the local grantee
- ✓ Forward design documents to the legislature for review
- ✓ Review project operating budget
- ✓ Answer questions regarding the grant-making process
- ✓ Sign the completed grant agreement
- ✓ Review invoices and approve payments to the grantee
- ✓ Enforce provisions of executed grant agreements

Role of the Local Grantee (the Local Government Unit)

- ✓ Read the requirements contained in state statutes, this manual, and state grant agreements
- ✓ Consult with your local legal and financial advisors
- ✓ Provide all information requested by state agencies, including a complete sources and uses of funds[1]
- ✓ Review the capital project checklist starting on the next page to make sure the project is eligible for a capital grant (all questions must be answered "Yes" to receive state funds)
- ✓ Review and sign the grant agreement
- ✓ Review and sign the use agreement, if applicable
- ✓ Provide payment requests to the state granting agency with appropriate documentation
- ✓ Complete the project
- ✓ Operate the project
- ✓ Record a real property declaration acknowledging the restrictions on bond-financed property
- ✓ Certify annually to the granting agency and MMB the continuing operation of the project for the intended purpose

[1] A sources and uses of funds form is attached as an appendix to the Grant Agreement forms listed on page 24.

CAPITAL PROJECT CHECKLIST

This checklist highlights the requirements that grantees must satisfy to receive most state grants. All of the following questions must be answered "Yes" to comply with requirements of the Minnesota Constitution, state statutes, state accounting policies and federal tax regulations. Any "No" answer is problematic and will likely result in the grant not being processed. This checklist does not need to be submitted to the state; rather, it is for grantees' use to determine whether their projects are eligible for state bonding proceeds.

*****Grantees should NOT incur project costs or expect state reimbursement until the following requirements have been satisfied.***

The following steps are not necessarily sequential. Grantees may wish to complete some or all of the steps simultaneously. The granting agency will advise the grantee accordingly. The grantee should verify that the answers to Questions 1 through 3 are "yes" before requesting a state grant.

1. **Public Purpose** (see pages 9-10 of this manual)

Yes	No	
☐	☐	Are the programs and services to be provided by the project consistent with the public purpose expressed in the state appropriation or statutes?

2. **Public Ownership** (see pages 9-11)

Yes	No	
☐	☐	If the project is financed by state general obligation bonds or if the project is financed with general fund cash that is appropriated to a specific public entity, will the public entity that will receive the grant possess a qualifying ownership interest in the capital project? A "qualifying ownership interest" means fee ownership or a long-term noncancellable lease or easement covering at least 125% of the useful life of the project.

3. **Qualified Capital Expenditures** (see pages 9-11)

Yes	No	
☐	☐	Will expenditures for the portion of the project paid by state funds constitute qualified capital costs (this only applies to general obligation bond appropriations)?

4. **Total Project Funding** (see pages 12-14)

(For projects that will be financed from multiple funding sources, with total project costs in excess of the state appropriation. For projects funded entirely from the state appropriation, proceed to the next question.)

Yes	No	
☐	☐	Are all non-state funding sources committed or legally binding?
☐	☐	Has documentation of all funding sources been received and approved by both the granting agency and MMB?

5. **Predesign Review by the Department of Administration** (see pages 15-16)

The grantee should read the predesign requirements of Minn. Stat. § 16B.335 to verify whether the requirements contained in that section apply to its project. Predesign review must occur before design can begin. A predesign manual is available from the Department of Administration (see page 24 for a link to the manual).

Yes	No	
☐	☐	If Minn. Stat. § 16B.335, subd. 3 does not exempt the project from predesign review, has the Department of Administration received and approved the project predesign?

6. **Legislative Design Review** (see pages 15-16)

The grantee should read the design review requirements of Minn. Stat. § 16B.335 to verify whether the requirements apply to its project. Design review must occur before bid documents can be prepared.

Yes	No	
☐	☐	If Minn. Stat. § 16B.335, subd. 1(b) does not exempt the project from design review, have the chairs of the House Ways and Means Committee and Senate Finance Committee received and approved the project design and have the chairs and ranking minority members of the House Capital Investment Committee and the Senate Capital Investment Committee been notified?
☐	☐	If Minn. Stat. § 16B.335, subd. 1 does not exempt the project from design review and if the project has changed significantly in scope since the project appropriation was made or since the predesign was completed, have the chairs and ranking minority members of the House Ways and Means and Capital Investment Committees and Senate Finance and Capital Investment Committees been notified and advised of the changes?

Questions 7 and 8 apply to projects financed by state general obligation bonds only. For general fund cash projects, proceed to Question 9.

7. **Approval of Use Agreements** (see pages 17-18)

The grantee should read the requirements of Minn. Stat. § 16A.695 and the *Fourth Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property* dated July 30, 2012 (the "Commissioner's Order"), to verify whether the requirements apply to its project (the statute and order are available at the MMB website link on page 24).

Yes	No	
☐	☐	If the publicly-owned project will be used or operated in whole or in part by a non-profit or other private entity, has the grantee completed a G.O. Bonding Compliance Checklist for Use Contracts (see link on p. 24)?
☐	☐	If the publicly-owned project will be used or operated in whole or in part by a non-profit or other private entity, has the use agreement been approved by MMB?

8. **Program Operational Funding Review** (see page 19)

The grantee should read the requirements of Minn. Stat. § 16A.695 to verify whether the requirements apply to its project.

Yes	No	
☐	☐	In all cases, will the public grantee have substantial ongoing oversight of the public program contained in the facility or operated on the property?
☐	☐	If the project will be operated by the public agency, has the state granting agency received and approved a budget document or resolution of the local governing board pledging to support and fund the operations of the program?
☐	☐	If the project will be used or operated by a private, non-profit entity, has the state granting agency received and approved the program operating budget, which may include pro-forma financial statements?

9. Agreements (see pages 20-21)

Yes	No	
☐	☐	Has the state granting agency prepared a grant agreement for review by the grantee?
☐	☐	Has the grantee signed the grant agreement?
☐	☐	Other than ongoing requirements, have all the conditions contained in the grant agreement been met and all required information supplied to the granting agency?
☐	☐	(For projects financed by state general obligation bonds only) Has a bond-financed property declaration been filed that prohibits the sale of the project property without the consent of the commissioner of MMB?

10. Project Cancellation (see page 22)

Yes	No	
☐	☐	To avoid automatic cancellation of any appropriation, will all grant funds be encumbered or spent within the time period specified under Minn. Stat. § 16A.642?

This table shows the differences in requirements for projects funded by general obligation bonds and by general fund cash.

LEGAL REQUIREMENTS	GENERAL OBLIGATION BOND PROJECT	GENERAL FUND CASH PROJECT
Public purpose	Required	Required
Public ownership	Required	Required if specified in law
Public program oversight	Required	Required if specified in law
Predesign review by Department of Administration	Required for most projects. See Minn. Stat. § 16B.335	Required for most projects. See Minn. Stat. § 16B.335
Design review by legislative chairs	Required for most projects. See Minn. Stat. § 16B.335	Required for most projects. See Minn. Stat. § 16B.335
Qualified capital expenditures	Required	May be required when specified in law
Matching funds	Required when specified in law or if total capital costs exceed the state appropriation	Required when specified in law or if total capital costs exceed the state appropriation
Use agreement review by MMB	Required if facility will be operated by an entity (whether public or private) other than the public entity receiving the grant	Not required
Program operational funding review by granting agency	Required	Required
Grant agreement	Required	Required
Appropriation cancellation after four years	Required for balances that are neither spent nor encumbered	Required for balances that are neither spent nor encumbered

QUALIFIED CAPITAL EXPENDITURES

The Minnesota Legislature appropriates funds for capital projects either through the issuance of general obligation bonds or from general fund cash. All state grants financed from general obligation bonds must comply with requirements of the Minnesota Constitution regarding definitions of eligible capital projects and the proper use of state bond proceeds. This includes requirements for public ownership and oversight, public purpose, and capital-eligible expenditures. General fund cash projects generally have greater flexibility in how state funding may be used.

The two financing mechanisms have varying restrictions in the use of the funds. This chapter describes each type of financing and what it means for affected projects.

First, the grantee should **read the legislation that provides funding for the project** to determine whether it is bond financed or from general fund cash. Most projects are bond financed. General fund projects are specifically identified as such in the language of the state appropriation. If you are in doubt, call the state granting agency named in the appropriation bill.

State Bond Financed Projects

The Minnesota Constitution, Minn. Stat. § 16A.695 and the Commissioner's Order detail the restrictions and requirements associated with property financed with state bond proceeds. State bond funds have constitutional restrictions that limit the use of funds to improvements of a capital nature, require that the facility or property be owned by a state agency or political subdivision of the state, and require that a public program be provided in the facility or operated on the property. Therefore, bond proceeds may only be used to finance publicly owned and publicly operated projects (e.g., state buildings, state parks, correctional facilities, public higher education buildings, and local performing arts centers and libraries).

Non-profit and other private organizations are not eligible to receive state general obligation bond proceeds. However, a local government that owns a bond-financed project (or that obtains a "qualifying ownership interest" for purposes of receiving a bonding grant, as discussed in the next subsection) may allow a non-profit or other private entity manage the facility or property and operate its public program with proper oversight by the public owner. Such non-profit or other private organization may use or operate a state bond-financed facility by entering into a use agreement with its public owner.

For example, the legislature may provide that bond proceeds appropriated to an agency are to go to a city to build a municipal community center. Although the community center will be a public building owned by the city, the city may not want to manage the day-to-day activities in the building and may wish to have another entity do so. In such case, the city will need to enter into a use agreement with that entity to ensure that the public program will be carried out. See the information relating to use agreements starting on page 17 for more information.

Please note that a local unit of government that enters into a use agreement with another entity, whether private or public, for operation of bond-financed property is ultimately responsible for the operation of that property. Even if the entity operating the property terminates or walks away from the use agreement, the public entity remains responsible for operating the bond financed property and the public program.

Projects financed with state bond proceeds must remain in public ownership until the public purpose of the facility is discontinued. Bond-financed property may be sold only if it is determined by official action that the property is no longer usable or needed by the public to carry out the intent of the project. If the project is sold, Minn. Stat. § 16A.695 requires the sale to be made at fair market value with all or a portion of the net sale proceeds returned to the state. This may include a return of all state grant funds and a pro-rata portion of the facility's appreciated value.

Grant agreements for state bond financed property must include all the provisions required by Minn. Stat. § 16A.695, the Commissioner's Order and federal tax code provisions applicable to tax-exempt bonds. There is little, if any, flexibility in negotiating the terms of a bond-financed grant agreement due to the limits of the Minnesota Constitution, associated state statutes and federal tax code.

Required Public Ownership

The required public ownership can be a fee simple interest or a sufficiently long-term lease or easement interest (having a term that is at least 125% of the useful life of the project). This is referred to as a "qualifying ownership interest". The long-term lease or easement may be entered into specifically for the purpose of making a project eligible to receive a state bonding grant. A draft lease or easement must be submitted to MMB prior to its execution together with a completed checklist which MMB has prepared for these documents. A link to that checklist is on page 24.

If a private organization leases property to a local government so that a project is eligible for bond financing, the local government will probably wish to enter into a lease or management agreement with the private organization to allow the latter to operate the facility. That lease or management agreement, which are both types of use agreements, must be for a significantly shorter term than the lease to the local government and must also be reviewed by MMB; see page 17.

State General Fund Financed Projects

Unlike state bond financed projects, general fund projects do not have the same constitutional restrictions that require public ownership. Therefore, projects financed with state general funds may have greater flexibility.

Public ownership of the project may not be required. Private and non-profit organizations are eligible to receive direct cash appropriations from the general fund or another state fund for projects they will own.

However, other provisions that apply to bond financed projects may be included in the general fund grant agreement as a matter of good public policy or when required by bill language in the state appropriation. For example, if the Legislature appropriates state general funds to a city to build a community center, it is evident that the Legislature intends that a community center be built and maintained by the city as a community center facility – not built by the city and then sold to a private party for a fitness center.

In some cases, the terms of the grant agreement can be negotiated depending on the nature and needs of the project and the language of the appropriation.

Qualified Capital Expenditures

General obligation bond proceeds and general fund cash appropriations which have been limited to capital expenditures may only be used for qualified capital expenditures. Eligible costs include land acquisition, predesign, design, construction, major remodeling (if it adds to the value or life of a building and is not of a recurring nature), and other improvements or acquisitions of tangible fixed assets of a capital nature.

General operating expenses, overhead, master planning, maintenance, operating costs, and personal property are not qualified expenses. Equipment is not eligible unless purchased and installed upon initial acquisition and construction of a building, expansion or major remodeling and needed for the governmental program to be operated in the project. Computers, software and other information technology expenditures may be eligible in certain circumstances. Expenses that are not qualified capital expenses must be paid from funds other than general obligation bond proceeds or may be paid from general fund cash if not prohibited by law.

Agencies may use general obligation bond proceeds to pay for agency staff costs for bonding appropriations authorized in the 2010 legislative session and later and for earlier appropriations if explicit statutory authority was given to use general obligation bond proceeds to fund staff costs.

Agencies must notify MMB of their intention to capitalize the costs of staff prior to expending any bond appropriations for this purpose. Staff time expended on capital projects must be tracked on a daily basis by project and by each individual recording time on the project. Agencies are required to submit a quarterly memorandum to their Executive Budget Officer, for approval by MMB, which outlines their proposed process for tracking and reporting all agency staff time funded with G.O. bond proceeds. MMB's policy on the use of general obligation bond proceeds to pay staff costs can be viewed at the link given on page 24.

Questions regarding the requirements of this chapter should be addressed first to the granting agency or to the agency's executive budget officer at MMB. Further questions may be addressed to Roger Behrens of MMB at (651) 201-8131, roger.behrens@state.mn.us.

TOTAL PROJECT FUNDING

This chapter applies to projects with total capital costs that exceed the state capital appropriation and require additional funding. The grantee must document that all project funding has been received or a legally binding commitment is in place. This information must be submitted to and approved by the state granting agency and MMB before the grant agreement can be executed and before the appropriation can be activated in the state accounting system.

Grantees will typically be asked to document the total project cost (total capital costs) and identify the source and status of all funding.

Bonding bills, appropriation bills, and other session laws commonly require non-state matching funds as a condition of receiving a capital appropriation. This is the "matching requirement". Minn. Stat. § 16A.86 requires that at least half of the funding of most local government unit projects (not including school district projects) come from non-state sources. Non-state funding may include federal, local and private funds. Bill language for these appropriations typically specify that the recipient may not receive a capital appropriation until the recipient has a commitment for or receives matching funds to complete project financing.

In many cases, additional financing is needed to complete a project above and beyond the amount of the state appropriation plus matching requirements named in the appropriation bill. In these cases, the grantee must demonstrate that *all financing* is in place to complete the project. This is the "full funding requirement" and is addressed in Minn. Stat. §§ 16A.502 and 16A.695, subd. 6.

It is important to note that the full funding requirement applies to a "project" as defined in the appropriation bill. As an example, an agency may request funds for predesign in one biennium and for construction in a later biennium. In that case, the "project" submitted in the first biennium is just the predesign, and the full funding requirement applies only to the predesign costs.

For projects that will be owned, developed or managed by a political subdivision, non-state matching funds do not need to be deposited in the state treasury. Rather, the political subdivision must provide documentation that all non-state funds necessary to complete the project have been secured or are legally committed. The state agency making the grant may sign the grant agreement before the matching funds are available, but may not release state funds until all matching funds are available.

Grantees should understand that pledges, promises and I.O.U.'s **do not qualify** as legally binding commitments. Matching funds must be real and available before costs are incurred.

Federal Authorizations, Appropriations and Grant Letters

Federal funds can be documented through line items in approved federal budgets and grant award letters from federal agencies. Federal authorizations by themselves are insufficient; they

must be accompanied by corresponding budget appropriations and a grant award letter in order to be considered binding federal commitments.

Local Government Budgets and Resolutions

Local government funds can take the form of local bonds or can be documented through line items in approved local budgets or resolutions of support from local governing bodies. Although a resolution of the local governing board is not a legally binding commitment, the grantee must legally obligate such funds as part of the subsequent grant agreement.

Private Contributions, Loans and Letters of Credit

Private pledges that have been deposited into a segregated account can be documented through financial statements and reports. However, multi-year pledges that have not been received do not qualify as a legally binding commitment unless converted into cash or cash equivalent through a loan or irrevocable letter of credit from a third-party financial institution.

All capital funds must produce new or additional value in project assets. Loans or letters of credit supported by operating revenues rather than new contributions are not considered eligible matching funds because they do not improve the project balance sheet. In such cases, increased asset values on the balance sheet are offset by loan payable obligations.

Documentation for in-kind contributions, when permitted by law, must include the name of the contributor, a description and the value of the contribution, and the details of how the value of the in-kind contribution or service was determined. The value of land or buildings donated to a project should be included when estimating total project costs and may be considered as part of a matching contribution if used exclusively for the purpose of the new capital project. The value of contributed land or buildings should be documented through an appraisal performed by a licensed appraiser.

Documentation of total project funding must be provided to the state granting agency. Upon approval by the granting agency, the information should be forwarded to MMB by the granting agency with an appropriation entry form to activate the account in SWIFT. Agencies should prepare all appropriation entry forms.

This is an example of a project which demonstrates total project funding and examples of documentation required:

Name of the Project: Johnstown Community Center
Total Project Costs (total capital costs): $3.5 million

Funding Sources	Amount	Status
State Funds	$ 500,000	Authorized in the 2012 bonding bill (Laws of MN 2012, Chapter 492, Article 1, Section 90, subd. 5)
Federal Funds	250,000	Grant award letter dated 6/15/13 from the U.S. Dept. of Housing and Urban Development
Local Funds	1,500,000	Bond referendum approved by voters 8/4/13
	500,000	City Council Budget Resolution #xxx dated 12/31/13
Private Funds	600,000	Received and deposited into city account # xxx-xx
	150,000	Irrevocable letter of credit dated 6/20/13 from Wells Fargo Bank
Total Project Funding	**$ 3,500,000**	

Copies of all documents demonstrating the funding sources described above must be provided to the granting agency, which will forward a copy of the information to MMB.

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Roger Behrens of MMB at (651) 201-8131, roger.behrens@state.mn.us.

PREDESIGN AND DESIGN REVIEW

State statutes require predesign review by the Department of Administration and legislative design review for certain types of capital projects. Please read Minn. Stat. § 16B.335 and the following information for guidance as to which projects require predesign and design review.

Predesign Review by Department of Administration

Predesign is a written plan for the capital project that is completed prior to designing and constructing the project. It should include information regarding the need for the project (purpose), its architectural program (scope), project budget (capital costs), and time constraints that effect the project (schedule). It should also include information on the staffing and operating budget for the facility.

Predesign is an important part of the state's capital budget process. Predesign has been recognized in statute as the first of three stages of a capital project. In its proper sequence, predesign follows strategic and operational planning for a project, and precedes design and construction stages.

Predesign examines all aspects of project feasibility, including whether the proposed facility meets the agency's long-term mission, strategic and operational plans, capital costs, funding sources and required funding sequence for legislative action on capital budgets. Predesign helps to avoid surprises during project development that may require additional project funding. All predesign, design, and construction projects must include consideration of the state correctional industries program (MINNCOR Industries), in predesign planning and product specifications (Minn. Stat. §§ 16B.335, subd. 3 and 16B.181).

Because the requirement for predesign is dependent on the nature of the capital project and its cost, the applicant should consult with the granting agency to determine the appropriate requirements and procedures for each project. Applicants should review the predesign manual on the Department of Administration's website to determine which projects are subject to predesign requirements (see link on p. 24).

In very general terms, projects required to have a predesign include construction of a new building, substantial addition to an existing building, and substantial change to the interior configuration of an existing building. Projects exempt from doing a predesign include local government projects with a construction cost of less than $1.5 million, or any other capital project with a construction cost of less than $750,000.

Predesign questions may be directed to Bee Yang, Statewide Predesign Program Manager at the Department of Administration at (651) 201-2393, bee.yang@state.mn.us.

Legislative Design Review

Minn. Stat. § 16B.335 requires that program plans and cost estimates of certain capital projects be reviewed by legislative committee chairs and ranking minority members. This review must occur before preparation of construction plans and specifications.

Most major projects require a legislative recommendation, while other projects merely require a legislative notification. Grantees should work with the state granting agency to supply design information to the appropriate legislative chairs and ranking minority members on a timely basis. Please read the following information to determine which legislative reporting requirement applies to your capital project.

Projects Requiring a Legislative Recommendation

A legislative recommendation is required for program plans and cost estimates for construction, major remodeling and land acquisition projects that receive an appropriation. Such information must be presented to the chair of the Senate Finance Committee and the chair of the House Ways and Means Committee for their recommendations at least two weeks before a recommendation is needed. The chair and ranking minority member of the House Capital Investment Committee and the chair and ranking minority member of the Senate Capital Investment Committee must be copied on the information.

This information should be presented to the chairs after predesign is completed. The applicant must receive the chairs' recommendations before preparing final plans and specifications for construction of the project. Failure or refusal by the chairs to make a recommendation is considered a negative recommendation. The recommendations are advisory only.

Projects Requiring Only Legislative Notification

Local government projects with a construction cost of less than $1.5 million or any other capital project with a construction cost of less than $750,000 are among the projects for which only a legislative notification is required when work is ready to begin. Applicants should review Minn. Stat. § 16B.335, subds. 1 and 2 for a detailed list of projects for which only legislative notification is required. For these projects, the chairs and ranking minority members of the Senate Finance and Capital Investment Committees and the House Capital Investment and Ways and Means Committees must be notified prior to any work starting, including design work. However, these projects do not need to wait for a recommendation to proceed.

In addition, the chairs and ranking minority members of the Senate Finance and Capital Investment Committees, and House Capital Investment and Ways and Means Committees must be notified whenever there is a substantial change in a construction or major remodeling project or in its cost since the original appropriation was made or since the predesign was completed.

Questions regarding the requirements of this chapter should be forwarded to legislative staff for the committee chairs named in Minn. Stat. § 16B.335.

MANAGEMENT AND BUDGET APPROVAL OF USE AGREEMENTS

State statutes require the commissioner of MMB to review and approve use agreements for state bond financed projects that are publicly owned but operated by a non-profit or other private organization. These requirements do not apply to general fund cash projects.

Article XI, Section 5(a) of the Minnesota Constitution limits the appropriation of state general obligation bonds to state agencies and political subdivisions. Because of this constitutional constraint, grants or loans for bond-financed projects cannot be directly made to non-profit or for-profit organizations. This requirement does not apply to general fund cash-financed projects.

Minn. Stat. § 16A.695 and the Commissioner's Order contain guidelines that must be followed when a non-profit or for-profit organization is involved with the operation of a bond financed project. Generally, this would be accomplished by having the capital project be owned by a state agency or political subdivision that then enters into a use agreement with the private organization to provide a public program carried out by the private organization. A use agreement is a lease, management contract or other similar contract between the public entity that owns the land or facility and any non-public entity which operates it.

A state agency or political subdivision that enters into a use agreement with the private organization must continue to be an active participant in the public program with ongoing oversight of the program. The public entity must be much more than merely a conduit with a one-time responsibility of passing the bond proceeds through a grant agreement to the private organization. The commissioner of MMB must approve all use agreements for bond-financed property.

The commissioner of MMB must approve use agreements, but MMB is not a co-signer to the agreement. The use agreement is exclusively a legal agreement between the public owner of the facility and the private user who will operate the facility and the public program. The public owner and the private user normally jointly prepare the agreement. Grantees should consult with their appropriate legal advisors.

Although projects that receive cash (general fund) financing are not subject to the public ownership and use agreement requirements of the Minnesota Constitution or Minn. Stat. § 16A.695, cash projects are subject to conditions of the project authorization in the bonding bill.

In addition, all cash and bond-financed projects must provide the purpose, program or service identified in the project authorization on an ongoing basis. If the program expressed in the project appropriation is discontinued and/or the sale of the capital asset or facility is contemplated, the grantee must comply with applicable sale and reimbursement conditions contained in Minn. Stat. § 16A.695, the Commissioner's Order and the grant agreement.

Prior to executing a use agreement, the grantee should complete a *G.O. Bonding Compliance Checklist for Use Agreements* and forward the checklist and a copy of the use agreement in draft form to Roger Behrens of MMB at (651) 201-8131, roger.behrens@state.mn.us, for review. This checklist is intended to ensure compliance with applicable constitutional and statutory requirements, including IRS regulations relating to use of tax-exempt bond proceeds. A link to the checklist is given on page 24. In this way, any changes to the use agreement which are necessary to comply with the checklist can be made before the use agreement is signed by the parties.

Questions regarding the requirements of this chapter can be directed to the granting agency, to the agency's executive budget officer at MMB or to Roger Behrens (contact information above).

OPERATING BUDGET REVIEW

The operating budget plan for facilities that are state bond financed must be reviewed and approved by the state granting agency. This requirement does not apply to projects financed from the state's general fund.

Due to statutory requirements, the state needs assurances that grantees and non-profit operators have an adequate plan for operating and funding the public program in a state bond-financed facility. Upon completion of the facility, the state does not want a local government or a non-profit operator to return seeking state funds to pay for operating costs of the public program or public facility.

Commissioner's Determination

Minn. Stat. § 16A.695, subd. 5 requires the commissioner of the granting agency to review the grantee's operating plan to determine that the organization can successfully carry out the public program and the operating plan of the bond-financed project, and that it has, or will have, sufficient funds to do so. As such, the grantee will need to demonstrate to the granting agency that a program plan is in place to adequately finance the operations of the facility.

For most facilities operated by a public agency, a copy of that agency's operating budget or a resolution of its governing board that pledges to fund the public program is typically all that is needed.

If the facility's public program is particularly complex, or if the facility will be operated by a private or non-profit organization, the commissioner may ask the grantee or the non-profit organization to provide projections covering a minimum of three years after the start-up date.

Budgeted expenditures and revenues, as well as the assumptions used in developing the financial statements, should be included. The grantee must explain why each assumption is valid.

The commissioner of the granting agency will use this information to make a determination required under Minn. Stat. § 16A.695, subd. 5.

On occasion, the complexity or context of a grant project and its operating program may be too difficult or unfamiliar for the granting agency to evaluate. For example, this may be true when the grant is for a local capital project that is outside of the granting agency's traditional policy area. In situations such as this, the agency is encouraged to contact MMB for assistance.

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Roger Behrens of MMB at (651) 201-8131, roger.behrens@state.mn.us.

PREPARATION OF GRANT AGREEMENTS

Grantees must enter into a grant agreement with the state before receiving any state money. The granting agency has responsibility for preparing grant agreements for bond-financed and general fund projects. The granting agency will make a final determination regarding which type of grant agreement will be used, and will prepare it for review by the grantee.

Appropriations to state agencies for their internal use are not grants and do not require a grant agreement. However, they are still subject to the requirements in the Minnesota Constitution, state statutes, appropriation bill language, federal tax regulations and state accounting policies.

There are three basic types of grant agreements entered into by the state when awarding capital grants. The grant agreement that is used depends on the nature and needs of the project as well as the funding source (state general obligation bond proceeds or state general fund dollars).

Grant Types

End grant. This type of grant agreement reimburses the grantee after the project has been fully completed. It requires the grantee to provide up-front financing during development of the project, with state reimbursement after project completion and occupancy. Some type of documentation establishing that the project has been completed, such as a certificate of occupancy, is required to receive reimbursement from the state. If the bonding or appropriation legislation requires matching funds, documentation confirming compliance with the matching requirement will also need to be supplied before any portion of the grant is disbursed.

This grant type may not be feasible for all projects. However, from the state's perspective this grant requires the grantee to assume full responsibility for completing the project and minimizes any financing risk to the state. The basic tenets of an end grant include a match (when required by the appropriation language or as necessary to fund additional costs), public ownership of the project, and a use agreement if the facility or program will not be managed by the public grantee.

Construction grant. This type of grant agreement disburses grant proceeds during the construction process on a cash-needed basis. As such, it is preferred by many grantees. State reimbursements are provided to grantees on a pro-rata basis, with the reimbursement ratio reflecting the state's share of total project costs.

Provisions within this grant agreement require, among other things, that the grantee provide a fixed price construction contract and a payment and performance bond prior to the release of any state funds. This serves as security to the state that the project will be completed within available resources. Documentation of expenses is required with ongoing draw requests.

The basic tenets of a construction grant agreement include a match (if required by the appropriation language), public ownership of the project, a use agreement if the facility or program will not be managed by the public grantee, performance bonds, a fixed price contract, and a grantor-approved budget.

Please note that on occasion the granting agency may charge a small fee for administering the construction grant agreement.

Predesign and design grant. This type of grant agreement only funds the predesign and/or design phase of a project. It is the shortest and most specific of the three types.

If a state appropriation directs funding for predesign, design and construction of a facility, depending on the financing needs of the grantee, a predesign and design grant may be executed for that stage of the project. Subsequently, a construction grant may be issued for the construction phase of the project. This is the only grant type of the three that may be used in conjunction with another grant type.

State grant funds may either be disbursed at the conclusion of the project or on a cash-needed basis during the predesign/design process.

Note that if a predesign or design grant is funded with state general obligation bonds, then the facility or property will become bond financed property subject to all the requirements in Minn. Stat. § 16A.695 if and when the project is implemented, even if it is constructed with funds other than state general obligation bonds. Once a facility or property becomes bond financed property, it will remain so for 125% of its useful life or until such property is sold in accordance with Minn. Stat. § 16A.695 and the Commissioner's Order.

No Advance Payments

The state will not advance funds to grantees prior to a signed grant agreement under any circumstances. Funds will be disbursed only when the grant agreement is signed and project costs are being incurred. No funds will be disbursed prior to the start of the project. Funds will be disbursed only through an end grant, construction grant, or predesign/design grant.

Questions regarding the requirements of this chapter can be forwarded to the state granting agency named in the appropriation bill.

Real Estate Declaration

Section 7.02 of the Commissioner's Order requires that a declaration be recorded against real estate that is purchased or improved with state bonds. Recording the declaration is a very important step in implementing the provisions of Minn. Stat. § 16A.695, subd. 3, including the disposition of sale proceeds. This Section also allows grant recipients to apply for a waiver of the declaration requirement for portions of projects used to acquire or better real property within roads, highways or utility or transit corridors, easements or rights of way. Grantees should consult with their legal advisors to fully understand these requirements.

Agencies must send a copy of the recorded declaration to Roger Behrens of MMB at (651) 201-8131, roger.behrens@state.mn.us.

CANCELLATION REPORT TO THE LEGISLATURE

Projects with a delayed start may be canceled. Grantees must enter into a grant agreement with the state and the appropriation must be expended or encumbered within four years or the appropriation will be reported to the legislature and automatically cancelled.

Minn. Stat. § 16A.642 requires the Commissioner of MMB to report to the chairs of the Senate Finance Committee, House Ways and Means Committee, and House Capital Investment Committee on January 1 of odd-numbered years regarding projects with balances that have not been spent or legally obligated. This report identifies uncommitted balances of bond financed and general fund capital projects authorized more than four years earlier.

Capital appropriations that are not spent or encumbered are subject to being reported. Unspent or unencumbered balances of capital projects authorized in the 2008 bonding bill or earlier were reported on January 2, 2013. Unspent or unencumbered balances of projects authorized in 2010 or earlier will be reported on January 1, 2015. This pattern will be repeated in future years.

Project balances that are reported by the commissioner are automatically canceled effective July 1 of the year of the report unless the Legislature specifically acts to reauthorize the project.

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Roger Behrens of MMB at (651) 201-8131, roger.behrens@state.mn.us.

STATUTES APPLICABLE TO CAPITAL PROJECTS

STATUTE	Required for these FUNDING RECIPIENTS?		
	State Agency	Higher Ed	Political Subdivisions
1. §16B.241 - Coordinated facility planning	YES	no	no
2. §16B.32, Subd. 1 - Alternative energy sources to be included in building and renovation designs	YES	no	no
3. §16B.32, Subd. 1a - Renewable energy sources - 2% of energy use from solar or wind encouraged	YES	no	no
4. §16B.32, Subd. 2 - Energy conservation goals (not mandatory)	YES	YES	no
5. §16B.323 - Solar energy in state buildings. Up to 5% of appropriation may be used on a solar energy system	YES	YES	YES
6. §16B.325 - Sustainable building guidelines (B3 or MSBG) apply to new buildings and major renovations §216B.241 - Sustainable Building 2030 requirements	YES	YES	YES
7. §16B.326 - Written plan with predesign to consider providing geothermal and solar energy heating/cooling systems on new or replacement HVAC systems	YES	YES	YES
8. §16B.327 - Recycling construction and demolition waste	YES	YES	no
9. §16B.33 - State Designer Selection Board	YES	YES	no
10. §16B.335, Subd. 1 – Legislative notification to House and Senate Committees	YES	YES	YES
11. §16B.335, Subd. 3 - Predesign submittal to Dept. of Admin.; see statute for exempted projects	YES	YES	YES
12. §16B.335, Subd. 4 - Energy conservation standards (MN Energy Code)	YES	YES	YES
13. §16B.335, Subds. 5 & 6 - Information technology review by MN.IT (formerly OET)	YES	no	no
14. §16B.335, Subd. 3c - Consider the use of MINNCOR products	YES	YES	YES
15. §16B.35 - 1% for art when appropriation is ≥ $500,000; see statute for ineligible projects	OPTIONAL	OPTIONAL	OPTIONAL
16. §16A.695 - Use and grant agreements; sale of bond-financed property	YES	YES	YES
17. Matching funds requirement	See appropriation	See appropriation	See appropriation
18. §16A.502 – Full funding requirement	YES	YES	YES

ADDITIONAL INFORMATION

Additional information can be obtained from the following sources:

- Minnesota Statutes sections referred to in this manual:
  https://www.revisor.mn.gov/pubs/

- After the Bonding Bill memo:
  https://mn.gov/mmb/debt-management/capital-projects/after-the-bonding-bill/

- Capital budget instructions for agencies and local governments:
  https://mn.gov/mmb/budget/budget-instructions/capbud/

- State grant agreements and bond financed property checklists:
  https://mn.gov/mmb/debt-management/capital-projects/grant-agreements/

  - Grant agreement templates for projects financed with (1) general obligation bonds – both earmarked projects and projects financed through grant programs, and (2) general fund cash.

  - Bond financed property checklists for (1) use agreements, (2) ground leases and easements in order to create the required public ownership, and (3) sales.

- Predesign Manual for Capital Budget Projects:
  https://mn.gov/admin/government/construction-projects/manuals-guidelines-forms/guidelines/

- Legal information regarding the use of general obligation bonds and bond financed property:
  https://mn.gov/mmb/debt-management/capital-projects/legal-information/

  - *Fourth Order Amending Order of Commissioner of Finance* dated July 30, 2012

  - Bond counsel opinions on qualified capital expenditures

- MMB policy regarding use of general obligation bond proceeds to fund agency staff costs:
  https://mn.gov/mmb/debt-management/capital-projects/staff-costs/