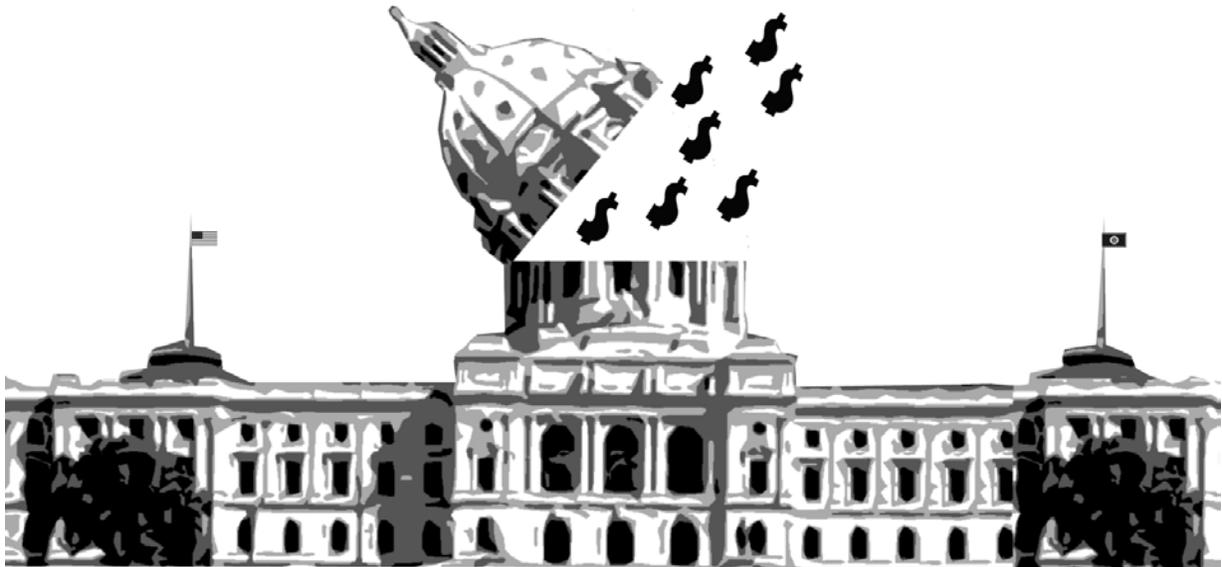


STATE OF MINNESOTA CAPITAL GRANTS MANUAL



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

Prepared November 2002

The *State Of Minnesota Capital Grants Manual* was prepared by the Minnesota Department of Finance (DOF) in cooperation with the Department of Administration; Department of Trade and Economic Development; and Department of Children, Families and Learning.

This manual is intended as a general guide for local grantees who wish to receive state capital grant funds from state agencies. Individual state agencies may have additional requirements with their capital grant programs or projects.

This manual highlights the steps grantees need to follow in order to receive state capital grants. However, it only describes 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. Information regarding how local units of government may submit capital budget requests is not provided in this manual but can be obtained from the granting agency or the Department of Finance.

If you have questions or desire additional information regarding this manual, please contact the state agency that received the appropriation specified in law or:

Minnesota Department of Finance
400 Centennial Building
658 Cedar Street
St. Paul, MN 55155-1489
(651) 296-5900

This manual and other state capital budget documents referred to in the manual are available on the World Wide Web at <http://www.finance.state.mn.us>.

This document was prepared by the Minnesota Department of Finance in November 2002.

TABLE OF CONTENTS

Purpose Of This Capital Grants Manual.....	1
Roles And Responsibilities In The Project Review Process	3
Role of the Governor	3
Role of the State Legislature.....	3
Role of the Department of Administration	3
Role of the Department of Finance.....	3
Role of the State Agency Making the Grant.....	3
Role of the Local Grantee.....	4
Capital Project Checklist	5
Qualified Capital Expenditures	11
State Bond Financed Projects	11
State General Fund Financed Projects	12
Qualified Capital Expenditures.....	13
Total Project Funding.....	15
Federal Authorizations, Appropriations and Grant Letters.....	16
Local Government Budgets and Resolutions.....	16
Private Contributions, Loans and Letters of Credit	16
Qualified Capital Expenditures.....	16
Predesign Review By The Department Of Administration.....	19
Projects Requiring Predesign.....	20
Projects Exempt from Predesign.....	20
Legislative Design Review	21
Projects Requiring a Legislative Recommendation	21
Projects Requiring a Legislative Notification.....	22
Department Of Finance Approval Of Use Agreements.....	23
Operating Budget Review	25
Commissioner's Determination	25
Minnesota Non Profit Review Committee.....	26
Preparation Of Grant Agreements.....	27
Grant Types.....	27
No Advance Payments.....	28
Cancellation Report To The Legislature	31
Additional Information	33

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 on-going 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 take the form of bond proceeds or general fund cash.

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

Capital projects are subject to requirements of the Minnesota Constitution, state statutes, language contained in the appropriation bill, 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 many local capital projects that will be used or operated by non-profit organizations.

Each section of this manual provides general information that local officials need to understand the grant making process. Read each section carefully. Call the grant administrator in 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 various 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 the Department of Finance (DOF)

- ✓ Coordinate the governor's capital budget process
- ✓ Review information submitted for capital projects
- ✓ Approve use agreements
- ✓ Approve match requirements and total project funding
- ✓ Prepare cancellation report for projects more than 4 years old
- ✓ Place appropriations for capital projects in the state accounting system (this allows granting agencies to disburse state funds)

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
- ✓ Receive invoices and make payments to the grantee

Role of the Local Grantee

- ✓ 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
- ✓ Complete the enclosed grant checklist (all questions must be answered 'yes' or 'n/a' to receive state funds)
- ✓ Review and sign the grant agreement
- ✓ Provide payment requests to the state granting agency

CAPITAL PROJECT CHECKLIST

This checklist delineates the requirements that grantees must satisfy to receive most state grants. All of the following questions must be answered 'yes' or 'n/a' (not applicable) to comply with requirements of the Minnesota Constitution, state statutes, and state accounting policies. Any 'no' answer is a problem and will likely result in the grant not being processed.

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.

1. Public Purpose (see pages 11-13)

Yes No N/A
 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 11-13)

Yes No N/A
 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 or a political subdivision own the capital project?

3. Qualified Capital Expenditures (see pages 11-13)

Yes No N/A
 Will expenditures for that portion of the project paid by state funds constitute qualified capital costs?

4. Total Project Funding (see pages 15-16)

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

Yes **No** **N/A**

 Are all non-state funding sources committed or legally binding?

 Has documentation of all funding sources been received and approved by the granting agency and the Department of Finance?

5. Predesign Review By The Department Of Administration (see pages 19-20)

The grantee should read the predesign requirements of Minnesota Statute Section 16B.335 to verify whether the requirements apply to their project. Predesign review must occur before design can begin. The predesign manual is available from the Department of Administration.

Yes **No** **N/A**

 If M.S. Section 16B.335 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 21-22)

The grantee should read the design review requirements of Minnesota Statute Section 16B.335 to verify whether the requirements apply to their project. Design review must occur before bid documents can be prepared.

Yes **No** **N/A**

 If M.S. Section 16B.335 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?

 If M.S. Section 16B.335 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 above-referenced chairs been notified?

7. **Approved Use Agreements** (see pages 23-24)
 (For projects financed by state general obligation bonds only. General fund cash projects should proceed to the next question)

The grantee should read the requirements of Minnesota Statutes Section 16A.695 and the *Order Amending the Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property*, dated July 20, 1995, to verify whether the requirements apply to their project (available on the DOF web site listed at the end of this manual).

- | Yes | No | N/A | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If the publicly owned project will be used or operated in whole or in part by a private or non-profit entity, has the grantee completed a <i>G.O. Bonding Use Agreement Compliance Checklist</i> ? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If the publicly owned project will be used or operated in whole or in part by a private or non-profit entity, has the use agreement been approved by the Department of Finance? |

8. **Program Funding Review** (see pages 25-26)
 (For projects financed by state general obligation bonds only. General fund cash projects should proceed to the next question)

The grantee should read the requirements of Minnesota Statutes Section 16A.695 to verify whether the requirements apply to their project.

- | Yes | No | N/A | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | In all cases, will the public grantee have substantial on-going oversight of the public program contained in the facility? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If the publicly owned 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 the operations of the program? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | If the publicly owned project will be used or operated by a private, non-profit entity, has the state granting agency and the Department of Finance received and approved the program operating budget that may include pro-forma financial statements? |

9. Grant Agreements (see pages 27-30)

Yes **No** **N/A**

- Has the state granting agency prepared a grant agreement for review by the grantee?

- Has the grantee signed the grant agreement?

- Have all conditions contained in the grant agreement been met and all required information supplied to the granting agency?

- Has a real estate recording been filed that includes a declaration that restricts the sale of the project without the consent of the commissioner of Finance?

10. Project Cancellation (see page 31)

Yes **No** **N/A**

- To avoid automatic cancellation of project funding, will all grant funds be encumbered or spent within the time period permitted under Minnesota Statutes Section 16A.642?

EXHIBIT 1

**Legal Requirements for Projects Funded by
General Obligation Bonds and General Fund Cash**

Legal Requirements	General Obligation Bond Project	General Fund Cash Project
Public Purpose	Required	Required
Public Ownership	Required	May be required when specified in law
Public Program Oversight	Required	May be required when specified in law
Pre-design review by Department of Administration	Required for most projects. See MS 16B.335	Required for most projects. See MS 16B.335
Design review by Legislative Chairs	Required for most projects. See MS 16B.335	Required for most projects. See MS 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 agreements	Required if facility will be operated by a non-public entity	Not required
Program funding review by granting agency	Required	Not required
Grant agreement	Required	Required
Project cancellation after four years	Required for unspent or unencumbered balances	Required for unspent or unencumbered balances

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 will be 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 and Minnesota Statutes Section 16A.695 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 be owned by a state agency or political subdivision, and require that a public program be provided in the facility. Therefore, bond proceeds may be used to finance publicly owned and publicly operated projects (i.e., state buildings, state parks, correctional facilities, public higher education buildings, and local schools and libraries).

Private and non-profit organizations are not eligible to receive state general obligation bond proceeds. However, a jurisdiction that owns a bond-financed project may choose to have a private or non-profit entity manage the facility and operate its public program through proper oversight by the public owner. Such private or non-profit organizations may use or operate a state bond-financed facility by entering into a use agreement with its public owner.

For example, the legislature may appropriate bond proceeds 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. In such case, the city will need to enter into a use agreement with the non-public entity to ensure that the public program will be carried out. See the use agreement section of this manual for more information.

Please note that a local unit of government that enters into a use agreement with a non-profit entity for operation of a bond-financed facility is ultimately responsible for the operation of that facility. Even if the non-profit operator cancels or walks away from the use agreement, the public entity remains responsible for operating the public program.

Projects financed with state bond proceeds must remain in public ownership until the public purpose of the facility is discontinued. The sale of bond-financed property can only occur 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, M.S. Section 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 include all the provisions required by M.S. Section 16A.695. There is little, if any, flexibility in negotiating the terms of a bond-financed grant agreement due to the limits of the Minnesota Constitution and associated state statutes.

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.

For example, use agreements are not required for projects financed with state general funds if the public agency that receives the state money chooses not to have oversight of the building or program.

Also, public ownership of the project may not be required unless provided by the language of the state appropriation. 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

All general obligation bonds and most general fund cash appropriations may only be used for qualified capital expenditures. Eligible costs include land acquisition, predesign, design, construction, major remodeling, furnishings and capital equipment, and other improvements or acquisition of tangible fixed assets of a capital nature.

General operating expenses, general master planning, staffing and operating costs are not qualified expenses. Expenses that are not qualified capital expenses must be paid by the grantee, or may be paid from general fund cash if specifically provided in law.

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Peter Sausen of the Department of Finance at (651) 296-8372.

TOTAL PROJECT FUNDING

This chapter applies to projects with total capital costs that exceed the state appropriation and require additional, non-state 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 the Department of Finance before the grant agreement can be executed and before the appropriation can be loaded into 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 non-state funding.

State agencies must process capital grants within the requirements of M.S. Section 16B.31, subd.2. This law reads in part, “No plan may be adopted, and no improvement made or building constructed by the commissioner or any other agency to whom an appropriation is made for a capital improvement, that contemplates the expenditure for its completion of more money than the appropriation for it, unless otherwise provided in this section or the act making the appropriation.”

Bonding bills, appropriation bills, and other session laws commonly require non-state matching funds as a condition of receiving a capital appropriation. Bill language for these appropriations typically specify that the recipient may not receive a capital appropriation until the recipient has a commitment for or receipt of matching funds to complete project financing. Non-state funding may include federal, local and private funds.

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.

For projects that will be owned, developed or managed by a political subdivision, non-state matching funds will 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 will not sign a grant agreement or release funds until evidence of the availability of matching funds has been provided.

Grantees should understand that pledges, promises and I.O.U.'s do not qualify as legally binding commitments. Matching funds must be real and must be 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 must be accompanied with corresponding budget appropriations and a grant award letter to be considered binding federal commitments.

Local Government Budgets and Resolutions

Local government funds 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 of the contribution, and the details of how the amount 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 a qualified appraisal.

Qualified Capital Expenditures

State funds and non-state matching funds may only be used for qualified capital expenditures. *Non-qualified capital costs must be paid by the local government and do not count toward the local match.*

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 DOF by the granting agency with an appropriation entry form. Agencies should prepare all appropriation entry forms.

For further information, please refer to MAPS operating policies 0302-01, 0302-02, 0302-03 and 0302-04 (posted to the Department of Finance web site at www.finance.state.mn.us).

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Lee Mehrkens of the Department of Finance at (651) 296-1700.

EXHIBIT 2

Documentation Demonstrating Total Project Funding
(Hypothetical Example)

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 2000 bonding bill (Laws of MN 2000, Chapter 492, Article 1, Section 90, subd. 5)
Federal funds	\$250,000	Grant award letter dated 6/15/00 from the U.S. Dept. of Housing and Urban Development
Local funds	\$1,500,000	Bond referendum approved by voters 11/4/00
	\$500,000	City Council Budget Resolution #xxx dated 12/31/00
Private funds	\$600,000	Received and deposited into city account # xxx-xx
	\$150,000	Irrevocable letter of credit dated 6/20/00 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 the Department of Finance.

PREDESIGN REVIEW BY THE DEPARTMENT OF ADMINISTRATION

State statutes require predesign review for certain types of capital projects. Predesign documents must be prepared by the grantee and reviewed by the Department of Administration prior to beginning design. Please read M.S. Section 16B.335 and the following information to determine which projects are required to complete predesign.

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 a 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. The Department of Administration has developed a predesign manual to describe specific information that should be provided to satisfy the predesign requirement.

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 an agency, and precedes design and construction stages.

Predesign came about after unfortunate experiences where inadequate project information was available, which caused a series of surprises during project development that required additional project funding. While exceptions may occur, the typical procedure is for a project to complete predesign before beginning the design or construction stages.

In some cases, predesign is completed before or as part of the application process for a state appropriation. On other occasions it is required after the award of the grant as a condition of the grant agreement. 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.

Projects Requiring Predesign

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 Predesign

Projects exempt from doing a predesign include demolition or decommissioning of state assets, hazardous materials projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the commissioner of Transportation has entered into an assistance agreement under Minnesota Statutes Section 457A.04, ice centers, a local government project with a construction cost of less than \$1.5 million, or any other capital project with a construction cost of less than \$750,000.

Grant recipients that must complete a predesign should prepare a predesign package and submit it to the commissioner of Administration for review. The commissioner's recommendation is due within ten working days after receiving it. Failure to review and recommend within the ten days is considered a positive recommendation.

The predesign package must be sufficient to define the purpose, scope, cost and schedule of the project and must demonstrate that the project has been analyzed according to appropriate space needs standards.

Aided by this predesign information early in the process, the Governor and Legislature will have better information at a minimal cost (usually ½ - 1% of total project cost) to evaluate the project and decide whether subsequent design and construction appropriations are warranted.

The Department of Administration has created a project predesign manual for Agencies, grantees and consultants. The Predesign manual is available on the World Wide Web at <http://www.sao.admin.state.mn.us> and follow the link in the top for Designer Procedures Manual.

Questions may be directed to the Department of Administration at (651) 296-4640.

LEGISLATIVE DESIGN REVIEW

Statutes require a legislative review of design documents for certain types of capital projects. Please read M.S. Section 16B.335 and the following information to determine which projects require a legislative design review.

The Legislature requires program plans and cost estimates (i.e., design) of certain capital projects be reviewed by legislative committee chairs. 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 will need to work with the state granting agency to supply design information to the appropriate legislative chairs 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

The following projects require a legislative recommendation:

Program plans and cost estimates for all elements necessary to complete construction and major remodeling projects that receive a legislative appropriation must be presented to the chair of the senate finance committee and the chair of the house ways and means committee for their recommendations. The chair of the house capital investment committee must be copied on the information (Minnesota Statute Section 16B.335).

This information must be presented to the chairs after predesign and design development is completed. Recommendations to proceed must be received from the chairs before preparing final plans and specifications for construction of the project.

Construction and major remodeling means construction of a new building, substantial addition to an existing building, or substantial change to the interior configuration of an existing building.

Projects Requiring a Legislative Notification

The following projects only require a legislative notification when work is ready to begin:

Demolition or decommissioning of state assets, hazardous materials projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the commissioner of Transportation has entered into an assistance agreement under Minnesota Statutes Section 457A.04, ice centers, a local government project with a construction cost of less than \$1.5 million, or any other capital project with a construction cost of less than \$750,000.

For these projects, the chairs 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 of the Senate finance committee, House capital investment committee, and House ways and means committee 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 with the committee chairs named in M.S. Section 16B.335.

DEPARTMENT OF FINANCE APPROVAL OF USE AGREEMENTS

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

Article XI, Section 5 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 cash-financed projects.

Minnesota Statute Section 16A.695, and the *Order Amending the Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property*, dated July 20, 1995, contains guidelines that must be followed when a capital project benefits a non-profit or for-profit organization. Generally, for a private organization to benefit from bond proceeds, the capital project must be owned by a state agency or political subdivision that enters into a use agreement with the private organization to provide a public program carried out by the private organization.

A state agency or political subdivision that enters into a use agreement with the private organization must 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 Finance must approve all use agreements for bond-financed property.

Although the commissioner must approve use agreements, the Department of Finance 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 or non-profit tenant who will operate the public program. The public owner prepares the agreement. Grantees should consult with their appropriate legal advisors.

Although projects that receive cash financing are not subject to public ownership and use agreement requirements of the Minnesota Constitution or M.S. Section 16A.695, cash projects are subject to conditions of the project authorization in the bonding bill.

For example, if a cash appropriation is provided as a grant to a political subdivision, the project must be publicly owned. In addition, all cash and bond-financed projects must provide the purpose, program or service identified in the project authorization on an on-going 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 of the state.

Prior to completing a use agreement, the grantee is advised to complete a *G.O. Bonding Compliance Checklist for Use Agreements*. This checklist is available from the Department of Finance and is useful in understanding the provisions that should be included in the use agreement.

Questions regarding the requirements of this chapter can be forwarded to Peter Sausen of the Department of Finance at (651) 296-8372.

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

Minnesota Statute Section 16A.695, subdivision 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. 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 operator should also provide alternative financial projections based upon less optimistic assumptions.

The commissioner of the granting agency will use this information to make a determination required under M.S. Section 16A.695, subdivision 5. The determination will then be forwarded to the Department of Finance.

Minnesota Non Profit Review Committee

On occasion, the complexity of a grant project and its operating program may be too difficult for the granting agency to evaluate. This is particularly true when the state grant is for a local capital project that is outside of the traditional policy area of the granting agency. State staff may be unfamiliar with the proposed public program and unable to offer a meaningful review.

To deal with this situation, the Department of Finance established the Minnesota Non Profit Review Committee to assist commissioners in making the determination required by state statutes.

The committee is available for all commissioners to use. Its purpose is to evaluate financial statements from the grantee or operator of the public program, and offer a financial opinion on the feasibility of the operating program.

The committee is made up of people from outside state government with expertise in evaluating non-profit organizations. At the request of a granting agency, the committee will evaluate the material provided by the operator of the facility, listen to presentations made by the operator, ask questions and make a recommendation to the commissioner of the granting agency.

Commissioners wishing to use the Non Profit Review Committee should contact the Department of Finance. Finance will work with the committee to set a meeting date to hear the operating budget presentation and notify the grantee of required submittals.

Because committee members need adequate time to review materials prior to the meeting, commissioners should contact Finance several weeks before the suggested meeting date. The committee will make final decisions in a timely manner after the meeting date.

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Peter Sausen of the Department of Finance at (651) 296-8372.

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.

There are three basic types of grant agreements issued by the state when awarding capital grants. Regardless of whether the project is financed with state general obligation bond proceeds or state general fund dollars, the grant agreement that is used depends on the nature and needs of the project rather than the funding source.

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. A certificate of occupancy is required to receive reimbursement from the state.

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 on-going 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. This fee will be deducted from the proceeds of the grant.

Pre-design and design grant. This type of grant agreement only funds the pre-design 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 pre-design, design and construction of a facility, and depending on the financing needs of the grantee, a pre-design 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.

The basic tenets of a pre-design and design grant include a match (if required in the appropriation language) and a grantor-approved budget.

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

Please note that if a pre-design or design grant is funded with state general obligation bonds, then the facility will become bond financed property subject to all the requirements in Minnesota Statutes Section 16A.695, even if the facility is eventually constructed with funds other than state general obligation bonds.

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, a construction grant, or a pre-design/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

Please note that under the *Order of the Commissioner of Finance* as amended, a declaration must 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 Minnesota Statutes Section 16A.695, subd. 3, including the disposition of sale proceeds. Grantees should consult with their legal advisors to fully understand this legal requirement.

EXHIBIT 3

Summary Of Documentation Required For Reimbursable Expenses (Department of Administration example)

Documentation required for a construction grant:

- Application and certification for payment. This document originates with the contractor and is signed off by the construction manager (if applicable) and the architect.
- Invoices for construction material. Copies of invoices for building materials or any other allowable expenses detailed in the grant language.
- Expense reports. Expense reports for employees working on the project are subject to the limits of the current MAPE contract. More detail may be requested from the grantee if needed.
- Telephone and utility bills. Invoices for services required to operate the construction site.
- Rental equipment. Invoices for rental equipment needed to manage or complete construction.
- For final payment. Final payment information must also include a certificate of occupancy.

Expenses not allowed to be paid or reimbursed with grant funds

- Supplies needed for operating (e.g., paper for copier/printer, pens, etc.)
- Alcoholic beverages included in expense reports
- First class travel arrangements

CANCELLATION REPORT TO THE LEGISLATURE

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

M.S. Section 16A.642 requires the Commissioner of Finance to report to the chairs of the Senate finance committee, House ways and means committee, and House capital investment committee on February 1 of odd numbered years regarding projects with unspent balances. 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 1996 bonding bill or earlier were reported on February 1, 2001. Unspent or unencumbered balances of projects authorized in 1998 or earlier will be reported on February 1, 2003. This pattern will be repeated in future years.

However, the statute allows an exception – at the determination of the Department of Finance, the cost of contracts to be let in accordance with existing plans and specifications are considered expended for purposes of the report. In other words, if an agency has a project under construction and one or more additional contracts must be let to complete the plans for the project, the amount of the contracts is considered spent. Projects that have not started design or construction do not qualify for this exception.

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.

Please also note that appropriations for asset preservation projects in the 2002 bonding bill must be encumbered or spent by June 30, 2004 to avoid cancellation on July 1, 2004. This is intended to encourage the rapid expenditure of asset preservation funds.

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Peter Sausen of the Department of Finance at (651) 296-8372.

ADDITIONAL INFORMATION

Additional information can be obtained from the following sources.

- 🔗 Minnesota Statutes Sections 16A.632, 16A.695, 16B.335 and 135A.046
(Minnesota Legislature web site)
<http://www.leg.state.mn.us/leg/statutes.htm>
- 🔗 After the Bonding Bill – the Next Steps
(Department of Finance web site)
<http://www.budget.state.mn.us/budget/capital/index.shtml>
- 🔗 Capital Budget Instructions Manual
(Department of Finance web site)
<http://www.budget.state.mn.us/budget/capital/index.shtml>
- 🔗 State Grant Agreements
(Department of Finance web site)
<http://www.budget.state.mn.us/budget/capital/index.shtml>
- 🔗 Predesign Manual for Capital Budget Projects
(Department of Administration web site)
<http://www.dsbc.admin.state.mn.us/dpm/predesign-info.asp>
- 🔗 Order of the Finance Commissioner, Executed July 14, 1995; Amended July 20, 1995
(Department of Finance web site)
http://www.finance.state.mn.us/bonds/grantagreements/general_bonds.html
- 🔗 G.O. Bonding Compliance Checklist for Use Agreements
(Department of Finance web site or the Attorney General’s Office)
http://www.finance.state.mn.us/bonds/grantagreements/general_bonds.html
- 🔗 Bond counsel opinions on qualified capital expenditures
(Department of Finance web site or the Attorney General’s office)
<http://www.budget.state.mn.us/budget/capital/index.shtml>
- 🔗 MAPS operating policy 0302-01, 0302-02, 0302-03 and 0302-04
(Department of Finance web site)
<http://www.budget.state.mn.us/budget/capital/index.shtml>