

**TITLE 164
PROCEDURAL RULE
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA**

SUMMARY OF REVISIONS

**SERIES 1
POLICY AND PROCEDURES HANDBOOK
OF THE SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA**

The SBA staff has worked diligently over the last several months to provide enhancements and improvements to the SBA's Policy & Procedures Handbook in order to further the Authority's mission of increasing accountability of all parties involved in the execution of an SBA-funded project. The 2019 revisions to the handbook were sweeping and comprehensive. We have found that during the application of the new procedures, additional changes are needed to provide the clearest direction, the cleanest application, and the most conformant processes to other applicable federal, state, and local guidelines.

The goal remains the same: the policies and forms included in this document are meant to guide each user through the development, planning, financing, and construction phases with straightforwardness and ease. The final draft you have before you is the culmination of a tremendous endeavor which we believe will create a more efficient and effective school building program to the benefit of the students and the taxpayers of our State.

SUMMARY OF PROPOSED CHANGES

SUPPLEMENTALS MOVED TO APPENDIX – For enhanced clarity, the SBA Architectural / Engineering Supplemental Requirements to AIA B101, the SBA Supplemental Instructions to Bidders to AIA A701, and the SBA Supplemental General Conditions to AIA A201 have been moved to the Appendix. These documents are used as forms within an SBA-funded project, therefore, incorporating them in the Appendix, which is where all other SBA Forms are located, is organizationally appropriate.

- SBA Architectural / Engineering Supplemental Requirements to AIA B101 is now **Form 300**
- SBA Supplemental Instructions to Bidders to AIA A701 is now **Form 400**
- SBA Supplemental General Conditions to AIA A201 is now **Form 401**

SECTIONS MODIFIED AND ADDED – In coordination with the Supplemental documents moving to the Appendix, three new sections have been created. The language in these new sections was included in Chapter 300 – Project Development Requirements, which included broad details from development, design, bidding, and construction requirements. In an effort to provide clear requirements and definitions, these four sections are now separately organized. These sections provide the LEA with specific, clarified requirements that are appropriate to each particular phase of the project. New or revised language is described in each of the four separate sections below:

- Section 300 – Project Development Requirements – Moved design, bidding, and construction procedures from this section into separate corresponding sections; included development schedule requirements and maintenance agreement requirements that were previously included in the SBA Grant Agreement.
- Section 302 – Architectural, Engineering, and Design Requirements – New section that includes A/E requirements for contractual relationships, fee structure, project development, and building components.
- Section 400 – Bidding Procedures – New section that includes clarified Three Envelope Bidding System requirements, Qualification Statement Requirements, and Subcontractor List submission requirements. Also describes steps related to the evaluation of submitted bidding forms and for determining the Lowest Qualified Responsible Bidder(s).
- Section 401 – Construction Procedures – New section that includes Supplemental Condition requirements, Non-Conformance and Non-Compliance reporting requirements, and an SBA Staff Intervention meeting with A/E, Contractor, or CMA performance trends toward a negative performance review and subsequent suspension.
- Section 502 – Grant Closeout Procedures – New section that includes requirements to close out the finance portion of an SBA-funded project after construction is complete.

CHANGES AND ADDITIONS TO EXISTING POLICY LANGUAGE

200.02. – Requirement for Budgets to be Established by a Licensed A/E – These requirements have been lessened on projects where proposed projects do not affect structural integrity, HVAC design, ADA compliance, or any other applicable building code. With SBA staff approval, and following local purchasing requirements, the LEA may obtain quotations directly from vendor(s) to establish the budget.

210.01-210.03 – Requirements for Grants to Supplement ESCO Projects – Additional direction is provided to LEAs where a decision regarding the method is required at an earlier stage. LEAs shall choose whether the financial arrangement service is to be performed by an independent financing consultant that has a direct fiduciary responsibility to the LEA or if these services shall be a part of the energy services company (ESCO) scope of services as a packaged project. In addition, the LEA shall determine, as a part of the RFP template, the maximum interest term of the loan, the standard interest rate, and the standard escalation rate for submission by the proposers.

300.011-012 – Project Development Requirements – Edited for clarity and moved from the Grant Agreement to this location. Describes specific requirements for the progress of design after a grant is awarded. Appropriate here because Grant Agreement is simplified to basically say “Follow all applicable Federal, State, and Local requirements.”

300.04. Determination of Project or County-Specific Requirements within Supplemental General Conditions – Amended to require the LEA to determine and establish specific insurance requirements and amounts for liquidated damages for each project as required by WVBE Policy 8200 and BRIM. As a part of the Construction Document Phase Submission, the LEA and the A/E shall determine these amounts so that bidders may incorporate these amounts in their bid submission.

300.06 – Maintenance and Upkeep Requirements – Similar to the project development requirements, this was moved from the Grant Agreement and edited for clarity.

302.036 – Eligible Reimbursable Expenses – Removed document printing for Owner’s review and approval by agencies having jurisdiction as a cost eligible for reimbursement. These expenses shall be covered in the Architect’s Basic Service Fee. This aligns with State Purchasing’s requirements.

302.06 – Design Progress – In addition to the required assurances that the LEA makes in each phase or project development related to completing the entire scope of the project within the proposed budget, an additional item of assurance is added. The LEA shall either commit additional local funds to a project if budget exceeds funds available as a result of the inclusion of design elements that exceed WVBE Policy 6200 and SBA Quality and Performance Handbook or reduce the scope of the project.

302.062 – WVDE OSF&T Review & Reconciliation – Acknowledges the requirement for the WVDE Office of School Facilities & Transportation (WVDE OSF&T) to review all construction projects. The A/E shall review and reconcile comments prior to proceeding to the next phase of the project.

400.07. – Three Envelope System Bidding Requirements – This language gives clear direction for bid opening procedures. This process is described in the instructions to bidders, however, after working with LEAs, clearer direction was needed to aid LEAs (and their A/Es) as they administer bid openings.

400.011 – Contractor Qualification Statement Requirements – Describes submission procedures and evaluation process for determining the Lowest Qualified Responsible Bidder.

400.012 – Additional State Requirements – Lists that a copy valid WV Contractor Licenses, the WV Purchasing affidavit, and the WV Drug-Free Workplace Affidavit shall be provided to the Owner by the apparent low bidding Contractors and their Subcontractors within 72 hours of the bid.

401.046. – SBA Staff Intervention Procedures – describes the SBA staff intervention process, desired by LOCEA, when Contractors or Architects trend toward bad evaluation and potential subsequent suspension. The SBA Executive Director shall meet with the cited firm to bring additional attention to the issue and seek possible solutions.

501.01. – SBA Suspension Procedures – describes a process where the SBA responds to unsatisfactory performance evaluations that reveal critical issues related to conformance, compliance, and closeout of SBA-funded projects, the SBA may suspend a(n) Architect/Engineer, Contractor, or Construction Manager’s right to bid on future SBA-funded projects. A recommendation is made by the SBA staff, due process is afforded to the cited firm, and a decision is made. A suspension may last one to two years.

MODIFICAITONS TO SBA FORMS

SBA Form 100-D – 100-F – Translating Educational Needs into Facility Needs – These forms were amended to follow the updated documents used in the 2020 digital CEFPP and more closely relate to WVBE Policy 6200. This “translating” section has evolved into three separate form: County Review, a Building Review, and a Plan Overview which provide a better understanding of existing conditions, and a concise review of the planning teams’ recommended changes.

SBA Form 209 – Grant Agreement – This form was edited to meet requirements of the State Auditor’s Office and simplified to give clear direction to LEAs/Grantees. By removing specific stipulations and sections and simply saying all applicable federal, state, and local procedures shall be followed, this eliminates any potential conflict and makes the SBA’s policy handbook stronger.

SBA Form 210 – SBA RFP Template for Energy Savings Performance Contract Projects – corresponding changes are made to the template in regard to the new requirements for early determination of the financial arrangement as described in Section 210.01-13 above.

SBA Form 300 – SBA Architectural / Engineering Supplemental Requirements to AIA B101 – New location for this A/E contract supplemental. This document ensures Architects that provide design and construction administrative services on SBA-funded projects follow all SBA rules and requirements. Changes proposed to this form include:

- §3.1 – Requires review and reconciliation of any WVDE OSF&T comments prior to proceeding to the next phase of the project.
- §8.2 – References to binding arbitration were removed as this was included in the State of WV’s Purchasing supplemental, but not advisable for County Boards of Education.
- §8.3 – In a similar fashion, references to the Owner having sovereign immunity status was removed because County Boards of Education do not. This was appropriate for the Purchasing Supplemental and State entities, but not in this case because this supplements the contract between the County and their Architect/Engineer.

SBA Form 400 – SBA Supplementary Instructions to Bidders to AIA A701 – New location for this AIA Bidding Supplemental Document. This document ensures all bidders are given clear direction on bidding requirements and procedures. Changes within this form are:

- §4.3.1 – Removed the requirement to submit a copy of a valid WV Contractor’s License, the WV Purchasing Affidavit, and the WV Drug Free Workplace affidavit from list of documents due at the time of bid. These are still required as a part of the post-bid submission requirements. The staff feels the submission of these items is not of material consequence to the bid itself. These documents are to be submitted by the apparent low bidder within 72 hours following the bid. The submission requirements for these documents are described in §6.3.6, §6.5.1, and §6.5.2.
- §4.3.1 – Amended the list of documents due at the time of bid to include the SBA Form 402, which is the SBA Addenda Acknowledgement & Bid Certification. This combined the bid certification form and the certification of receipt of addenda forms, and also requires the bidding contractor to swear they have a valid WV Contractor License.

- §5.3 – Removed the requirement of a bond to be posted when appealing a bid protest decision. While the intent is to prevent frivolous protests, this requirement should be up to the Court system.
- §6.1.2 – Added definitions and evaluation criteria for the LEA, Architect, and SBA to determine the lowest qualified responsible bidder.
- §6.6 – Added a notification of the SBA post-project evaluation and the SBA’s power to suspend right to bid.

SBA Form 401 – SBA Supplemental General Conditions to AIA A201 – New location for this A/E Contract supplemental. This document ensures Contractors, who provide construction services on SBA-funded projects, follow all SBA rules and requirements. Changes proposed to this form include:

- §9.11 – Per the new language described in Section 300.04, Liquidated Damages penalties shall be determined by the LEA prior to bid.
- §11.1.5 – Per the new language described in Section 300.04, minimum Insurance requirements shall be determined by the LEA prior to bid.
- §13.8 – Specific direction given to Contractors stating they shall not employ unauthorized workers and they shall not have registered sex offenders present on the school construction site.
- §13.6.2 and §13.8.1 – Bidding procedures moved to Instructions to Bidders
- §15.3 – 15.4 – References to Arbitration and Sovereign Immunity are removed per reasons described in SBA Form 300. In addition, the reference to WV Court of Claims are removed as this does not pertain to County Boards of Education.

SBA Form 402 – Addenda Acknowledgement & Bid Certification Form – The Bid Checklist & Certification Form and the Certification of Receipt of Addenda Form have been deleted and this form replaces both. It includes a simplified addenda acknowledgement and a bid certification statement. It also requires the Contractor to certify they are in compliance with the WV Contractor Licensing Act and that they possess a valid Contractor License. This form is due at the time of bid.

SBA Form 403-A – List of Proposed Major Subcontractors – This form has been edited to provide clearer direction to both the A/E and the Contractor who each have duties in the completion of this form. The number of available categories of major subcontractors to be listed has been reduced from ten to six.

SBA Form 405 – Contractor Qualification Statement – The Statement of Financial Condition has been removed from this form. In order to obtain a Bid, Performance, or Payment Bond, the Bonding Company performs a detailed review of the Contractor’s financial status with far greater detail and knowledge than the SBA staff’s capabilities.

SBA Form 502 – Grant Closeout Certification Form – This form aligns with Section 502 – Grant Closeout Procedures. This form certifies the completion of the project and that no additional billing will be requested by the LEA. This will allow the SBA Finance Staff the ability to close out the projects in a timely manner and sweep any available remaining funds back into the School Construction Fund.