

for 100 percent of a county’s annual allotment within three years of the date established by the Department in the annual notification, pursuant to N.J.A.C. 16:20A-4.2(a), shall result in the immediate rescission of any unencumbered funds. Rescinded funds will be reallocated to the following State fiscal year’s county local aid program to be distributed pursuant to N.J.A.C. 16:20A-1.2.

(f) Any encumbered funds not expended upon project closeout shall be returned to the Department or retained by the county and reallocated to another project. Such reallocated funds must be encumbered within one year.]

(e) **Distribution of the portion of the grant provided initially to a county may be contingent on its performance in spending prior grants. Pursuant to N.J.A.C. 16:20A-4.2(a), failure to award construction or other approved contracts for 100 percent of a county’s allotment within three years of notification by the Department of that year’s allotment shall result in the allotment being immediately rescinded or the funds returned to the Department, as applicable. In the event that the funds are not immediately returned, the Department will make deductions from future allocations of aid to that county. Any of those funds may be reallocated by the Commissioner to other transportation projects, as the Commissioner shall so determine.**

(a)

DIVISION OF LOCAL AID AND ECONOMIC DEVELOPMENT

Municipal Local Aid

Proposed Readoption with Amendments: N.J.A.C. 16:20B

Authorized By: Diane Gutierrez-Scaccetti, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:13-1 et seq., 27:13A-1 et seq., 27:14-1 et seq., 27:15-1 et seq., 27:15A-1 et seq., and 27:1B-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-046.

Submit comments by July 16, 2021, to:

Paul Sprewell
 Administrative Practice Officer
 New Jersey Department of Transportation
 PO Box 600
 Trenton, New Jersey 08625-0600
 Fax: (609) 530-4638
 Submit electronically at nidotRules@dot.state.nj.us.

This rule may be viewed or downloaded from the Department’s website at <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.

The agency proposal follows:

Summary

In accordance with N.J.S.A. 52:14B-5.1.c and Executive Order No. 66 (1978), N.J.A.C. 16:20B was scheduled to expire April 16, 2021. As the Department of Transportation (Department) has filed this notice prior to that date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date was extended 180 days to October 13, 2021. These rules provide the guidelines and establish procedures to be followed by municipalities in the receipt of State aid for transportation projects as disbursed through the Department’s Municipal Local Aid Program.

The Department has reviewed the rules and determined that they are necessary, reasonable, and proper for the purposes for which they were originally promulgated. Amendments are necessary to update contact information, update the specifications that must be followed, and include language in compliance with the governing statutory authority at N.J.S.A. 27:1B-25.1 et seq. (effective June 26, 2019), which amended the New Jersey Transportation Trust Fund. The Department is proposing to readopt

the rules with amendments as set forth below. Since the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The current chapter is summarized as follows:

Subchapter 1 provides the purpose and scope of the chapter.

Subchapter 2 provides the definitions for the chapter.

Subchapter 3 provides contact information.

Subchapter 4 describes the State’s participation in eligible project costs, program approval, and municipal responsibilities.

Subchapter 5 provides standards and specifications.

Subchapter 6 provides the procedures to be followed in awarding contracts; contract completion and payment; reporting progress on expenditure of funds; cost of engineering, inspection, and construction supervision.

Subchapter 7 provides the requirements for the annual audit of the municipality.

The proposed amendments are as follows:

N.J.A.C. 16:20B-3.1(a)1 is proposed for amendment to correct the phone number for the main office in Trenton. N.J.A.C. 16:20B-3.1(a)4 is proposed for amendment to correct the phone number for District 3, Bureau of Local Aid. N.J.A.C. 16:20B-3.1(a)5 is proposed for amendment to correct the phone number for District 4, Bureau of Local Aid.

Pursuant to N.J.S.A. 27:1B-25.5.d, N.J.A.C. 16:20B-4.1(a) is proposed for amendment to state that grant recipients are permitted to expend up to five percent of their allotment in the fiscal year, beginning July 1, 2019, and every fiscal year thereafter for those purposes. Pursuant to N.J.S.A. 27:1B-25.1.a(2), N.J.A.C. 16:20B-4.4(a) is proposed for amendment to require the Department to solicit municipal applications by April 30th of each year. For purposes of that statutory authority, N.J.A.C. 16:20B-4.4(b) is also proposed for amendment to require that municipalities submit applications by July 1st of each year. Similarly, N.J.A.C. 16:20B-4.4(g) is proposed for amendment to state that award letters will be sent to municipalities by November 30th of each year.

N.J.A.C. 16:20B-5.2(a) is proposed for amendment to correct citations.

Pursuant to N.J.S.A. 27:1B-25.1.a(2), N.J.A.C. 16:20B-6.1(c) is added to provide that the Department will execute agreements with municipalities concerning projects and includes the required dates and timelines. N.J.A.C. 16:20A-6.2(b) is proposed for amendment to clarify language related to the failure to use allotments in the required timeframes. Pursuant to N.J.S.A. 27:1B-25.5.c, N.J.A.C. 16:20B-6.3(a) is proposed for amendment to require that all bidders with contracts valued at more than \$5,000,000 shall be prequalified by the Department. N.J.A.C. 16:20B-6.3(e)2 is proposed for amendment to delete the requirement for sealed resolutions. The Department has determined that this is unnecessary. Pursuant to N.J.S.A. 27:1B-25.5.a, current N.J.A.C. 16:20B-6.3(g) is proposed for deletion because local aid program funds are not allowed to be used for employees or equipment belonging to the local entity. Also pursuant to N.J.S.A. 27:1B-25.5.a, new N.J.A.C. 16:20B-6.3(g) is added to state that local aid program funds are not allowed to be used for employees or equipment belonging to the local entity. Pursuant to N.J.S.A. 27:1B-25.5.b, new N.J.A.C. 16:20B-6.3(h) is added to state that all construction contracts must be compliant with the provisions of N.J.S.A. 40A:11-1 et seq. N.J.A.C. 16:20B-6.4(i) is proposed for amendment to clarify the provision, without any substantive change.

Social Impact

The New Jersey Department of Transportation is committed to advancing projects that enhance safety, renew aging transportation infrastructure, and support new transportation initiatives. The rules proposed for readoption with amendments will continue to have a positive social impact by continuing to provide State aid to municipalities for rehabilitation and improvement of roads and bridges and other transportation projects. As of Fiscal Year 2017, \$161.35 million in State transportation aid was provided to municipalities and up to \$7.5 million in discretionary funding will be available to both counties and municipalities through the Department’s State Local Aid Program. The rules continue to assist municipalities in providing a safe, reliable, and efficient transportation system essential to the traveling public and the economy of the State.

Economic Impact

The rules proposed for readoption with amendments are an essential mechanism in providing municipalities with necessary funds for the rehabilitation and improvement of public roads and bridges and for other transportation projects. Municipal governments will continue to incur direct and indirect costs for the processing of plans and specifications, cost of engineering, contractual agreements, and invoices. The costs of design engineering and right-of-way acquisition shall continue to be borne by the municipality, except in special approved cases.

State aid for municipal transportation projects is subject to appropriations made pursuant to the New Jersey Transportation Trust Fund Act (TTF), N.J.S.A. 27:1B-1 et seq. Pursuant to N.J.S.A. 27:1B-25, municipal aid allocations use a distribution formula that is based on county population compared to State population and municipal roadway miles within a county compared to municipal roadway miles within the State. The Department updates county population information when it is updated by the U.S. Census Bureau. The 2020 U.S. Census data figures have not yet been deemed official; therefore, the 2010 figures are being used in formulas. The Department expects to be able to use the 2020 figures for the upcoming 2023 programs. As the formula by which municipal local aid allocations are distributed and is controlled by statute, the Department has no discretion in the calculation of these allocations.

Projects that encounter delays will be eligible for future consideration for municipal local aid funds, and the proposed rule provides reasonable options for municipalities to either request a six-month extension of time to award delayed projects or voluntarily withdraw funding from projects that cannot advance in a reasonable timeframe, so as to avoid any rescission of funds.

Federal Standards Statement

A Federal standards analysis pursuant to N.J.S.A. 52:14B-23 is not required because the rules proposed for readoption with amendments are under the authority of State statute only and are not subject to Federal law, standards, or requirements.

Jobs Impact

The rules proposed for readoption with amendments establish the policies and procedures for disbursement of municipal aid from the State TTF for transportation projects advanced by municipalities. As of Fiscal Year 2017, \$161.35 million is available for distribution to municipalities. These projects generate jobs in the construction industry and other industries directly and indirectly impacted by transportation construction. The number of jobs generated by these projects is difficult to estimate, as it is dependent on the type and complexity of the transportation project and the amount of other work being undertaken by a particular contractor working on a particular municipal transportation project. The rules, therefore, will continue to have a positive impact on the generation of jobs in the State and are not anticipated to result in the loss of jobs in the State, although the magnitude of that positive impact cannot be determined.

Agriculture Industry Impact

The rules proposed for readoption with amendments have no impact on the agriculture industry. The rules are not intended to regulate farming, crop, or animal production.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption with amendments do not place any reporting, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules concern how municipal governing bodies receive State aid for transportation projects.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have no impact on the affordability of housing in New Jersey. The rules establish the policies and procedures for the disbursement of municipal local aid from the State Transportation Trust Fund for transportation projects advanced by municipalities. The Department believes it is extremely unlikely that the rules would bring about a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on smart growth. The Department believes that it is unlikely that the rules would bring about a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the rules establish the policies and procedures for disbursement of municipal local aid from the TTF for transportation projects advanced by municipalities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

This chapter establishes the policies and procedures for disbursement of municipal local aid from the State Transportation Trust Fund for transportation projects advanced by municipalities. The existing rules have had no impact on Racial and Ethnic Community Criminal Justice and Public Safety in New Jersey and the Department believes that it is extremely unlikely that the rules proposed for readoption with amendments as they refer only to disbursement of municipal local aid from the TTF for transportation projects advanced by municipalities, will have any impact on pretrial detention, sentencing, probation, or parole policies concerning adults or juveniles in the State. Therefore, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:20B.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 3. CONTACTS

16:20B-3.1 Contact information

(a) Municipal local aid funds are administered by the Department's Division of Local Aid and Economic Development. Contact information for the Division is as follows:

1. Main Office
1035 Parkway Avenue
Trenton, New Jersey 08625
Phone: (609) [530-3640] **963-2021**
Fax: (609) 530-8044
Counties covered: All counties
- 2.-3. (No change.)
4. District Three Office
PO Box 600
Trenton, New Jersey 08625-0600
Phone: [(732) 625-4290] **(609) 963-2020**
Fax: (732) 625-4292
Counties covered: Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset
5. District Four Office
One Executive Campus
Route 70 West, 3rd Floor
Cherry Hill, New Jersey 08002
Phone: (856) [486-6618] **414-8414**
Fax: (856) 486-6771
Counties covered: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem

SUBCHAPTER 4. MUNICIPAL AID

16:20B-4.2 Engineering and right-of-way costs

(a) [Municipalities] **A grant recipient under the local aid program shall be permitted to expend up to five percent of its aid allotment for design purposes in the fiscal year beginning July 1, 2019, and every fiscal year thereafter for those purposes. Additionally, municipalities** qualified by the Department of Community Affairs for Urban Aid funding pursuant to N.J.S.A. 52:27D-178 et seq., or for Depressed Rural Centers Aid or any municipality demonstrating special need as approved by the Department, may, at the discretion of the Commissioner, be reimbursed for engineering and right-of-way acquisition in addition to construction costs, provided that the amount does not exceed the total amount allotted

for the project. Justification submitted by the municipality may include its inability to advance a project due to lack of funds, lack of staff, lack of expertise, or other extenuating circumstances. Department staff shall recommend acceptance or rejection of the special need request to the Commissioner for his or her final decision. The Commissioner's final decision shall be based on need, on a case-by-case basis.

(b)-(h) (No change.)

16:20B-4.4 Project approval

(a) Subject to appropriations, the Department shall solicit applications **from each municipality by April 30th of each year** for municipal local aid [and provide a deadline for submissions].

(b) Municipalities seeking municipal local aid will be required to submit an application through the Department's online grant management system, SAGE (System for Administering Grants Electronically) at <http://www.state.nj.us/transportation/business/localaid/sage.shtm> **by July 1st of each year**. SAGE users can submit grant applications, communicate with grant program staff, request changes, and manage grants.

(c)-(f) (No change.)

[(g) Municipalities will be notified of projects selected for municipal local aid.]

(g) The Department shall distribute an award letter to each municipality by November 30th of each year.

SUBCHAPTER 5. STANDARDS AND SPECIFICATIONS

16:20B-5.2 Specifications

(a) Construction and materials shall conform to the Department's Standard Specifications for 2019 Road and Bridge Construction, [2007 edition,] which is incorporated herein by reference, as amended and supplemented, and the Department's Supplementary Specifications for State Aid Projects, [2011] 2019 Edition, which is incorporated herein by reference, as amended and supplemented. The Standard Specifications for Road and Bridge Construction is available in electronic format on the Department's website at <http://www.state.nj.us/transportation/eng>. The Supplementary Specifications for State Aid Projects is available in electronic format on the Department's website at <http://www.state.nj.us/transportation/business/localaid/suppspecpay.shtm>.

(b) (No change.)

SUBCHAPTER 6. PROJECT AGREEMENTS AND CONTRACTS

16:20B-6.1 Project agreements

(a)-(b) (No change.)

(c) The Department shall execute an agreement with each municipality concerning the project for which the aid is allotted to that municipality within 90 days from the date the Department distributes the award letter to the municipality or by March 1st of the following year, whichever is later.

16:20B-6.2 Contract deadline

(a) (No change.)

[(b) Failure to award a contract within the 24-month deadline specified in this section without voluntarily canceling the municipal local aid agreement will result in the agreement being canceled and the funds, except those funds programmed for Urban Aid, being rescinded.]

(b) An allotment provided to a municipality shall be rescinded, returned, or deducted from future allocations as a result of a municipality's failure to award construction or other approved contracts for 100 percent of the municipality's allotment within two years of notification by the Department of that year's allotment.

(c)-(f) (No change.)

16:20B-6.3 Award of contract

(a) Upon approval by the Department, the municipal government shall advertise and award the contract for each project in accordance with the provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. **Additionally, for all projects funded, in whole or in part, out of funds from the local aid program, each bidder on a construction contract**

valued at more than \$5,000,000 shall be prequalified by the New Jersey Department of Transportation.

(b)-(d) (No change.)

(e) Within 30 calendar days following the award of the contract to the lowest responsible bidder, the municipal government shall submit the following to the appropriate district office:

1. (No change.)

2. A fully executed [and sealed] resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department;

3. (No change.)

(f) (No change.)

[(g) Municipalities may also perform work using their own workforces. In order to do so, the municipality must demonstrate to the Department that the force account method is more cost effective than contracting through competitive bidding and efficiently uses labor, equipment, materials, and supplies to assure the lowest overall cost.

1. When the force account method is requested, the municipality must supply the following:

i. Sufficient cost information, so that a cost-effectiveness determination can be made by comparing the total cost for the agency to perform the work versus the total cost using competitively bid prices. The project or contract completion time is to be equal for both municipality and contract work estimates in order to provide a fair price comparison;

ii. The determination that the municipality has the experience, resources, and demonstrated ability to complete the work with the same level of quality as that expected on a competitively bid contract;

iii. The ability to comply with the appropriate design, construction, and material quality standards; and

iv. Documentation of compliance that the level of quality is the same as that which is required for competitively bid contracts.

2. All force account work requests must be reviewed and approved by the Department prior to the start of construction.

3. If the force account method is approved, the municipality shall enter into a force account agreement with the Department. Any construction undertaken by the force account method prior to Department approval and execution of a force account agreement shall be subject to non-participation.

4. The Department's participation shall not exceed the approved project amount.]

(g) Local government entity grant recipients shall be prohibited from using local aid program funds to support the work of any local government entity's employees on any construction projects funded, in whole or in part, out of funds from the local aid program.

(h) The construction contracts for all projects funded, in whole or in part, out of funds from the local aid program shall be made and awarded in accordance with the Local Public Contracts Law, P.L. 1971, c. 198 (N.J.S.A. 40A:11-1 et seq.).

16:20B-6.4 Contract completion and final payment

(a)-(h) (No change.)

(i) Any funds remaining after final payment or rescission shall be reallocated by the Department at the Commissioner's discretion, except for those funds programmed for Urban Aid funding. These funds will be held by the Department for reallocation to the recipient. **Distribution of the portion of the grant provided initially to a municipality may be contingent on its performance in spending prior grants. Failure to award construction or other approved contracts for 100 percent of a municipality's allotment within two years of notification by the Department of that year's allotment pursuant to N.J.A.C. 16:20B-6.2(b), shall result in the allotment being immediately rescinded or the funds returned to the Department, as applicable, or in the event that the funds are not immediately returned, deducted by the Department from future allocations of aid to that municipality. Any of these funds may be reallocated by the Commissioner to other transportation projects, as the Commissioner shall so determine.**