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U.S. DEPARTMENT OF EDUCATION
OFFICE OF INNOVATION AND IMPROVEMENT
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THE STATE CHARTER SCHOOL FACILITIES INCENTIVE GRANTS PROGRAM

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GUIDANCE

The State Charter School Facilities Incentive Grants program (the “program”) will provide approximately five grants in FY 2004 to States. The purpose of this program is to provide matching funds to States to establish or enhance and administer per-pupil facilities aid programs in order to help charter schools obtain adequate facilities. These grants thus provide an incentive for States to share in the costs of funding charter school facilities, as they often do in funding the capital costs of regular public schools. The program is authorized under section 5205(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB).

The following Questions and Answers are designed to clarify different aspects of the program. For additional information on program requirements, and how to submit an application, please see the Notice Inviting Applications and the Application Package.

A. Eligible Grantees

A.1. Who is eligible to apply for and receive a grant under this program?

States that have:

- enacted a State law authorizing per-pupil facilities aid for charter schools by the deadline for submitting applications indicated in the application notice and
- funded, or contingently funded upon receipt of an award, the non-Federal share of the cost of a program that provides annual per-pupil aid for charter school facilities

are eligible to apply for and receive grants under this program.

A.2. What constitutes “annual per-pupil facilities funding”?

A State program of annual per-pupil facilities funding must provide funds to charter schools on a formula basis (although, as discussed in subsequent questions, the formula does not have to provide a flat amount per child or reach every charter school). The formula must take into account the number of pupils in a charter school. Applicants must assure that they intend to provide charter school facility funding on an annual basis. Grantees must provide the non-Federal funds in a given year in order to receive the Federal funds in that year. The per-pupil facilities aid must be dedicated solely or have a portion of which is dedicated solely for charter school facilities.

A.3. Must a State per-pupil facilities aid program serve every charter school in the State in order to be eligible?

No, a State does not need to serve every charter school in the State to be eligible. For instance, a State could choose to make charter schools that are on probation ineligible. Furthermore, a State might provide funds only to schools with high proportions of students in poverty. Also, a State cannot receive Federal funds under the program to match any State funds for schools that do not meet the Federal definition of a charter school. (See discussion under B.1.)

A.4. Must every student have the same weight in the State formula?

No, every student need not have the same weight in the formula. For instance, students with disabilities and students from low-income families might receive relatively higher weights than other students in the per-pupil formula. Furthermore, applicants that over-weight students in charter schools with great need or high proportions of students in poverty can potentially score higher under the selection criteria than applicants that do not.

A.5. May charter schools apply for these funds directly?

No, charter schools may not apply for these funds directly. Only States may apply for these funds.

A.6. Can programs that provide funds for facilities to both charter schools and regular public schools qualify for Federal matching funds?

Yes, such a program can qualify for Federal matching funds. However, the Federal match would only be based on the portion of non-Federal funds provided for charter school facilities.

A.7. If a State is newly creating a per-pupil facilities financing program, how far along in the legislative process must a State be to become eligible for these funds?

A program must be authorized or enacted into law by the deadline for transmitting applications indicated in the application notice to be eligible to receive funds. However, the non-Federal match does not need to be funded by the State until July 15, 2004, for an applicant to be eligible to receive funds.

B. Eligible charter schools

B.1. What is a “charter school” for the purposes of this program?

The definition of a charter school under this program is the same as the definition used by the U.S. Department of Education’s Charter Schools Program (CSP). Under that definition:

(1) A charter school is a public school that--

(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this paragraph; [the paragraph that defines the term charter school];

(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(D) provides a program of elementary or secondary education, or both;

(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) does not charge tuition;

(G) complies with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and part B of the Individuals with Disabilities Education Act;

(H) is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(I) agrees to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program [the CSP] ;

(J) meets all applicable Federal, State, and local health and safety

requirements;

(K) operates in accordance with State law; and

(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

Charter schools must meet each element of this definition in order to be eligible to receive Federal and non-Federal funding under the State Charter School Facilities Incentive Grants Program. Consequently, a school that meets its State's definition of a charter school, but, for example, does not:

- provide an elementary or secondary education program (as defined under State law) or
- admit students based on a lottery if more students apply for admission than can be accommodated

cannot receive funding from a grantee under the program. For further information, consult the guidance for CSP at <http://www.ed.gov/policy/elsec/guid/cspguidance03.doc>.

B.2. Does a charter school need to have a charter or be operating to receive assistance from a grantee?

As long as the charter schools served meet the definition specified in B.1., applicants may determine the requirements a charter school must meet, such as the date by which charter schools must have a charter or be open, to receive assistance through their proposed grant projects.

B.3. Is the use of the facility limited to operation of a charter school?

Operating a charter school (or schools) must be the primary use of the facility. However, there may be cases where a charter school rents out either all of the facility for part of the time or a portion of its facility all of the time for other uses. After factoring in these other uses, the primary purpose of the facility must be for operating the charter school(s).

B.4. May a charter school lease a religious organization's facility?

A charter school may use these grant funds to lease a religious organization's facility. Charter schools may use the facilities of a religious organization to the same extent that other public schools may use these facilities. Generally, this means that a charter school may lease space from a religious

organization so long as the charter school remains non-religious in all its programs and operations. Therefore, the religious landlord may not exercise any control over what is taught in the charter school.

Space constraints can be a major challenge facing charter schools. A charter school should select space based on its logistical and educational needs, not because the space is located in or near a religious school or institution or because officials of the charter school are connected to a particular religious organization. On the other hand, it is important that charter school operators have the flexibility to examine a range of options in their community. The Department strongly recommends that any space used by a charter school be free of religious symbols and under the full control of the charter school during school hours and during all charter school activities.

C. GRANT COMPETITION

C.1. How many grants will the Department award under this program?

The Department expects to make five awards, from FY 2004 funds, depending on the quality of the applications and the cost of the proposed projects.

C.2. Who should I contact if I have problems submitting an e-application?

Applicants are required to submit applications electronically under this program. If you have problems submitting an application electronically, please contact our computer help staff at (202) 401-6238.

C.3. On what basis will the Department select applications for funding?

Applicants will be selected based on the standards and requirements described in the application notice that was published in the Federal Register and a copy of which is included in the application package. These standards are summarized below:

Adequacy of funding (35 points)

- The extent to which the proposal provides adequate funding for charter school facilities on a per-pupil basis.
- The extent to which there is adequate funding, including funds other than per-pupil facilities aid, for charter schools to meet their facility needs.

Quality of plan (35 points)

- The likelihood that the proposed grant project will result in the State either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance (State and Federal) declining over a five-year period;
- The flexibility charter schools have in their use of facility funds for the various authorized purposes;
- The quality of the plan for identifying charter schools and determining their eligibility to receive funds; and
- The formula's ability to target resources to charter schools with the greatest need and the highest proportions of students in poverty.
- For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose; and
- For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

The grant project team (15 points).

- The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants and subcontractors; and
- The adequacy and appropriateness of the applicant's staffing plan for the grant project.

The budget (15 points)

- The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project;
- The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits;
- The extent to which the Federal share of the costs of the project (which may not exceed the percentages allowed under section 5205(b)(2)(C) of the ESEA) falls below the maximums allowed, particularly in the initial years of the program; and
- The need for per-pupil charter school facility funding in the State.

In addition, the Department awards up to 20 points under a competitive preference priority for this program.

C.4. What is the competitive preference priority and how does it work?

Under the competitive preference priority, up to 20 points are awarded to States provided that they meet *all* of the following requirements:

- Periodic Review and Evaluation. The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school, at least once every 5 years, unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter and is meeting or exceeding the academic performance requirements and goals for charter schools as provided under State law or the school's charter.
- Number of High-Quality Charter Schools. The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which an State educational agency (SEA) or eligible applicant applies for a grant under this competition.
- One Authorized Public Chartering Agency Other than a local educational agency (LEA), or an Appeals Process. The State --
 - (1) Provides for one authorized public chartering agency that is not an LEA, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or
 - (2) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.
- High Degree of Autonomy. The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

C.5. What is the invitational priority and how does it work?

We also have included an invitational priority for this competition. No points or preference are awarded to applicants that meet the invitational priority. The purpose of the invitational priority is to suggest that applicants attempt to focus their applications in a certain manner. An invitational priority may be used as a competitive priority and reward applicants with points in future years if its use as an invitational priority suggests that it could also work as a competitive priority.

The invitational priority under this program is based on school facility capacity issues related to NCLB. Under NCLB, school districts are required to provide public school choice to students in schools that have either (1) failed to make adequate yearly progress for two consecutive years, or (2) are considered to be persistently dangerous. In the event that there is insufficient space to accommodate students desiring to exercise choice as a result of schools failing to make adequate yearly progress, school districts are required to create additional space for those students.

School districts that lack sufficient space to accommodate students who desire to exercise choice because of the requirements under NCLB would have a school facility capacity issue. In addition, sometimes a school facility capacity issue might exist in part of a large school district. A school district might be able to accommodate students who desire to exercise choice, but if the schools that could accommodate these students are far from the home of the student, this choice might not be meaningful.

The invitational priority for this competition invites proposals to increase the capacity of charter schools to offer public school choice in those communities with the greatest need by addressing the extent to which the applicant would target services to charter schools that are in:

- geographic areas where a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the ESEA;
- geographic areas in which a large proportion of students perform poorly on State academic assessments; and
- communities with large proportions of low-income students.

D. Use of funds

D.1. How may a grantee use these funds?

Grantees may use these funds to:

- establish new per-pupil facilities aid programs;
- enhance (increase the funding level of) existing per-pupil facilities aid programs; and
- administer per-pupil facilities aid programs.

D.2. How may charter schools use these funds?

Charter schools that receive these funds through their State must use the funds for their facilities. Allowable expenditures include:

- paying rent,
- purchasing a school building,
- constructing a school building,

- renovating an already owned school facility,
- making leasehold improvements, and
- paying debt service on a school facility (see next question).

D.3. May these grant funds be used for debt service? Can they be used to make payments to trustees?

Unless restricted by State or local law, yes, these funds may be used for debt service. Furthermore, they may be paid into the account of a third party or trustee who in turn makes debt service payments for facilities on behalf of charter schools.

D.4. May a charter school use grant funds under this program to purchase land?

Yes, if the land is included in an allowable building purchase. Since charter schools are permitted to use these grant funds for acquiring facilities, a charter school may use grant funds to purchase a building and the land on which it is located.

Charter schools may not use these grant funds for purchasing land when they have no immediate plans to construct a building on that land since land alone does not meet a charter school's building infrastructure needs.

D.5. What costs must be included as administrative costs? Are they limited?

Administration includes indirect costs, evaluation, technical assistance, dissemination, personnel, and any other costs involved in administering the State's per-pupil facilities aid program. These costs may not exceed five percent of the grant award.

D.6. How long do grantees have to obligate funds?

Grantees and their subgrantees both must obligate funds before the end of the grant funding period specified in the grant award documents. For FY 2004 grantees, the funding period will be three years, which means that all funds must be obligated by grantees and subgrantees within three years from when a grant is awarded. Since subgrantees will often take longer to obligate their funds because they have State and local bidding procedures to follow before they can issue contracts for certain facilities construction or improvements, it is essential that State grantees obligate the funds to the charter schools as soon as possible. Our expectation is that States will obligate funds to charter schools within the first six months of their receipt of the Federal grant funds.

D.7. How long do grantees have to expend or liquidate funds?

States and local governments/charter schools must expend or liquidate all obligations not later than 90 days after the end of the funding period. The funding period for this program is three years. For FY 2004 State grantees, this means that all funds must be liquidated within 90 days of the conclusion of their grant funding period, which will be specified in the grant award documents, but we expect will be within calendar year 2007.

For example, if a State receives an FY 2004 grant and its grant period runs from August 30, 2004, to August 30, 2007, both the State and its charter school recipients must obligate their funds before the end of August 2007. Since States and charter schools must liquidate these funds within 90 days of the end of the grant period, all of the funds would be then liquidated by November 29, 2007.

D.8. How does the “supplement not supplant” requirement work?

At the State level:

All State applicants, but in particular those that are enhancing existing charter facilities programs, must ensure that neither they nor their charter school recipients violate this program’s statutory non-supplanting requirements. A State may use these grant funds only to the extent that the grant funds and the required nonfederal match would supplement the total amount of funding provided to charter schools for any type of cost, including operating and capital costs.

Example of supplanting: If a State had been providing \$100 million a year on behalf of charter schools for their facility expenses and operating expenses and intended to continue that level of funding in future years, it would be supplanting if it reduced the level of its financial contribution to charter schools after it received a grant.

At the local level:

At the local level, charter schools may use these grant funds only to the extent that the grant funds and the required non-Federal match would supplement the total amount of State and local funding provided to charter schools.

Example of supplanting: If a school district had been providing \$1 million a year on behalf of a charter school for its facility expenses and operating expenses and intended to continue that level of funding in future years, it would be supplanting if it reduced the level of its financial contribution to the charter school after it received grant funds from the State.

E. Conflicts of Interest

E.1. What are the rules governing “conflicts of interest” in the administration of grants?

Grantees must avoid apparent and actual conflicts of interest when administering grants from the U.S. Department of Education. Department regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or his or her immediate family member; and (b) the person is a public official or has a family or business relationship with the grantee. Section 75.525(b) provides further that a grantee may not permit any person participating in a project to use his or her position for a purpose that is -- or gives the appearance of being -- motivated by a desire for a private or financial gain for that person or for others.

E.2. What procedures must a grantee follow in order to avoid a “conflict of interest” when making a procurement?

When using Federal funds to enter into a contract, a State or local entity receiving a grant must comply with 34 CFR 80.36. These standards require Federal grant recipients to develop written procurement procedures and to conduct all procurement transactions in a manner that provides, to the maximum extent possible, open and free competition. No employee, officer, or agent of the grantee may participate in the selection, award, or administration of any contract supported by Federal funds if a real or apparent conflict of interest exists.

F. Federal requirements

Do Davis-Bacon prevailing wage requirements apply to these funds?

When funds under this program are used for construction-related activities costing over \$2,000, such as constructing a school building, renovating an existing owned school facility, or making leasehold improvements, any laborers and mechanics employed by contractors or subcontractors on the projects assisted with these Federal funds must be paid in accordance with prevailing wage requirements in the Davis-Bacon Act.