

4 AAC 31.013(e) is amended to read:

(e) [ON AN ANNUAL BASIS, THE] **The** department **will make a determination of a district's** [SHALL PROVIDE A PRELIMINARY NOTICE TO EACH DISTRICT REGARDING ITS] compliance with each element required in (a) of this section, based on evidence of a program [PREVIOUSLY PROVIDED TO] **acquired by** the department, [OR THAT WAS] **including information** gathered by the department during an on-site visit conducted under (f) of this section. **The department may change a determination at any time during the year based on new evidence. For purposes of eligibility for an application submitted under AS 14.11.011, on** [ON] or before June 1, the department will provide [ITS] preliminary notice **of its determination.** [THE DEPARTMENT MAY CHANGE A DETERMINATION OF NON-COMPLIANCE AT ANY TIME DURING THE YEAR BASED ON NEW EVIDENCE.] Districts that are not in full compliance must provide evidence of compliance to the department by August 1. On or before August 15, the department will notify districts of its final determination regarding compliance. The department will deny a grant application submitted under AS 14.11.011 by a district that has received a final determination from the department that the district is out of compliance with this section.

4 AAC 31.013(f) is amended to read:

(f) The department **will** [SHALL] conduct **an** on-site **inspection** [INSPECTIONS] of a school district preventive maintenance and facility management **program** [PROGRAMS] at least once every five years; **however, if the department issues a finding of noncompliance under (e) of this section and the district does not provide adequate evidence of compliance, the department may postpone an onsite visit beyond the five-year period.** The department

may make additional inspections as it deems necessary. The department may change its determination of compliance based on information obtained during an [THE] on-site inspection [INSPECTIONS].

4 AAC 31.013 is amended by adding a new subsection to read:

(h) Notwithstanding (e) and (f) of this section, the department may make a determination of provisional compliance for a district that provides evidence of a plan that meets all required elements identified in (a) of this section but does not provide documentation of adherence to that plan. A determination of provisional compliance will allow a district to be eligible for state aid until a final determination of compliance or non-compliance is provided.

(Eff. 5/24/2001, Register 158; am 12/19/2002, Register 164; am 12/15/2004, Register 172; am 6/17/2010, Register 194; am __/__/__, Register ____)

Authority: AS 14.07.020 AS 14.11.011 AS 14.11.132
AS 14.07.060

4 AAC 31.016 is amended by adding a new subsection to read:

(i) The enrollment calculated for students in leased space will be excluded from use in calculating eligibility for additional square footage for facilities unless

(A) that enrollment is in an attendance area comprised of a single school, or

(B) the lease is due to terminate within two years and district submits an application for a capital improvement project under AS 14.11 for new school construction to house the student population of the terminating lease space. (Eff. 7/13/2000, Register 155; am 12/19/2002, Register 164; am __/__/__, Register ____)

Authority: AS 14.07.060 AS 14.11.015 AS 14.11.100
AS 14.11.011 AS 14.11.017 AS 14.11.132
AS 14.11.013

4 AAC 31.020(a) is amended to read:

(a) The following are the basic guides for educational facility planning **adopted by reference:**

(1) for a school capital project application submitted to the department, **Creating Connections: The CEFPI Guide for Educational Facility Planning** [CREATING CONNECTIONS: THE CEFPI GUIDE FOR EDUCATIONAL FACILITY PLANNING], 2004 Edition, as published by the Council of Educational Facilities Planners International;

(2) repealed 4/17/98;

(3) repealed 4/17/98;

(4) **Guidelines for School Equipment Purchases** [GUIDELINES FOR SCHOOL EQUIPMENT PURCHASES], as published by the Alaska Department of Education and Early Development, **2016 edition** [1997 EDITION];

(5) deleted 8/31/90;

(6) repealed 4/17/98;

(7) **Swimming Pool Guidelines** [SWIMMING POOL GUIDELINES], as published by the Alaska Department of Education and Early Development, 1997 edition; and

(8) **Site Selection Criteria and Evaluation Handbook** [SITE SELECTION CRITERIA AND EVALUATION GUIDELINE], as published by the Alaska Department of Education and Early Development, **2011 edition** [1997 EDITION].

4 AAC 31.020(d) is amended to read:

(d) The department **will** [SHALL] reduce a project budget in proportion to the amount that the project's design exceeds the square feet allowable as determined under (c) of this section[.THIS SUBSECTION APPLIES TO A PROJECT], **until an agreement, as described in 4 AAC 31.023(c), is fully executed** [THAT HAS NOT RECEIVED A GRANT UNDER AS 14.11, A PROJECT THAT HAS RECEIVED MONEY FROM THE DEPARTMENT FOR PLANNING]. **The department may proportionally reduce the project budget under this subsection if** [, AND] a project [THAT] has not secured the approval of the commissioner under 4 AAC 31.040 [THIS SUBSECTION DOES NOT APPLY TO A PROJECT THAT HAS SECURED THE APPROVAL OF THE COMMISSIONER UNDER 4 AAC 31.040].
(Eff. 3/1/78, Register 65; am 6/9/83, Register 86; am 12/2/83, Register 88; am 8/31/90, Register 115; am 10/7/95, Register 136; am 4/17/98, Register 146; am 2/18/99, Register 149; am 7/13/2000, Register 155; am 8/23/2001, Register 159; am 12/20/2002, Register 164; am 6/17/2010, Register 194; am __/__/__, Register __)

Authority:	AS 14.07.020	AS 14.11.011	AS 14.11.100
	AS 14.07.060	AS 14.11.020	AS 14.11.132

4 AAC 31.021(e) is repealed and readopted to read:

(e) Using the criteria set out in 4 AAC 31.022(b), the department will score each application and use the score to assign a priority ranking to the projects approved for eligibility. The department may annually approve a school district's request to reuse an original application

and its score for up to five additional years after the year the original application is submitted, if, for a school capital project listed in the district's six-year capital improvement plan,

(1) the school district identifies, in a letter accompanying the six-year plan, the specific application for which the district requests consideration beyond the initial application period;

(2) the chief school administrator certifies in writing that the district's eligibility for any additional square footage associated with the project has not decreased; and

(3) for requests to reuse the application and score for the first additional year;

(A) the physical condition of a facility included in the project has not deteriorated so as to increase the project's cost to exceed the amount determined by application of the inflation factor under (f) of this section; and

(B) health and life safety conditions and code conditions have not changed so as to affect the project's score under 4 AAC 31.022(b); or

(4) for requests to reuse the application and its score in years two through five after the year of the original application, the project construction must be substantially complete at the time of the original application. An inflation factor under (f) of this section will not be added to the project cost when an application is reused under this paragraph.

4 AAC 31.021(f) is repealed and readopted to read:

(f) If, under (e) of this section, the department approves a district's reuse of its previous year's application and score for one additional year after the year the original application is filed, the department will add an inflation factor based on an industry-accepted method to costs anticipated to occur after the award of the grant.

4 AAC 31.021 is amended by adding new sections to read:

(g) If, under (e) of this section, a district reuses its original application and score for one or more additional years after the year the original application is filed, the district may not appeal its priority ranking in any of the additional years.

(h) A grant application must include certification that insurance or a program of self-insurance exists under 4 AAC 31.200 – 4 AAC 31.225 and will be revised, if necessary, to include the proposed facility. (Eff. 8/31/90, Register 115; am 8/12/93, Register 127; am 3/10/96, Register 137; am 4/17/98, Register 146; am 7/13/2000, Register 155; am 12/19/2002, Register 164; am 6/17/2010, Register 194; am __/__/__, Register __)

Authority: AS 14.07.060 AS 14.11.011 AS 14.11.132
AS 14.11.008 AS 14.11.013

4 AAC 31.022(b) is amended to read:

(b) When reviewing the six-year capital improvement plans and the grant applications submitted by school districts, department staff shall separately rank projects in the following classifications in the first year of the plan, in descending order of priority, as serves the state's best interests, where:

(1) school construction projects are those projects the primary purpose of which is to accomplish work under the categories established in **AS 14.11.013(a)(1)(A), (B), (F), and (G)** [AS 14.11.013(a)(1)(A), (a)(1)(B), AND (a)(1)(E) - (a)(1)(G)]; and

(2) major maintenance projects are those projects the primary purpose of which is to accomplish work under the categories established in **AS 14.11.013(a)(1)(C)-(E)**

[AS 14.11.013(a)(1)(C) AND (D)], except that a major maintenance project may not include additional or replacement square footage.

4 AAC 31.023(c) is amended to read:

(c) The department will, before the disbursement of grant or allocations of other financial assistance [MONEY] to a school district, require the execution of a grant or other financial assistance agreement, on a form prescribed by the commissioner, that contains the following conditions:

(1) the project will be constructed and equipped under the requirements of 4 AAC 31.020(a), within the project budget determined under 4 AAC 31.022(e);

(2) money will be disbursed as the parties agree to allow the accomplishment of stages in the project, such as site acquisition; design and construction; and to reimburse the district for money actually and necessarily spent, before the award of the grant or allocation of other financial assistance,

(A) for **application costs**, planning costs, design costs, and construction costs incurred not more than 36 months before the **initial** submission of the grant **or other financial assistance** application **with a substantially identical scope**; and

(B) site acquisition costs incurred not more than 120 months before the **initial submission of the** grant or other financial assistance application **with a substantially identical scope** for which the department has given its approval under 4 AAC 31.025;

(3) the district's performance under the grant or other financial assistance is subject to financial audit at any time; the cost of an audit required by the state is an allowable cost of school construction;

(4) the site for the school facility is approved under 4 AAC 31.025;

(5) designers, **commissioning agents, and construction managers** of the facility shall be selected under 4 AAC 31.065; [AND]

(6) construction shall be performed by contracts awarded under 4 AAC 31.080;

and

(7) unless a district provides documented evidence of project-specific indirect administrative costs in excess of these limits, indirect administrative costs may not exceed

(A) three percent of construction costs, if construction costs are \$500,000 or less;

(B) the greater of \$15,000 or two percent of construction costs, if construction costs are over \$500,000 but less than \$5,000,000;

(C) the greater of \$100,000 or one percent of construction costs, if construction costs are \$5,000,000 or more.

4 AAC 31.023 is amended by adding a new subsection to read:

(e) In (c) of this section,

(1) “indirect administrative costs” means an allocable portion of administrative and operating expenses; and

(2) “construction costs” means the cost of contracted work as well as force account for facility construction, site preparation, site improvements, and utilities.

Register ____, ____ 20__ EDUCATION & EARLY DEV.

(Eff. 8/31/90, Register 115; am 8/12/93, Register 127; am 4/17/98, Register 146; am 2/18/99, Register 149; am __/__/__, Register ____)

Authority: AS 14.11.013 AS 14.11.017 AS 14.11.132
AS 14.11.015 AS 14.11.100

4 AAC 31.026(d) is amended to read:

(d) Within 10 working days after the filing of an appeal under (c) of this section, the **chief administrative law judge of the office of administrative hearings** [COMMISSIONER] shall appoint a hearing officer to hear the case. The hearing officer shall consider the issues raised in the appeal on the basis of

(1) the school district's updated capital improvement plan submitted under 4 AAC 31.011;

(2) the grant application, and supporting documentation submitted by the school district under 4 AAC 31.020(c);

(3) the comments received at the public hearing conducted under (a) of this section;

(4) the decision rendered by the department on the request for reconsideration under (b) of this section; and

(5) the appeal filed by the school district under (c) of this section.

(Eff. 8/31/90, Register 115; am 8/12/93, Register 127; am 4/17/98, Register 146; am __/__/__, Register ____)

Authority: AS 14.11.013 **AS 14.11.016** AS 14.11.132
AS 14.11.015

4 AAC 31.030(a) is amended to read:

(a) A school district shall submit the elements of a plan for **a school capital project**, **including** new construction, additions, demolitions, and rehabilitations, to be undertaken by the school district that are to be funded under **AS 14.11.011** [AS 14.11.020] or for which reimbursement is to be sought under AS 14.11.100. The elements of the plan must be submitted to the commissioner for the commissioner's review and approval as the elements are developed and before any **construction contract solicitation or** construction activity is initiated.

(Eff. 3/1/78, Register 65; am 12/2/83, Register 88; am 10/7/95, Register 136; am 4/17/98, Register 146; am __/__/__, Register __)

Authority:	AS 14.07.020	AS 14.11.011	AS 14.11.020
	AS 14.07.060	AS 14.11.013	AS 14.11.100

4 AAC 31.040(a) is amended to read:

(a) Before commencing **construction contract solicitation or** construction activity under **AS 14.11.011** [AS 14.11.020] or **construction contract solicitation or** construction activity for which reimbursement will be sought under AS 14.11.100, a school district or a regional school board shall secure the approval of the commissioner of the documents for the project as follows:

(1) the school district or regional school board shall submit to the commissioner 95 percent construction documents at least 20 work days before a bid invitation is made;

(2) if construction contract bids are to be invited for the project, the school district or regional school board shall submit the construction bid documents, excluding the construction plans and specifications if the 95 percent construction documents submitted under (1) of this

subsection were stamped and signed by the professionals in responsible charge, to the commissioner at least five work days before the bid invitation is made;

(3) if the project will not be advertised for bids, the school district or regional school board shall submit the final stamped and signed construction documents to the commissioner no later than 15 work days before commencing each construction phase; and

(4) a municipality or a school district may request, in writing, a waiver to the construction document approval process set out in (1) - (3) of this subsection for a project based on the ability of the municipality or school district to provide a thorough and complete independent review.

(Eff. 3/1/78, Register 65; am 12/2/83, Register 88; am 4/17/98, Register 146; am __/__/__, Register __)

Authority:	AS 14.07.020	<u>AS 14.11.011</u>	AS 14.11.100
	AS 14.07.060	AS 14.11.020	

4 AAC 31.060(i) is amended to read:

(i) Reimbursement for rehabilitation costs under AS 14.11.100 is limited to projects exceeding **\$200,000** [\$25,000].

(Eff. 3/1/78, Register 65; am 2/24/83, Register 85; am 12/2/83, Register 88; am 9/12/85, Register 96; am 2/8/86, Register 97; am 5/30/90, Register 114; am 4/17/98, Register 146; am 7/13/2000, Register 155; am 6/17/2010, Register 194; am __/__/__, Register __)

Authority:	AS 14.07.020	AS 14.11.020	AS 14.11.102
	AS 14.07.060	AS 14.11.100	AS 14.11.132
	AS 14.11.011		

4 AAC 31.061(b)(2) is repealed:

(2) repealed __/__/__; [FOR A CAPITAL IMPROVEMENT PROJECT GRANT APPLICATION SUBMITTED TO THE DEPARTMENT BEFORE JANUARY 1, 1996, NONASSIGNABLE SPACE MAY NOT EXCEED 25 PERCENT OF THE TOTAL SPACE, EXCEPT THAT THE DEPARTMENT WILL, IN ITS DISCRETION, GRANT A VARIANCE OF UP TO 35 PERCENT OF TOTAL SPACE IN SMALL SCHOOLS IN REMOTE AREAS IF IT CAN BE DEMONSTRATED THAT THE VARIANCE IS IN THE BEST INTEREST OF THE STATE AND THE DISTRICT; AND]

(Eff. 9/12/85, Register 96; am 2/8/86, Register 97; am 5/30/90, Register 114; am 9/29/90, Register 115; am 10/7/95, Register 136; am 4/17/98, Register 146; am __/__/__, Register ____)

Authority:	AS 14.07.020	AS 14.11.020	AS 14.11.102
	AS 14.07.060	AS 14.11.100	AS 14.11.103

4 AAC 31.064 is amended to read:

4 AAC 31.064. Redirection of bond proceeds. If a municipality has bond proceeds remaining after **termination of all design, construction, and equipment contracts for** [THE CONSTRUCTION OF] a project approved by the department for debt retirement under 4 AAC 31.060 and by local voters under AS 14.11.100(j), and the municipality seeks to construct a project different from the one approved by the department, the municipality may only receive reimbursement for the project if the new project is approved by the department and

(1) the bond proposition originally approved by the local voters authorized the use of any excess money for school capital projects such as the new project; or

Register ____, ____ 20__ EDUCATION & EARLY DEV.

(2) the municipality meets the requirements of AS 14.11.100(j), including the requirement for a municipal election to approve the new use of the money. (Eff. 5/30/90, Register 114; am __/__/__, Register ____)

Authority: AS 14.07.060 AS 14.11.100 AS 14.11.132

4 AAC 31.065(a) is amended to read:

(a) If a school district determines that it is necessary to engage the services of a private consultant to **provide design, commissioning,** or [PROVIDE] construction management **services** for an educational facility with money provided under AS 14.11.011 - AS 14.11.020, or for a project approved for reimbursement of costs under AS 14.11.100, and the estimated cost of the contract is more than \$50,000, **the contract shall be awarded to the most qualified proposer after evaluating proposals submitted in response to an approved solicitation.** The selection of the consultant shall be accomplished by soliciting written proposals by advertising **at least 21 days before the proposals are due by providing notice through publication** in a newspaper of general circulation. **The department may approve an alternate means of notice through publication on the Internet if the website has the express purpose of advertising similar solicitations, has unrestricted public access, and is equally likely to reach prospective proposers** [AT LEAST 21 DAYS BEFORE THE PROPOSALS ARE DUE. THE CONTRACT SHALL BE AWARDED TO THE MOST QUALIFIED OFFEROR, AFTER EVALUATING THE PROPOSALS SUBMITTED].

4 AAC 31.065 is amended by adding a new subsection to read:

(d) The department may deny or limit its participation in the costs of design.

commissioning, or construction management for a project eligible for grant funding under AS 14.11.011 or for reimbursement under AS 14.11.100 if the school district does not comply with the requirements of this section. (Eff. 12/2/83, Register 88; am 8/31/90, Register 115; am ____/____/____, Register ____)

Authority: AS 14.11.017 AS 14.11.020 AS 14.11.132

4 AAC 31.080(b) is amended to read:

(b) The school district shall **publish** [PROVIDE] **the first** notice of its solicitation **at least 21 days** [BY ADVERTISEMENT IN A NEWSPAPER OF GENERAL CIRCULATION IN THIS STATE AT LEAST THREE TIMES] before the opening of the offers. [THE FIRST PRINTING OF THE ADVERTISEMENT MUST OCCUR AT LEAST 21 DAYS BEFORE OPENING THE OFFERS.] The department may approve a solicitation period shorter than 21 days when written justification submitted by the school district demonstrates that a shorter solicitation period is advantageous for a particular **project** [offer] and will result in an adequate number of responses. A school district may provide additional notice by mailing its solicitation to contractors on any list it maintains, and any other means reasonably calculated to provide notice to prospective offerors. **The district shall provide notice of its solicitation by publication at least three times in a newspaper of general circulation in the state. The department may approve an alternate means of notice through publication on the Internet if the website has the express purpose of advertising similar solicitations, has unrestricted public access, and is equally likely to reach prospective offerors.**

4 AAC 31.080(e) is amended to read:

(e) The department may deny or limit its participation in the costs of construction for a project eligible **for grant funding under AS 14.11.011 or** for reimbursement under AS 14.11.100 if the school district does not comply with the requirements of this section. [A SCHOOL DISTRICT THAT ENTERS INTO A CONSTRUCTION CONTRACT FOR A PROJECT AUTHORIZED FOR CONSTRUCTION UNDER AS 14.11.020 THAT WAS AWARDED WITHOUT COMPETITIVE SELECTION UNDER THIS SECTION MAY NOT RECEIVE MONEY UNDER ITS PROJECT AGREEMENT FOR THE CONSTRUCTION PHASE OF THE PROJECT.]

4 AAC 31.080(f) is amended to read:

(f) Nothing in this section precludes a school district from using an alternative construction delivery method as defined and described in the **Project Delivery Method Handbook** [PROJECT DELIVERY METHOD HANDBOOK], **2017 edition** [NOVEMBER, 2004], adopted by reference, if the department approves the method in advance of any solicitation, the proposed method is in the state's best interest, and the school district concurs in any directives the department makes concerning the type of selection and award of the contract. The department may deny or suspend use of an alternative construction delivery method by a school district if the department concludes, based on substantial evidence, that use or repeated use of a delivery method by the school district has resulted or will result in limited competition or higher costs.

4 AAC 31.080(g) is amended to read:

(g) A school district may, with prior approval by the department, **enter into a lease or purchase agreement for, or accept a donation of,** an existing facility **or land** for use as an education-related facility if

(1) **for the purchase, lease or accepted donation of an existing facility,** a cost saving over new construction is achieved;

(2) the purchase **or lease** price is arrived at through impartial negotiation and is supported by a real estate appraisal that meets accepted standards; and

(3) the purchase, **lease, or donation** is in the best interests of the state and the school district.

4 AAC 31.080 is amended by adding a new subsection to read:

(i) The department may deny or limit its participation in the costs of a school capital project if the real property for the project is acquired by a school district through purchase, lease, or donation without the approval of the department under (g) of this section. (Eff. 12/2/83, Register 88; am 8/31/90, Register 115; am 4/17/98, Register 146; am 11/20/2005, Register 176; am ____/____/____, Register ____)

Authority: AS 14.07.060 AS 14.11.020 AS 14.11.132

4 AAC 31.085(a) is amended to read:

(a) The department may dispose of state-owned school buildings and other facilities under this section if it determines that the buildings or facilities are no longer needed to provide the educational program in the community in which they are located. The determination will be

made in writing after consultation with the regional educational attendance area (REAA) in which the property is located, and the reasons for the determination will be documented. The department will not make a determination under this section unless the regional school board that was given a use permit under 4 AAC 31.090 for the property provides, in support of the determination, a resolution requesting termination of the use permit and declaring that the property, both land and buildings, is no longer needed for the purpose of providing education services. In addition, the regional school board must give notice of its excess property on a form provided by the department, and must agree that the conditions and responsibilities contained under 4 AAC 31.090 in the use permit will remain valid for a one-year period after the date of the notice or the date of last occupancy, whichever is later, unless the department, in writing, relieves the regional school board of responsibility in whole or in part. **Nothing in the section relieves a regional school board of its ongoing responsibilities or liabilities arising out of its interest in or use or operation of the property.**

(Eff. 10/4/90, Register 115; am 4/17/98, Register 146; am 12/19/2002, Register 164; am 6/17/2010, Register 194; am __/__/__, Register: __)

Authority: AS 14.07.030 AS 14.07.060

4 AAC 31.220 is amended to read:

4 AAC 31.220. Proof of insurance. Except for a district that has an authorized self-insurance program under 4 AAC 31.205, each school district shall provide to the department a certificate of insurance, by **July 15** [JULY 1] of each year, that provides notice of the per occurrence and aggregate limits of coverage, and shall provide for 45 days' notice to the

department of cancellation, termination, or any material change in policy conditions. (Eff.

8/31/90, Register 115; am ____/____/____, Register ____)

Authority: AS 14.03.150 AS 14.07.060

4 AAC 31.900(2) is amended to read:

(2) "capital equipment" means built-in and movable equipment used to furnish a newly constructed or rehabilitated space; it includes first-time purchase of library books, reference material, and media to furnish a new or renovated library; it does not include supply items such as textbooks and expendable commodities; the term is further defined in the *Guidelines for School Equipment Purchases* [GUIDELINES FOR SCHOOL EQUIPMENT PURCHASES], **2016 edition** [1997 EDITION];

4 AAC 31.900(21) is amended to read:

(21) "school capital project" means a school construction or major maintenance project for which state aid is requested or provided when the costs of the construction or **major** maintenance exceed **\$50,000** [\$25,000];

4 AAC 31.900 is amended by adding a new subsection to read:

(33) "construction manager" means a private consultant contracted by the school district during any phase of a school capital project to manage the project's scope, quality, and budget. (Eff. 3/1/78, Register 65; am 6/9/83, Register 86; am 12/2/83, Register 88; am 9/12/85, Register 96; am 8/31/90, Register 115; am 9/29/90, Register 115; am 10/7/95, Register 136; am 4/17/98, Register 146; am 2/18/99, Register 149; am 7/13/2000, Register 155; am 8/23/2001,

Register ____, ____ 20__ EDUCATION & EARLY DEV.

Register 159; am 12/19/2002, Register 164; am 12/20/2002, Register 164; am 6/17/2010,

Register 194; am __/__/____, Register: __)

Authority: AS 14.07.020 AS 14.11.020 AS 14.11.102

AS 14.07.060 AS 14.11.100 AS 14.11.132

AS 14.11.011