

Chapter 392-344 WAC

STATE ASSISTANCE IN PROVIDING SCHOOL PLANT FACILITIES—PROCEDURAL REGULATIONS

(Formerly chapter 180-29 WAC)

WAC

392-344-005	Authority.
392-344-010	Purpose.
392-344-012	Waiver of rules to facilitate alternative public works contracting procedures.
392-344-021	Deadline for submission of agenda items.
392-344-025	Superintendent of public instruction review.
392-344-035	Site.
392-344-040	Educational specifications.
392-344-045	Notice to proceed with design.
392-344-050	Educational specifications contracts.
392-344-055	Architect-engineer contracts.
392-344-060	Energy conservation report contracts.
392-344-065	Value engineering contracts.
392-344-066	Constructability review contracts.
392-344-067	Building commissioning contracts.
392-344-068	Construction management.
392-344-075	Contracts—Filing.
392-344-080	Construction documents—Bids and contract provisions.
392-344-085	Construction and other documents—Submittal.
392-344-090	Construction documents—Other governmental agency approval.
392-344-095	Construction documents—Compliance with public works statutory provisions.
392-344-100	Construction documents—Compliance with state building code.
392-344-105	Bids—Advertisement.
392-344-107	Bid opening—Superintendent of public instruction approval.
392-344-1075	Superintendent of public instruction commitment when district is authorized to open bids.
392-344-108	Condition precedent to approval to bid.
392-344-110	Bids—Data and document requirements.
392-344-115	Authorization for contract award.
392-344-120	School district authorized agent.
392-344-125	Award of contract(s).
392-344-130	Disbursement of moneys—Sequence of payments.
392-344-135	Disbursement of moneys—General provisions applicable to payments.
392-344-140	Disbursements of moneys by school district(s)—Superintendent of public instruction filing.
392-344-145	Disbursement of moneys by superintendent of public instruction.
392-344-147	Retained percentage law related requirements.
392-344-150	Changes in contract cost.
392-344-155	Final acceptance of project by architect/engineer.
392-344-160	Acceptance of project by school district.
392-344-165	Documents required for release of retainage by school district.
392-344-170	Liens.
392-344-200	Forms.

WAC 392-344-005 Authority. This chapter is adopted pursuant to RCW 28A.525.020 relating to authority of the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of allotments to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provision of chapter 28A.525 RCW currently applicable to state funding assistance for school plant facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, and 28A.525.162 through 28A.525.178.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-005, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as §

(12/5/17)

392-344-005, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-005, filed 9/23/98, effective 10/24/98. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-29-005, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-005, filed 10/17/83.]

WAC 392-344-010 Purpose. The purpose of this chapter is to set forth the procedures governing all applications for state funding assistance, allocations of state funds, and disbursements by school districts and the superintendent of public instruction for school facility projects approved for state funding assistance by the superintendent of public instruction. The superintendent of public instruction shall prescribe and furnish forms for the purposes set forth in this chapter.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-010, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-010, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-010, filed 10/17/83.]

WAC 392-344-012 Waiver of rules to facilitate alternative public works contracting procedures. The provisions of this chapter may be deemed waived in accordance with WAC 392-341-012.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-012, filed 7/25/06, effective 8/25/06; WSR 01-08-040, § 180-29-012, filed 3/30/01, effective 4/30/01.]

WAC 392-344-021 Deadline for submission of agenda items. All items related to the approval of school facilities and requiring action by the superintendent of public instruction shall be submitted to the superintendent of public instruction no later than sixty days prior to the date of any regular superintendent of public instruction meeting at which action is expected.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-021, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-021, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.47.830. WSR 85-24-050 (Order 27-85), § 180-29-021, filed 11/27/85.]

WAC 392-344-025 Superintendent of public instruction review. Upon completion of the study and survey by the superintendent of public instruction and review by district board of directors, the study and survey and an application for state funding assistance from the district for the project(s) to be considered shall be reviewed by the superintendent of public instruction. Superintendent of public instruction approval of a proposed project(s) shall establish the maximum eligible area and estimated amount of state funding assistance based upon the information furnished in the study and survey.

[Ch. 392-344 WAC p. 1]

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-025, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-025, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-025, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.47-830. WSR 83-21-067 (Order 12-83), § 180-29-025, filed 10/17/83.]

WAC 392-344-035 Site. (1) The district shall provide the superintendent of public instruction with certification from the district board of directors that the site will not create or aggravate racial imbalance.

(2) Review of the site by the superintendent of public instruction as required by chapter 392-342 WAC shall be completed prior to issuance of preliminary funding status.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-035, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-035, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-035, filed 10/17/83.]

WAC 392-344-040 Educational specifications. Prior to the commencement of the design of the proposed school facility, the school district shall cause to be prepared the educational specifications pursuant to chapter 392-342 WAC.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-040, filed 7/25/06, effective 8/25/06; WSR 99-24-126, § 180-29-040, filed 12/1/99, effective 1/1/00; WSR 99-18-107, § 180-29-040, filed 9/1/99, effective 10/2/99. Statutory Authority: RCW 28A.47-830. WSR 83-21-067 (Order 12-83), § 180-29-040, filed 10/17/83.]

WAC 392-344-045 Notice to proceed with design. After completion of the educational specifications review process as set forth in WAC 392-344-040 and after approval of the site, the superintendent of public instruction shall transmit to the school district a notice to proceed with the design of the school facility.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-045, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-045, filed 10/17/83.]

WAC 392-344-050 Educational specifications contracts. Contracts between the school district and the educational specifications consultant, if any, shall stipulate the amount of fee and the consultant's duties, i.e., scope of work, to be performed as required in chapter 392-342 WAC set forth.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-050, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-050, filed 10/17/83.]

WAC 392-344-055 Architect-engineer contracts. Architects and engineers employed on approved school facility projects involving state school funding assistance shall be licensed to practice in the state of Washington. Contract(s) between the school district and the architects and engineers shall stipulate the maximum amount of the fee and the duties, i.e., scope of work, to be performed as required in chapter 392-343 WAC.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-055, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-055, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-055, filed 10/17/83.]

[Ch. 392-344 WAC p. 2]

WAC 392-344-060 Energy conservation report contracts. Contracts between the school district and the energy conservation consultant, if not included in the architect-engineer contract for professional services, shall stipulate the amount of fee and the consultant's duties, i.e., scope of work, to be performed as required by chapter 392-343 WAC set forth.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-060, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-060, filed 10/17/83.]

WAC 392-344-065 Value engineering contracts. Value engineering consultants employed on approved school facilities projects shall include a value engineering team coordinator/leader qualified by the Society of American Value Engineers to manage and coordinate a value engineering study. Contracts between the school district and the value engineering consultant shall stipulate the amount of the fee and the consultant's duties, i.e., scope of work, to be performed as in chapter 392-343 WAC set forth.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-065, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-065, filed 10/17/83.]

WAC 392-344-066 Constructability review contracts. Consultants performing constructability reviews on approved school facilities shall utilize an independent multi-discipline team and shall have a minimum of five years of experience providing constructability reviews of equivalent size projects. Contracts between the school district and the consultant shall stipulate the amount of the fee and the consultant's duties to be performed as in chapter 392-343 WAC.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-066, filed 7/25/06, effective 8/25/06; WSR 99-24-126, § 180-29-066, filed 12/1/99, effective 1/1/00.]

WAC 392-344-067 Building commissioning contracts. Consultants performing building commissioning on approved school facilities shall incorporate the attributes of the building commissioning association in their commissioning program. Contracts between the school district and the consultant shall stipulate the amount of the fee and the consultant's duties to be performed as in chapter 392-343 WAC.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-067, filed 7/25/06, effective 8/25/06; WSR 99-24-126, § 180-29-067, filed 12/1/99, effective 1/1/00.]

WAC 392-344-068 Construction management. A school district shall employ or contract for professional construction management pursuant to chapter 392-343 WAC. Construction managers shall have recent demonstrable experience on projects of similar size and type. Construction managers hired as employees of the district shall have employment agreements clearly stipulating the duties and responsibilities of the employee. Contracts between the school district and outside consultants shall stipulate the amount of the fee and the consultant's duties to be performed as in chapter 392-343 WAC.

(12/5/17)

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-068, filed 7/25/06, effective 8/25/06; WSR 00-04-008, § 180-29-068, filed 1/20/00, effective 2/20/00.]

WAC 392-344-075 Contracts—Filing. The school district shall submit to the superintendent of public instruction one copy of the following contracts for projects approved by the superintendent of public instruction for state funding assistance:

- (1) Educational specifications (WAC 392-344-050);
- (2) Architect-engineer (WAC 392-344-055);
- (3) Energy conservation report (WAC 392-344-060);
- (4) Value engineering (WAC 392-344-065);
- (5) Constructability review (WAC 392-344-066);
- (6) Building commissioning (WAC 392-344-067);
- (7) Construction management (WAC 392-344-068).

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-075, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-075, filed 7/25/06, effective 8/25/06; WSR 99-24-126, § 180-29-075, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-075, filed 10/17/83.]

WAC 392-344-080 Construction documents—Bids and contract provisions. The construction documents shall include the following bid and contract provisions:

(1) Separate or combined bids. The school district shall determine if the bids for general, mechanical, or electrical are to be separate or combined.

(2) Combination projects. For those projects which include a combination of both new construction and modernization, bid documents shall provide for separate and distinct bids for each and shall, when combined, be the low bid for the project.

(3) Ineligible items. Items ineligible for state funding assistance shall be bid separate or as an alternate.

(4) Bid law. All items included in the construction documents shall be bid in accordance with RCW 28A.335.190 and 43.19.1906.

(5) Builder's risk insurance. Provision for builder's risk insurance is mandatory for all school facilities under construction. The insurance shall cover at a minimum the amount of the work in place and materials to be used in the project which is in place and on the site. A certificate of insurance shall be submitted to the superintendent of public instruction that insurance is provided for by the contractor or the school district. Only costs for builder's risk insurance provided for in the construction documents will be eligible for state funding assistance.

[Statutory Authority: RCW 28A.525.020. WSR 17-24-089, § 392-344-080, filed 12/5/17, effective 1/5/18; WSR 10-09-008, § 392-344-080, filed 4/8/10, effective 5/9/10; WSR 06-16-032, recodified as § 392-344-080, filed 7/25/06, effective 8/25/06; WSR 98-23-034, § 180-29-080, filed 11/10/98, effective 12/11/98. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-29-080, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.47-830. WSR 83-21-067 (Order 12-83), § 180-29-080, filed 10/17/83.]

WAC 392-344-085 Construction and other documents—Submittal. School district projects with secured funding assistance as of July 2018. (1) For the purpose of determining that the provisions set forth in chapters 392-341 through 392-344 WAC have been complied with prior to the opening of bids of any project to be financed with state fund-

ing assistance, the school district shall have on file with the superintendent of public instruction the following:

(a) One copy of the construction documents forwarded by others;

(b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;

(c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;

(d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;

(e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;

(f) School district board acceptance of a value engineering report and its implementation.

The report shall include the following:

(i) A brief description of the original design;

(ii) A brief description of the value engineering methodology used;

(iii) The areas analyzed;

(iv) The design alternatives proposed;

(v) The cost changes proposed;

(vi) The alternates accepted; and

(vii) A brief statement explaining why each alternate not accepted was rejected;

(g) Certification by the school district that a constructability review report was completed.

The report shall include:

(i) A brief description of the constructability review methodology used;

(ii) The area analyzed;

(iii) The recommendations accepted; and

(iv) A brief statement explaining why each recommendation not accepted was rejected;

(h) Completed building condition assessment (BCA) as required by WAC 392-343-535 for every school facility in the district.

(i) Completed health and safety assessment as required by WAC 392-343-535, on buildings for which state funding assistance is being requested.

(2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC 392-344-025 which will result in an increase in state funding assistance, a new application must be submitted to the superintendent of public instruction.

[Statutory Authority: RCW 28A.525.020. WSR 17-17-165, § 392-344-085, filed 8/23/17, effective 9/23/17; WSR 10-09-008, § 392-344-085, filed 4/8/10, effective 5/9/10; WSR 08-20-008, § 392-344-085, filed 9/18/08, effective 10/19/08; WSR 06-16-032, amended and recodified as § 392-344-085, filed 7/25/06, effective 8/25/06; WSR 00-18-060, § 180-29-085, filed 9/1/00, effective 10/2/00; WSR 99-24-126, § 180-29-085, filed 12/1/99, effective 1/1/00; WSR 98-19-141, § 180-29-085, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24(8). WSR 92-16-058, § 180-29-085, filed 8/3/92, effective 9/3/92. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-085, filed 10/17/83.]

WAC 392-344-090 Construction documents—Other governmental agency approval. The construction documents shall be submitted for the approval of the following other governmental agencies:

- (1) Fire marshal or fire chief having jurisdiction when permitted by the state fire marshal;
- (2) Department of labor and industries or local jurisdiction when permitted by the department of labor and industries (electrical);
- (3) Health agency having jurisdiction;
- (4) Department of ecology or the local agency having jurisdiction for environmental approvals (when applicable); and
- (5) Building official having jurisdiction.

Approvals shall be in respect to compliance with pertinent rules and regulations established by said agencies.

Written approvals of the construction documents by the agencies shall be submitted to the superintendent of public instruction in accordance with WAC 392-344-085.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-090, filed 7/25/06, effective 8/25/06; WSR 98-23-035, § 180-29-090, filed 11/10/98, effective 12/11/98. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24 (8)(e). WSR 94-01-014, § 180-29-090, filed 12/3/93, effective 1/3/94. Statutory Authority: RCW 28A.47.802. WSR 84-21-003 (Order 11-84), § 180-29-090, filed 10/4/84. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-090, filed 10/17/83.]

WAC 392-344-095 Construction documents—Compliance with public works statutory provisions. The construction documents shall provide for compliance by the contractor with pertinent statutory provisions relating to public works including the following:

- (1) Chapter 39.08 RCW relating to contractor's bond;
- (2) Chapter 39.12 RCW relating to prevailing wages;
- (3) Chapter 18.27 RCW relating to contractor registration;
- (4) Chapter 49.28 RCW relating to hours of labor;
- (5) Chapter 49.60 RCW relating to discrimination;
- (6) Chapter 70.92 RCW relating to the provisions for the aged and physically handicapped;
- (7) RCW 39.04.320 relating to apprenticeship utilization.

[Statutory Authority: RCW 28A.525.020. WSR 10-19-025, § 392-344-095, filed 9/9/10, effective 10/10/10; WSR 06-16-032, recodified as § 392-344-095, filed 7/25/06, effective 8/25/06. Statutory Authority: Chapter 39.25 RCW, RCW 39.25.010, 39.25.020 and 39.25.030. WSR 95-08-031, § 180-29-095, filed 3/29/95, effective 4/29/95. Statutory Authority: RCW 28A.47.802. WSR 84-21-003 (Order 11-84), § 180-29-095, filed 10/4/84. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-095, filed 10/17/83.]

WAC 392-344-100 Construction documents—Compliance with state building code. The architect/engineer shall certify to the superintendent of public instruction that to the best of his knowledge the construction documents are in compliance with the provisions of the state building code, chapter 19.27 RCW, and any and all other pertinent state and local statutes relating to school building construction.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, recodified as § 392-344-100, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-100, filed 10/17/83.]

[Ch. 392-344 WAC p. 4]

WAC 392-344-105 Bids—Advertisement. In accordance with RCW 28A.335.190 and 43.19.1906, school districts shall advertise for bids once each week for two consecutive weeks in a trade journal of general circulation and a like number of times in a publication of general circulation throughout the area.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, recodified as § 392-344-105, filed 7/25/06, effective 8/25/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-29-105, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-105, filed 10/17/83.]

WAC 392-344-107 Bid opening—Superintendent of public instruction approval. (1) A school district shall not open bids until receiving written approval of the superintendent of public instruction. Such approval shall not be granted if more than one year has passed since the project received preliminary funding status pursuant to WAC 392-342-050.

(2) The superintendent of public instruction shall grant approval if moneys are available for state funding assistance and the required documents pursuant to WAC 392-344-075, 392-344-080, 392-344-085, 392-344-090, 392-344-095, and 392-344-100 are complete.

(3) If the superintendent of public instruction determines that the required documents are incomplete, the superintendent of public instruction shall hold the project and notify the school district in writing as to the incomplete items.

(4) If moneys are not available for state funding assistance in construction, the school district shall notify the superintendent of public instruction that they are proceeding with their own moneys with the expectation that they will be reimbursed as per WAC 392-343-057.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-107, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-107, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 28A.525.164. WSR 91-12-055, § 180-29-107, filed 6/5/91, effective 7/6/91. Statutory Authority: RCW 28A.47.830. WSR 85-24-047 (Order 24-85), § 180-29-107, filed 11/27/85; WSR 83-21-067 (Order 12-83), § 180-29-107, filed 10/17/83.]

WAC 392-344-1075 Superintendent of public instruction commitment when district is authorized to open bids. When a district is granted approval to open bids pursuant to WAC 392-344-107, the superintendent of public instruction is committed as provided at WAC 392-344-107 as well as to all other state funding assistance determinations including but not limited to additional state funding assistance and professional fees determined pursuant to state funding assistance rules and regulations in effect at the time such approval to open bids is granted. This commitment is subject to the district's compliance with the time limitation for requesting an authorization for contract award as set forth in WAC 392-344-108.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-1075, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-1075, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-1075, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.525.020 and 1991 c 14. WSR 91-20-151, § 180-29-1075, filed 10/2/91, effective 11/2/91. Statutory Authority: RCW 28A.47.830. WSR 86-04-065 (Order 1-86), § 180-29-1075, filed 2/4/86.]

(12/5/17)

WAC 392-344-108 Condition precedent to approval to bid. Any project for which the superintendent of public instruction authorizes a district to open bids pursuant to WAC 392-344-107 shall request an authorization for contract award pursuant to WAC 392-344-110 within ninety calendar days of receipt of approval pursuant to WAC 392-344-107: Provided, That the ninety-day period shall be automatically extended for an additional ninety calendar days if:

(1) The lowest legally acceptable base bid, exclusive of alternates, received by a district exceeds the cost estimate submitted to the superintendent of public instruction pursuant to WAC 392-344-085 by ten percent or more; and

(2) Prior to the expiration on or after June 15, 1989, of the initial ninety-day period the district has rejected, or hereafter rejects, all bids in order to solicit new bids.

A district which fails to request an authorization for contract award pursuant to WAC 392-344-110 within the time period allowed by this section shall have its authority to proceed withdrawn. Districts with such projects withdrawn may reinitiate an application for state funding assistance by first reapplying for project approval pursuant to WAC 392-341-040.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-108, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-108, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 89-22-008, § 180-29-108, filed 10/20/89, effective 11/20/89; WSR 85-24-047 (Order 24-85), § 180-29-108, filed 11/27/85.]

WAC 392-344-110 Bids—Data and document requirements. School districts shall demonstrate that they have complied with RCW 28A.335.190 and 43.19.1906 and shall not enter into contract(s) for construction until the following certified copies have been submitted and approved by the superintendent of public instruction:

- (1) Each advertisement for bid;
- (2) Tabulated statement of all bids received;
- (3) Recommendation of the board of directors for award of contract(s) on the basis of bids received, including all accepted alternates;
- (4) Alternate bids;
- (5) Names and addresses of all bidders;
- (6) Certified statement of costs for special inspections and testing;
- (7) Certified statement of amount of local and/or other disburseable funds available specifically for the project, exclusive of state funds, with the source of funds identified, including identity and amount of nonhigh school district funds when applicable;
- (8) School district board acceptance of a constructability review and implementation.

If the recommended contractor is not the low bidder, the school district shall give reasons pursuant to statutory provisions set forth in RCW 43.19.1911.

[Statutory Authority: RCW 28A.525.020. WSR 08-20-008, § 392-344-110, filed 9/18/08, effective 10/19/08; WSR 06-16-032, recodified as § 392-344-110, filed 7/25/06, effective 8/25/06. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-29-110, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-110, filed 10/17/83.]

(12/5/17)

WAC 392-344-115 Authorization for contract award. (1) Upon receipt of the items as per WAC 392-344-110, the superintendent of public instruction shall:

- (a) Analyze the bids;
- (b) Determine the amount of state funding assistance; and

(c) Make an allocation of state funding assistance for construction and other items as per chapter 392-343 WAC.

(2) Authorization for contract award and allocation of state funding assistance shall be contingent upon the following:

(a) The contract price for the construction has been established by competitive bid(s); and

(b) The school district has available sufficient local funds pursuant to chapter 392-341 WAC.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-115, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-115, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-115, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.525.020 and 1991 c 14. WSR 91-20-151, § 180-29-115, filed 10/2/91, effective 11/2/91. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-115, filed 10/17/83.]

WAC 392-344-120 School district authorized agent. The school district shall provide the superintendent of public instruction with the certified signature(s) of district personnel authorized by board resolution for the purposes in this chapter requiring district authorization(s).

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, recodified as § 392-344-120, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-120, filed 10/17/83.]

WAC 392-344-125 Award of contract(s). Upon receipt of authorization to award contract(s) from the superintendent of public instruction, the board of directors of the school district shall award contract(s) for construction of the school facility project no later than the expiration of the time period permitted by the terms and conditions of the bid(s) for the award of contract(s). Immediately following the awarding of contract(s), the board of directors of the school district shall forward to the superintendent of public instruction one copy of each properly executed contract, one copy of the contractor's cost breakdown, and one copy of the contract(s) payment schedule. Such cost breakdown and payment schedule shall be displayed on a form issued and approved by the superintendent of public instruction in accordance with WAC 392-344-085 (1)(b). All state funding assistance-related approvals granted by the superintendent of public instruction under this chapter shall lapse and be null and void if a school district fails to award contract(s) within the time period permitted by the terms and conditions of the bid(s), unless non-compliance is waived for extraordinary reasons by the superintendent of public instruction.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-125, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-125, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 28A.525.200. WSR 95-08-030, § 180-29-125, filed 3/29/95, effective 4/29/95. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24 (8)(e). WSR 94-01-013, § 180-29-125, filed 12/3/93, effective 1/3/94. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-125, filed 10/17/83.]

[Ch. 392-344 WAC p. 5]

WAC 392-344-130 Disbursement of moneys—Sequence of payments. The order in which funds shall be disbursed for school facility construction shall be as follows:

(1) Prior to payment of state funding assistance, the school district shall make payments on all claims submitted until such time as the total amount of local funds obligated by the district have been expended.

(2) When local funds have been expended as in subsection (1) of this section, payments of state funding assistance shall then be made: Provided, That for projects authorized for state funding assistance pursuant to WAC 392-344-115(2) after June 30, 1993, payment shall be made after receipt of written certification by the school district board of directors that the school facility project authorized for state funding assistance has been or will be completed according to the purposes for which the state funding assistance is being provided.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-130, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-130, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 1994 c 6 sp.s. WSR 94-13-019, § 180-29-130, filed 6/3/94, effective 7/4/94. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-130, filed 10/17/83.]

WAC 392-344-135 Disbursement of moneys—General provisions applicable to payments. Disbursement of moneys shall be in accordance with the following provisions:

(1) Payments to contractor(s) by school district. Payments to contractors shall be on the basis of work completed. Contractors shall submit to the school district monthly estimates of work completed which shall be supported by the architect/engineer's certificate for payment. No payments shall be made without certification from the architect/engineer that such work has been completed.

(2) Payments to others. Payments to others as per chapter 392-343 WAC shall be made in accordance with the contract provisions for those services.

(3) Retainage. The provisions of chapter 60.28 RCW relating to public works contracts and of WAC 392-344-147 shall govern retainage on contract payments.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-135, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24 (8)(e). WSR 94-14-028, § 180-29-135, filed 6/28/94, effective 7/29/94. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-135, filed 10/17/83.]

WAC 392-344-140 Disbursements of moneys by school district(s)—Superintendent of public instruction filing. At such time as the total amount of local funds obligated by the school district have been expended, a signed statement by an authorized agent of the board of directors comprising a listing of all payments to contractors and others, including retainage, shall be submitted to the superintendent of public instruction.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-140, filed 4/8/10, effective 5/9/10; WSR 06-16-032, recodified as § 392-344-140, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-140, filed 10/17/83.]

WAC 392-344-145 Disbursement of moneys by superintendent of public instruction. All school district claims for payment from state funding assistance shall be

submitted to the superintendent of public instruction on invoice vouchers provided by the superintendent of public instruction and shall be signed by the authorized agent of the school district. State warrants issued in payments, unless the school district agent designates a specific payee, shall be drawn payable to the school district. In all cases, warrants shall be transmitted to the school district for disposition.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-145, filed 4/8/10, effective 5/9/10; WSR 06-16-032, recodified as § 392-344-145, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-145, filed 10/17/83.]

WAC 392-344-147 Retained percentage law related requirements. (1) State funding assistance is conditioned upon a school district's compliance with the cash, or bond in lieu of cash, retained percentage requirements of chapter 60.28 RCW and this section. A school district may elect to administer compliance with all requirements of chapter 60.28 RCW or, in part, designate the superintendent of public instruction as agent of the school district for purposes of administering retained percentage moneys reserved under RCW 60.28.011.

(2) Under RCW 60.28.011, a school district either:

(a) Must provide for the reservation of five percent of all moneys earned by a contractor either by the district, deposited by the district in an interest-bearing account or placed in escrow as provided in RCW 60.28.011(4); or

(b) Must accept a bond submitted by the contractor from any portion of the retainage in a form acceptable to the superintendent of public instruction and the school district and from a bonding company which meets the standards established at subsection (4)(b) of this section and by the school district, unless the school district can demonstrate good cause for refusing to accept the bond.

As a general rule, the superintendent of public instruction prefers and recommends the cash retainage option for reasons which include the security and ease of enforcement which the cash option affords.

(3) Cash retainage.

(a) If the school district reserves five percent of all moneys earned by the contractor in a retainage trust fund administered by the school district in accordance with RCW 60.28-011(1), moneys deposited in that trust fund (whether retained by the district, deposited by the district in an interest-bearing account, or placed in escrow), may be paid to the contractor without prior written consent by the superintendent of public instruction. The superintendent of public instruction shall make available to the school district model procedures and forms for setting up the trust fund selected by the contractor under RCW 60.28.011(4).

(b) At the request of the school district, the superintendent of public instruction may be designated as agent of the school district for cash retainage and will:

(i) Administer the retained percentage trust fund in accordance with RCW 60.28.011, inclusive of depositing, releasing and accounting for such moneys;

(ii) Establish and administer the retained percentage trust fund in accordance with the terms of chapter 60.28 RCW, and such terms as may be established by the superintendent of public instruction to ensure compliance with chapter 60.28

RCW, the security of trust fund moneys and efficient administration; and

(iii) Ensure that no moneys lawfully deposited in the retained percentage trust fund shall be paid to the contractor without the prior written consent of the superintendent of public instruction, except for the payment of interest earnings as may be required by law.

(4) If at the request of the contractor the bond in lieu of cash retained percentage option is implemented the following conditions apply:

(a) The bond shall be in terms and of a form approved and established by the superintendent of public instruction to ensure that the bond adequately addresses the purposes of chapter 60.28 RCW; and

(b) The bond shall be signed by a surety that is:

(i) Registered with the Washington state insurance commissioner; and

(ii) On the currently authorized insurance list published by the Washington state insurance commissioner.

(c) Whatever additional requirements for the bonding company as may be established by the school district.

(5) The release of retainage, whether cash or bond-in-lieu, shall be conditioned upon satisfactory compliance with the provisions of WAC 392-344-165.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-147, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-147, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24 (8)(e). WSR 94-14-028, § 180-29-147, filed 6/28/94, effective 7/29/94.]

WAC 392-344-150 Changes in contract cost. The final contract cost shall be determined after inclusion of the net change due to additive and/or deductive change orders. If the final contract cost results in an increase above the original bid amount, the school district shall finance the entire increase. If the final contract cost results in a decrease from the original bid amount, the school district and the state shall share the amount of the decrease based on the state funding assistance percentage in effect at the time of contract award. Copies of all change orders when executed and signed by the school district's authorized agent and the project architect/engineer shall be forwarded to the superintendent of public instruction.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-150, filed 4/8/10, effective 5/9/10; WSR 06-16-032, recodified as § 392-344-150, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-150, filed 10/17/83.]

WAC 392-344-155 Final acceptance of project by architect/engineer. Upon final completion of the project by contractor(s), the architect/engineer shall inspect the project to determine compliance with the construction documents. The architect/engineer, upon determining that the project has been completed satisfactorily, shall make such recommendation through the issuance of a certificate of completion to the school district board of directors. Separate certificates of completion shall be written for each contract awarded. Certificates of completion shall provide a statement of work completed including the gross square footage of new and/or modernized construction per WAC 392-343-019.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-155, filed 7/25/06, effective 8/25/06; WSR 98-19-

(12/5/17)

141, § 180-29-155, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-155, filed 10/17/83.]

WAC 392-344-160 Acceptance of project by school district. The board of directors for a school district shall accept a project as complete or reject a project as incomplete after a review of the building commissioning final report, an inspection of the project, and receipt of certificate(s) of completion signed by the architect/engineer. A school district board resolution accepting the projects as complete must be submitted to OSPI before release of retainage shall be made in accordance with WAC 392-344-165.

[Statutory Authority: RCW 28A.525.020. WSR 08-20-008, § 392-344-160, filed 9/18/08, effective 10/19/08; WSR 06-16-032, amended and recodified as § 392-344-160, filed 7/25/06, effective 8/25/06; WSR 99-24-126, § 180-29-160, filed 12/1/99, effective 1/1/00. Statutory Authority: RCW 28A.525.020 and chapters 39.35 and 60.28 RCW. WSR 92-24-027, § 180-29-160, filed 11/24/92, effective 12/25/92. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-160, filed 10/17/83.]

WAC 392-344-165 Documents required for release of retainage by school district. Release of retainage on contracts shall be subject to receipt by the superintendent of public instruction of the following documents:

(1) These documents shall be required no later than thirty days after official acceptance:

(a) Properly executed state invoice voucher as per the requirements of WAC 392-344-145;

(b) Architect/engineer certificate(s) of completion;

(c) School district board of directors' resolution of final acceptance signed by the authorized agent of the school district;

(d) School district board of directors' resolution accepting the building commissioning report;

(e) Certification by the authorized agent of the school district that the requirements of RCW 39.04.320 apprenticeship utilization have been met.

(2) These documents shall be required no later than sixty days after official acceptance:

(a) Certification by the authorized agent of the school district that the district has on file all affidavits of wages paid in compliance with RCW 39.12.040;

(b) After expiration of forty-five days following acceptance of the project by the school district, a signed statement by the authorized agent of the school district that no lien(s) is on file with the school district or a certified list of each lien is on file with the school district. A copy of each lien shall be forwarded to the superintendent of public instruction;

(c) Either a permanent or temporary occupancy permit by building official of the jurisdiction. Also required are release documents as defined in chapter 60.28 RCW, RCW 50.24.130, and 51.12.050.

[Statutory Authority: RCW 28A.525.020. WSR 10-19-025, § 392-344-165, filed 9/9/10, effective 10/10/10; WSR 08-20-008, § 392-344-165, filed 9/18/08, effective 10/19/08; WSR 06-16-032, amended and recodified as § 392-344-165, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and chapters 39.35 and 60.28 RCW. WSR 92-24-027, § 180-29-165, filed 11/24/92, effective 12/25/92. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-165, filed 10/17/83.]

WAC 392-344-170 Liens. In the event that liens are filed with the school district, the provisions of RCW 60.28.-010 through 60.28.060 shall apply. If the district holds a cash retainage under WAC 392-344-147 (2)(a), the amount of each lien plus three thousand dollars or twenty-five percent of the claim, whichever is greater, for potential attorney fees, plus ten percent of the lien claim for court costs, shall be withheld from the retainage until any lien has been removed.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-170, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24 (8)(e). WSR 94-14-028, § 180-29-170, filed 6/28/94, effective 7/29/94. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-170, filed 10/17/83.]

WAC 392-344-200 Forms. In addition to forms prescribed in WAC 392-341-200 and 392-342-200, commencing January 1, 1986, forms applicable to the provisions of this chapter for school facility projects shall be as follows:

(1) Applications for secured funding status pursuant to WAC 392-344-107 shall be designated as SPI Form D-7.

(2) Grants of secured funding status pursuant to WAC 392-344-107 shall be given to districts through SPI Form D-8.

(3) Grants of authority for school districts to proceed without secured funding status pursuant to WAC 392-344-107 shall be given to districts through SPI Form D-8-1.

(4) Applications for authority to enter into contracts pursuant to WAC 392-344-110 shall be designated as SPI Form D-9.

(5) Grants of authority to enter into contracts pursuant to WAC 392-344-115 shall be given to districts through SPI Form D-10.

(6) Grants of authority for school districts to enter into contracts without secured funding status pursuant to WAC 392-344-115 shall be given to districts through SPI Form D-10-1.

(7) Applications for SPI to release retainage pursuant to WAC 392-344-165 shall be designated as SPI Form D-11.

(8) Grants of release of final retainage pursuant to WAC 392-344-165 shall be given through SPI Form D-12.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-200, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-200, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.47.830. WSR 85-24-047 (Order 24-85), § 180-29-200, filed 11/27/85.]