§ 3.07. State financial assistance for improvement, expansion or rehabilitation of existing buildings. 1. Any other provision of any other law to the contrary notwithstanding, state financial assistance may be provided for up to fifty percent of the approved costs (excluding feasibility studies, plans or similar activities) of eligible projects for the rehabilitation of existing buildings, including leasehold improvements, by an eligible nonprofit cultural organization, as provided herein. Such financial assistance may be in the form of grants and/or loans.

2. A nonprofit cultural organization may submit an application for state financial assistance for eligible projects as provided herein. The council, after review of the programmatic and fiscal needs and resources of the project and the organization, shall make a determination, subject to the restrictions, limitations, responsibilities and requirements of this section, as to the amount of state financial assistance in the form of a grant and/or state financial assistance in the form of a loan, or any combination thereof, that the organization may receive, provided, however, that subject to the requirements established herein:

(a) Any financial assistance in the form of a grant may be provided for any amount from funds appropriated specifically therefor up to and including the amount of fifty thousand dollars.

(b) Any financial assistance in the form of a loan may be provided from the arts capital revolving fund established pursuant to section ninety-seven-z of the state finance law for any amount up to and including the amount of one hundred thousand dollars, provided that interest in any such loan shall not exceed a maximum of ten or a minimum of three percent per annum.

(c) Any combined financial assistance in the form of a grant and a loan may be provided for an amount up to and including the amount of one hundred fifty thousand dollars and may include any amount of state financial assistance in the form of a grant and any amount of state financial assistance in the form of a loan, as shall be determined by the council subject to the provisions of paragraphs (a) and (b) of this subdivision and the requirements, duties and responsibilities imposed by this section.

(d) Nothing contained herein shall be deemed to require approval of a

total of fifty thousand dollars in state financial assistance in the form of a grant, or approval of a total of one hundred thousand dollars in state financial assistance in the form of a loan, or to prevent the council from approving a loan or any combination of a grant and loan in any amount, subject only to the limitation on such financial assistance imposed by paragraphs (a) and (b) of this subdivision, and the council's determination of the programmatic and fiscal needs and resources of the project and the organization, and other requirements of this section, irrespective of the amount of state financial assistance in the form of a grant and/or state financial assistance in the form of a loan requested or suggested by the applicant.

(e) The council may contract with outside entities to effect the purposes of this paragraph and to disburse loans and receive payments on such loans.

3. (a) For the purposes of this section, organizations or eligible organizations shall mean nonprofit cultural organizations which received funding from the council in each of the three previous state fiscal years and which own a condominium or a building or a part of a building or which own shares representing a cooperative interest in a building or which have entered into a lease-purchase agreement to own a building or which lease a building or space in it, and which operate a program therein, provided that evidence of such ownership, lease or lease-purchase agreement shall be provided by the eligible organization in such manner and form as is satisfactory to the council. Nothing contained herein shall prevent an eligible organization from receiving financial assistance under this section which has satisfactory occupancy agreements in a building which is owned by a local government.

(b) Eligible organizations shall not include:

(1) public school districts, their components, and affiliate organizations, state agencies or departments, or, except as provided hereunder, public universities, their components and affiliate organizations; or

(2) the provisions of subparagraph one of this paragraph to the contrary notwithstanding, a public university, its components or affiliate organizations may be funded if it serves and is located in a rural or minority community, as such shall be determined by the council

pursuant to subdivisions seven and fifteen of this section and meets all other applicable requirements for funding under this section, provided that applications from such entities for state financial assistance shall not be considered by the council prior to December thirty-first in any state fiscal year.

(c) Eligible projects shall include:

(1) improvement, expansion or rehabilitation of a building for arts purposes;

(2) improvement, expansion or rehabilitation of existing buildings to increase or assure public access;

(3) improvement or rehabilitation of existing buildings for energy conservation purposes or for such other purposes as will serve to reduce the organization's costs of operation in such building;

(4) improvement or rehabilitation of existing buildings to address known health and safety deficiencies;

(5) improvement, expansion or rehabilitation of existing buildings to provide for handicapped accessibility;

(6) such other projects of substantive character as are in keeping with the spirit and intent of this section.

(d) No project shall be considered eligible if it is approved for financing from any other state assistance program.

4. Each application for financial assistance shall be submitted to the council by the governing body of the eligible organization. Each application shall:

(a) demonstrate that adequate operating support and resources will be available at the completion of the project to provide an improved or increased level of service;

(b) contain verification in such form as may be acceptable to the council that the remaining cost of the project, exclusive of state financial assistance, has been or will be obtained;

(c) demonstrate that the project will be completed promptly and in accordance with the application;

(d) either demonstrate that the operation of the organization will be made more economical or efficient as a consequence of approval or demonstrate that health and safety concerns will be repaired or access to handicapped provided;

(e) demonstrate that the project will be conducted in accordance with applicable federal, state and local laws and regulations;

(f) demonstrate that, where appropriate, competitive bidding procedures will be followed as required by law, or provide such other evidence of competition as shall be satisfactory to the council;

(g) provide an assessment of the useful life of the project, and such recommendation, analysis of needs or feasibility studies as may be required by the council provided, however, that for the purposes of this section the term "useful life" shall mean such method of calculating the worth of a project and the amount of annual depreciation necessary for effecting contracts under this section as the council shall require after consultation with the state comptroller and upon approval by the state division of the budget;

(h) demonstrate that contracts for the project will be executed in accordance with subdivision twelve of this section;

(i) provide such other information as may be required by the council including such guarantees as are further required by subdivisions eight and nine of this section.

5. Each organization may submit no more than one application annually. Any other provision of this section to the contrary notwithstanding, no organization shall receive state financial assistance under this section funding more than three years in any consecutive five-year period.

6. (a) Each application for state financial assistance shall be reviewed by the council for its merits and for the programmatic and fiscal needs and resources of the proposed project and the applicant organization. Any application for a project whose total cost equals or exceeds the sum of one million dollars which is deemed preliminary acceptable shall be submitted by the council to the dormitory authority of the state of New York for technical review. Provided, however, that nothing contained herein shall prevent the council from submitting any application for financial assistance, irrespective of the amount of financial assistance requested or the total project cost, to the authority for technical review and recommendations pursuant to the provisions of this section.

(b) Within thirty days of the receipt of an application from the

council, the authority shall provide the council with a written evaluation of the project which shall include the following factors:

(1) feasibility of the proposed project from an engineering standpoint;

(2) total project cost estimate;

(3) proposed project schedule;

(4) useful life of the proposed project as defined pursuant to paragraph (b) of subdivision four of this section;

(5) such other factors which the authority shall determine are applicable to its evaluation of the project.

(c) If within the thirty-day period the authority finds more information is necessary, the authority shall so notify the council and shall have a maximum of ninety days to complete its review.

(d) Concurrent with its approval of any application, the authority shall include its recommendation as to the manner in which the design and construction of the project should be managed.

(e) In any case where the authority and the council and the organization have agreed that the authority will award contracts for the design and construction of the project, the authority shall prepare or cause to be prepared a feasibility design and performance plan which shall set forth the terms and conditions associated with the construction management process. Such plan shall contain provisions relating to the relative responsibilities of the authority, appropriate performance and surety bonds, remedies against architects, contractors and sureties deemed to be in default in the performance of their obligations, and, generally, the management of the construction process in a professional manner in accordance with prevailing construction industry standards.

(f) Should the authority fail to provide the council with an approval, disapproval or request for additional information within thirty days of receipt of the original application or within ninety days as may be appropriate, the application shall be submitted to the council for its final approval or disapproval.

(g) If approved by the authority, the application shall be returned to the council, which may provide final approval for state financial assistance.

(h) Subject to approval by the director of the division of the budget,

the council shall enter into an agreement to insure that the authority shall be reimbursed for reasonable expenses incurred in fulfilling its responsibilities under this section and shall authorize payment to the authority out of monies earned on interest in the arts capital revolving fund established pursuant to section ninety-seven-z of the state finance law or from any other funds allocated by it to fulfill the purposes of this section, provided, however, that in no event shall the council authorize payment under this paragraph an amount greater than the sum of fifty thousand dollars in any state fiscal year.

7. In approving any application, the council shall consider:

(a) the condition of the existing building;

(b) the recommendation and analysis of need as provided in the feasibility study or other documentation required by the council;

(c) the available resources for the project;

(d) the nature of the activities proposed to take place at the site which is the subject of the application;

(e) such other criteria as the council may deem appropriate or necessary to the approval of any application, including the fiscal resources of the applicant, which shall be determined after review of any one of the prior year's report of the following: a financial statement prepared by an independent certified public accountant; an annual statement of income and expenses; a federal tax return with all itemizations and breakdowns; or a long form report from the office of charities registration; and

(f) where appropriate and in keeping with the provisions of subdivision fifteen of this section, the needs of rural and minority communities.

8. Any other provision of law or of this section to the contrary notwithstanding, state financial assistance shall not be provided pursuant to this section until the council has (a) considered the useful life of the eligible project as such term is defined herein; (b) determined the grant, loan or combined amount of state financial assistance to be provided; and (c) executed an agreement to provide such assistance. Such agreement shall be executed by the council and the organization or, in the case of a leasehold or lease-purchase agreement,

with the eligible nonprofit cultural organization and, where appropriate, the owner of the property for which the eligible project has been proposed. Any such agreement shall provide for the creation of a lien or other security interest or such other guarantee as shall be satisfactory to the council to assure repayment of financial assistance provided under this section. Such agreement shall assure that the length of a loan shall not exceed the useful life of the project and shall include, in addition to such other provisions as the council may require, the following:

(i) the amount of financial assistance, the terms and conditions upon which it is provided, the useful life of the eligible project and the method of depreciating the eligible project for purposes of the repayment provisions of the agreement;

(ii) a requirement that the organization provide the council with such prior notice as the council may require of a sale or other disposition of the subject property or of a termination of the lease prior to the expiration of such useful life or the expiration of the term of any loan made hereunder;

(iii) a requirement that, in the event of such sale or disposition of the property or termination of the lease prior to the expiration of the useful life or the expiration of the term of any loan made hereunder, the owner of the subject property or such other guarantor shall repay to the council an amount equal to that portion of the approved costs of the project financed by financial assistance provided under this section, less accumulated depreciation, as of the date of such sale, disposition or termination, or, in the case of a loan or a combination of a grant and loan, repay an amount equal to the unpaid balance of the loan;

(iv) a requirement that, upon a finding by the council that a project has not been completed, or has not been completed in accordance with the terms of the agreement, the full amount of the financial assistance provided in the form of a grant, or the outstanding balance of financial assistance provided in the form of a loan shall be repaid to the council by the guarantor, provided that upon a showing of good cause by the organization the council shall grant an extension of up to ninety days from the date of such finding to allow the organization to complete the project in accordance with the terms of the agreement, and further provided that the council shall provide no more than two such extensions

from the date of such finding to allow the organization to complete the project in accordance with the terms of the agreement.

9. In any case in which state financial assistance is provided in the form of a loan or as a combination of a grant and loan, the following shall additionally be included in the agreement:

(i) a requirement that the organization shall obtain, in addition to such other security as may be required by the council or by other provisions of law, an undertaking or surety bond from any person or entity which has contracted to perform work on an approved project to assure the faithful performance of such project and/or a labor and/or material bond as may be appropriate; and

(ii) a requirement that the authority shall provide such construction management services as have been specified and agreed to pursuant to paragraphs (d) and (e) of subdivision six of this section.

10. Any lien, security interest or guarantee established created under the provisions of subdivision eight or nine of this section shall be in addition to any other rights or obligations of the council under the provisions of the lien law or any other law.

11. The council shall cause to be filed and to be recorded in the office of the county clerk in the county where the subject property is situated any lien or other security interest as may be required to assure repayment of financial assistance in accordance with the provisions of this section. The department of law shall provide such assistance as the council may require to create and perfect any such liens or other security interests.

12. (a) All contracts for design, construction, services and materials pursuant to this section of whatever nature and all documents soliciting bids or proposals therefor shall contain or make reference to the following provisions:

(i) That the contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority

group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training and retraining, including apprenticeship and on-the-job training;

(ii) That the contractor shall request any employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract to furnish a written statement that it will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and it will cooperate in the implementation of the contractor's obligations hereunder;

(iii) That the contractor will state, in any solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;

(iv) That the contractor will include the provisions of subparagraphs (i) through (iii) of this paragraph in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the agency.

(b) The council shall establish appropriate measures, procedures and guidelines to ensure that contractors and subcontractors undertake meaningful programs to employ and promote qualified minority group members and women. Such procedures may require after notice in a bid solicitation, the submission of a minority and women workforce utilization program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of any workforce utilization program adopted hereunder. The council may take appropriate action, including the impositions of sanctions for non-compliance to effectuate the provisions of this subdivision and the monitoring of compliance with this subdivision.

(c) (i) In the performance of projects pursuant to this section, minority and women-owned business enterprises shall be given the opportunity for meaningful participation. For purposes hereof, minority business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock or other voting interest is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian, American Indian, Pacific Islander, or Alaskan native, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year; and women-owned business enterprise shall mean any business enterprise which is at least fifty-one per centum owned by, or in the case of a publicly owned business, at least fifty-one per centum of the stock to other voting interests of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing and has the authority to independently control the day to day business decisions of the entity for at least one year.

The provisions of this subdivision shall not be construed to limit the ability of any minority business enterprise to bid on any contract.

(ii) In order to implement the requirements and objectives of this section, the council shall request, as appropriate, the assistance of other state agencies to monitor the contractors' compliance with provisions hereof, provide assistance in obtaining competing qualified minority and women-owned business enterprises to perform contracts proposed to be awarded, and take other appropriate measures to improve the access of minority and women-owned business enterprises to these contracts.

13. In approving applications pursuant to this section, the council shall seek to insure that:

(a) sixty percent of the funds appropriated pursuant to this section and made available for grants, and sixty percent of the funds made available for loans shall be made available in such a manner as to insure that the ratio of the amount received within each county to the whole of the financial assistance made available pursuant to this

paragraph is no greater than the ratio of the population of such county to the population of the state, provided;

(b) notwithstanding the provisions of paragraph (a) of this subdivision the council shall make such additional allocations for rural and minority communities as to insure that the needs of cultural development are met; and

(c) any funds made available pursuant to paragraph (a) or (b) of this subdivision which, by December thirty-first of the year in which this section shall have become a law, and October thirty-first of each year thereafter are declined by or which cannot be used by such organizations within such counties, and/or such communities, as such shall be determined by the council, shall be made available to other eligible nonprofit cultural organizations for eligible projects.

14. Any other provision of this section or of any other law to the contrary notwithstanding, the council shall provide a reasonable amount not exceeding seven and one-half percent of the funds appropriated pursuant to this section to organizations located in rural or minority communities, as such shall be determined by the council, to obtain technical and/or financial assistance necessary to bring a project to fruition, provided, however that this subdivision shall only be effective until March thirty-first, nineteen hundred eighty-nine.

15. The council shall establish a written policy recognizing the importance of and making provision to further cultural development in rural and minority communities, as such shall be determined by the council. Copies of the council policy concerning minority and rural cultural development shall be provided to the senate finance and the assembly ways and means committees.

16. To insure effective evaluation of applications made to it for financial assistance under this section at least three or one-fourth whichever is less of the persons designated by the chairman to provide a review of such application shall be licensed professional engineers. Such engineers shall be chosen for their expertise in the disciplines critical to the design process including but not limited to structural, mechanical and electrical and acoustical. The recommendations made by

such engineers concerning each application shall be considered specifically and apart from the reviews of any other persons designated to provide a review of such applications, and, any other provision of any other law to the contrary notwithstanding, such engineers may be designated to conduct audits or may be retained as consultants by the council. Nothing contained herein shall prevent the council from meeting the requirements of this subdivision by retaining an engineering firm as a consultant. Nothing contained in this subdivision shall be deemed to affect quorum requirements of any review group or panel established by the chairman to review such applications, or to require the presence of all of such engineers at each such meeting of each such review group or panel. The council shall establish appropriate quorum requirements for this panel or review group.

17. In the event an eligible organization fails to make a payment on a loan or fails to make any other payment required under the provisions of this section, the council shall inform the comptroller of such failure and of the amount overdue, which amount the comptroller may recover from any payments due from the state to the eligible organization, including local assistance payments.

18. The council shall adopt guidelines within sixty days of the effective date of this section, and shall promulgate rules and regulations not later than September first, nineteen hundred eighty-eight as are necessary to carry out the purposes and provisions of this section. In addition to any other requirements set forth by this section, the council shall, in establishing such guidelines, rules and regulations, delimit the application process, provide for an appeals procedure, establish the written policy required by subdivision fifteen of this section and establish procedures for the recoupment of financial assistance provided in the event that a project is not completed or not completed as proposed by the applicant organization. Copies of such rules and regulations shall be provided at least sixty days prior to the time they shall be effective to the senate finance committee and the assembly ways and means committee.

19. The council shall report to the governor, the temporary president

of the senate, the speaker of the assembly, the chairs of the senate finance committee and assembly ways and means committee not later than January fifteenth of each year concerning the amounts appropriated and expended pursuant to this section, the number of applications received, the total amount of financial assistance requested, the total number of applications funded, the amount of funding provided, and such other information as the chairman shall deem appropriate, including any recommendations for program improvement, recommendations for increasing the total amount of funding from state and nonstate sources available to increase total funds for projects available to the arts and cultural community of this state, in particular for rural and minority communities, and identification of and proposals for removing barriers or limits faced by communities in accessing the program or in maximizing use of funds provided hereunder.