STATE OF OHIO
DEPARTMENT OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITIES

5123:1-1-17 Distribution of funds for the residential handicap accessibility project (RHAP) and residential renovation project (RRP).

(A) Purpose

This rule establishes parameters for the use of community capital assistance funds for the residential handicap accessibility project (RHAP) and residential renovation project (RRP). The department shall set priorities for the use of the funds for RHAP and RRP.

(B) Definitions

As used throughout this rule, the following definitions shall apply:

(1) "Applicant" means any firm, agency, association, board or corporation who submits ~~an application~~ A REQUEST to the department for RHAP or RRP.

(2) "Controlling board" means the board established by section 127.11 of the Revised Code.

(3) "Department" means the Ohio department of mental retardation and developmental disabilities.

(4) "Director" means the ~~chief executive officer~~ ADMINISTRATIVE HEAD of the Ohio department of mental retardation and developmental disabilities or his OR HER designee.

(5) "Maintenance" is a repair to a structure or component, if that structure has not reached the end of its useful life.

(6) "Project" means capital facilities as defined in section 154.01 of the Revised Code.

(7) "Renovation" means work done to a building to

restore it to an acceptable condition and to make it functional for the purpose set forth in the application, including architectural and structural changes and the modernization of mechanical and electrical systems. "Renovation" does not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.

(C) Eligibility

(1) Criteria to be eligible for state funding under RHAP include the following:

(a) The applicant must be a county/government-operated agency or a nonprofit corporation.

(b) The applicant must have a stable programmatic and financial history.

(c) The applicant must provide services, or be a nonprofit agency which acquires residential properties for individuals requiring services, through the following:

~~(i) The department's purchase of service program;~~

~~(ii)~~ (i) Supported living program;

~~(iii)~~ (ii) Medicaid-funded home and community-based waiver services;

~~(iv)~~ (iii) Family consortium program,

~~(v)~~ (iv) Community-based ICF/MR program licensed by the department; or

~~(vi)~~ (v) Other types of residential programs serving persons eligible for services by the department as may be approved by the director.

(2) Criteria to be eligible for state funding under RRP include ~~the~~ the following:

(a) The applicant must meet the criteria listed under paragraphs (C)(1)(a) to ~~(C)(1)(c)(vi)~~ (C)(1)(c)(v) of this rule; and

(b) The applicant must have previously received community capital assistance funds to acquire, construct, or renovate the facility.

(D) Awarding of funds

(1) The department shall develop priorities and program guidelines and notify those who meet the ~~priorities to submit an application for funds~~ GUIDELINES OF PROJECT APPROVAL. Priority shall be given to:

(a) Requests to make newly purchased housing accessible to the prospective residents of the home; or

(b) Requests to make existing sites accessible for the current residents of the home.

(2) Data from the letters of intent will be used to determine the allocation for each ~~county~~ PROJECT.

~~(3) Once the appropriation is available, the department shall request applications based on the letter of intent data forms submitted pursuant to paragraph (E)(1) of this rule.~~

~~(4)~~ (3) No funds shall be distributed until the appropriation is released by the controlling board.

~~(5)~~ (4) The facility to be renovated must house no more than eight individuals.

~~(6)~~ (5) One accessibility project per biennium may be requested per property.

~~(7)~~ (6) An addition to an existing structure is allowed only as part of an authorized accessibility modification.

~~(8)~~ (7) The department shall review ~~applications~~ REQUESTS based upon meeting the eligibility criteria in paragraphs (C)(1) and (C)(2) of this rule and based upon the following:

(a) Submission of complete and accurate information within the time-frame allowed in accordance with paragraph (E) of this rule.

(b) Architectural and economical feasibility of renovation, as determined by the department.

(i) The cost of the project shall not exceed thirty-five per cent of the appraised value of the home. Waivers of this provision, up to seventy-five per cent, shall be reviewed by the department on a case-by-case basis.

(ii) A site visit by the department may be required prior to the approval of any project that exceeds fifty per cent of the value of the home.

~~(9)~~ (8) If approved, the letter shall indicate the maximum amount of state funding approved, subject to fund release action by the controlling board. The department will reimburse the applicant for approved costs for an amount up to but not exceeding the maximum total project cost stated in the initial approval letter.

~~(10)~~ (9) Costs that are suitable for reimbursement shall be limited to the following:

(a) Design and project administration fees paid

to an outside consultant;

(b) Construction costs;

(c) Costs of permits and inspections,

(d) Reproduction costs;

(e) Interest, subject to prior approval of the department at the time of application; and

(f) Printing fee for blue prints.

~~(11)~~ (10) Funds may not be used for the following:

(a) Maintenance projects;

(b) Movable equipment (e.g. furniture);

(c) Painting, wallpapering, and re-siding, unless in conjunction with an approved accessibility or renovation project; and

(d) Any project involving asbestos abatement or underground storage tank removal.

(E) Application process

(1) The applicant shall submit a letter of intent data form to the department, during the established time period of each odd numbered year, regarding the renovation needed in the next two years for each project. Letters of intent shall specify the following:

(a) A detailed description of the proposed project; ~~and~~

(b) The maximum estimated renovation costs~~.~~; AND

(c) JUSTIFICATION FOR THE PROJECT.

~~(2) Applications will be accepted during the established time period. Applications received after this period will be returned with no further action taken.~~

~~(3) Applicants shall submit four copies of their application. Applications must include the following:~~

~~(a) Justification for the project;~~

~~(b) Description of the proposed project;~~

~~(c) Number of individuals to be served following completion of the project;~~

~~(d) Completed individual information form;~~

~~(e) Completed facility check list form;~~

~~(f) An official appraisal of the property;~~

~~(g) A letterhead estimate; and~~

~~(h) Total maximum project costs.~~

~~(4)~~ (2) If a not-for-profit corporation, the applicant shall submit with the ~~application to~~ request FOR community capital assistance funds, in addition to all other documents required by this rule, a certified copy of a corporate resolution, corporate document (articles of incorporation), code of regulations (bylaws or constitution), and a current list of all trustees, officers and members and a certificate of good standing from the secretary of state's office.

(a) The articles of incorporation must contain the following provisions in addition to those otherwise required by law:

(i) A statement that the person who signs on behalf of the applicant has the authority to sign and bind the applicant to the terms of the RHAP or RRP agreement.

(ii) A provision that upon dissolution of

the corporation, if such dissolution occurs within the length of the participation agreement, the department or its successor shall be a party to any judicial proceeding or dissolution agreement and that the department or its successor may be distributee under such order or agreement to the extent of its participation and to the extent provided by law or the participation agreement which originally set forth disbursal of funds to the corporation.

(iii) A provision which will place the corporation in a tax exempt status pursuant to federal internal revenue service statutes and regulations, section 501 of the "Internal Revenue Code," as amended.

(b) The code of regulations or bylaws, as applicable, shall contain the following provisions in addition to those specifically provided by law:

(i) A provision stating that the board of trustees shall include individuals living in Ohio.

(ii) A provision that no persons related by consanguinity or marriage (to a degree of first cousin) shall constitute a majority of the board of trustees.

~~(5)~~ (3) The ~~completed application~~ REQUEST FOR FUNDS shall be reviewed by the department and accepted or rejected for state funding. The applicant shall be informed, in writing, of the approval or disapproval of a project.

~~(6)~~ (4) The department will provide technical

assistance to any applicant upon request. Assistance to an applicant will be supplementary in scope and will not relieve the applicant of all responsibility to administer the project and comply with the RHAP or RRP agreement and this rule.

(F) Responsibilities of the applicant

(1) The applicant shall enter into an agreement with the department that assures the following:

(a) The applicant shall acknowledge receipt of a copy of the series II lease agreement and that applicant has read and fully understands the document and its binding effect on the applicant.

(b) The applicant shall assure the completion of the project in accordance with standards set forth by the department and other applicable federal, state, and local statutes.

(c) The applicant shall assure the operation of the facility in accordance with the agreement.

(d) The applicant agrees to use and maintain the property as a residential facility for persons with mental retardation or other developmental disabilities for the length of the agreement.

(e) If the project is not used for said purpose, the applicant shall pay to the department, on a pro rata basis, any state funds disbursed to the applicant. The terms of the agreement shall expire as to the earlier of:

(i) Fifteen years from the date of the agreement; or

(ii) The date when all capital bonds, any

of the proceeds of which were expended for project costs, are no longer outstanding.

(2) Project approval and state funding may be withdrawn at any time for failure to comply with the applicable assurances, certifications, or requirements stated in this rule.

(3) If all or part of the project defined in the scope of work is canceled by the applicant or the department, or not completed, the department reserves the right to withhold the monies allocated for the work not completed.

(4) Applicants may not be the contractor for their own projects.

(5) The applicant must assure that the project is located upon, or will be located upon, real estate which the applicant owns in fee simple title or in which it has a leasehold interest. The applicant shall assure that the premises are, and shall remain for the term of the agreement, free and clear of all liens, encumbrances, restrictions, and conditions which prevent or interfere with the use of the property for the purpose of the project.

(6) If leased property is being used, the following is required:

(a) The lease provision must be consistent with the series II lease agreement and clearly state that the property is to be leased for a minimum of fifteen years.

(b) The applicant must certify that it has notified the owner of its intent to enter into an agreement with the state and has obtained written commitment from the owner to permit operation of the facility for a minimum of fifteen additional years and of its intent to sign the RHAP or RRP agreement.

(c) The owner must certify agreement to the project.

(d) The department shall have an opportunity to absolutely cure any default to avoid the reversion of the property to the lessor, and the department may at its option assume operation of the facility or may transfer or assign the leasehold interest and the operation of the program in the facility, upon approval of the lessor, which approval shall not be unreasonably withheld, to a nonprofit corporation or other agency to provide substantially similar services in the facility for the remainder of the lease term.

(e) The lease must state the exact location of the space being leased, if only a portion of the property is being leased.

(f) Documentation must be submitted establishing who owns the underlying land and/or building copy deed from the county recorder's office. If the county board is subleasing part of a building from someone, a copy of the prime lease with a certification that the copy is a true copy as well as the document that gives the lessor permission to sublet the property must be provided.

(g) Proof must be submitted to the department that all leasehold interest of three years or longer is recorded in the county recorder's office.

(7) The applicant shall obtain the services of a registered architect or engineer to perform any design required for the project if required by the political subdivision having jurisdiction for the occupancy involved. Where permitted by law, the design work and related services may be performed by unlicensed persons. An architect

should be brought on the project only with the concurrence of the department and only if the scope of the work involves extensive renovation.

(8) The applicant must assure, for projects which equal or exceed twenty-five thousand dollars in design fees, that any architectural or engineering services for the project meet the requirements of sections 153.65 to 153.70 of the Revised Code.

(a) This fee shall cover design services, bidding costs and construction observation.

(b) For projects that are one hundred thousand dollars or less, the acceptable architect fee is ten per cent of the construction costs only, not the total project cost.

(9) The applicant shall certify through the RHAP or RRP agreement that all work will comply with Title III of the "Americans with Disabilities Act (ADA)," 29 U.S.C. 12101 et. seq. and all state and local codes and ordinances, including zoning regulations. Furthermore, the applicant shall certify that it will obtain all required plan approvals, permits, and inspections.

(10) The applicant shall solicit, or cause to be solicited, sealed competitive bids from no fewer than three contractors. If, after a good faith effort of the applicant, fewer than three contractors submit bids, the other contractor(s) shall submit a stated "no bid" on their letterhead. The bids shall be based on bid documents which are in written and/or drawn form and are sufficiently complete and clear so that all bidders are bidding on the same scope of work.

(a) For projects with a total estimated cost of less than ~~twenty-five~~ FIFTY thousand dollars:

(i) The bids shall be solicited within

sixty days of the effective date of the RHAP or RRP agreement.

(ii) Bids may be solicited informally, without advertising, and submitted informally on the bidder's letterhead.

~~(iii) If the total project costs are less than twenty five thousand dollars, the applicant may choose to implement more formal bidding procedures.~~

(b) For projects with total estimated costs equal to or exceeding fifty thousand dollars, more formal bidding procedures shall be implemented.

(i) The project shall be advertised with a legal notice in a newspaper of general circulation to solicit bids from all interested contractors.

(ii) The notice shall be published four consecutive calendar weeks, with the bids due no sooner than eight days after the last date of publication.

(iii) The legal notice shall state the estimated construction cost.

(iv) The project may be bid as a single prime contract through a general contractor except when the low estimate or bid amount for any of the plumbing, HVAC, or electrical portions of the work exceed ten thousand dollars, in which case, that portion shall be bid as a separate prime contract.

(v) The applicant shall prepare a bid tabulation sheet which shows the official estimate amount for each

prime contract and lists all the prime contractors who received bid documents.

(vi) The bid opening shall be open to the public. The person officiating at the bid opening shall sign and date the bid tabulation sheet to certify that it is an accurate record of the bid results.

(vii) The applicant shall submit to the department the completed and signed bid tabulation sheet and photocopy of the low bid for each prime contract.

(viii) No contract can be awarded if the low bid received (aggregate bids if multiple contracts) exceed the estimate by more than ten per cent.

(ix) The applicant shall not enter into contracts and construction shall not begin until notified by the department, in writing, that controlling board approval has been obtained. Any costs not authorized by the department shall not be reimbursed by the department.

(x) If the applicant is an agency of the county government, the bidding procedures shall comply with the conditions the county prosecuting attorney may require. If there is a conflict between the local and state requirements, the state requirements shall supersede the local requirements.

(11) No funds for the project shall be used by the applicant unless the mechanics, laborers, or workers are paid the prevailing wage rates as described in section 176.05 of the Revised Code.

(12) The applicant shall ensure that all contractors comply with all applicable federal, state and local laws in the conduct of the work related to the project. The applicant shall ensure that the contractors shall accept full responsibility for payment of all workers' compensation and unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by contractors in the performance of work on the project.

(13) All contracts awarded by the applicant for the project shall contain provisions by which:

(a) The contractor agrees that in the hiring of employees for the performance of work under the contract, or any subcontract, no contractor, subcontractor, or any person acting on his OR HER behalf shall by reason of race, creed, sex, handicap, or color discriminate against any citizen of the state in the employment of labor who is qualified and available to perform the work to which the employment relates.

(b) The contractor agrees that no contractor, subcontractor, nor any person on his OR HER behalf shall in any manner discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, handicap or color.

(14) The applicant shall ensure that the project provides for an affirmative action program for the employment and effective utilization of disadvantaged persons whose disadvantage may arise from cultural, racial, or ethnic background, or other similar cause including, without limitation, race, religion, sex, handicap, national origin, or ancestry.

(15) In awarding contracts for the project, the applicant shall ensure that equal consideration be given to contractors, subcontractors, or joint venturers who qualify as a minority business enterprise as defined in section 122.71 of the Revised Code.

(16) The applicant shall indemnify, and hold harmless, the department from any and all liabilities, claims, and actions arising from the project including, without limitation, any liens of contractors, subcontractors, materialmen or laborers.

(17) The applicant shall keep all financial records in a manner consistent with generally accepted accounting procedures. ~~documentation~~ DOCUMENTATION to support each action shall be filed in a manner allowing it to be readily located. Such documentation shall be maintained by the applicant until fifteen years after the project is completed, or the date when all capital bonds, any of which were expended for project costs, are no longer outstanding, whichever is earlier.

(18) The applicant shall ensure that the work outlined in the scope of work has been completed.

(G) Reimbursement

(1) All project costs must be approved, in advance, by the department. The applicant must pay for all approved costs and then be reimbursed by the department after submittal of appropriate paid receipts.

(2) Projects with maximum total project costs under ~~twenty five~~ FIFTY thousand dollars shall be reimbursed ~~one-time only -- at the time of completion, unless another~~ ON A schedule ~~is approved~~ ESTABLISHED by the department.

(3) Upon submission of paid receipts for

reimbursement, the applicant shall certify that the construction contractor selected was the low bidder and that the applicant has obtained an affidavit of release of liens from all prime contractors on the project.

(4) Upon submission of paid receipts for reimbursement, the applicant shall also certify that it or its agent has inspected the work and that it complies with the scope of work outlined in the RHAP or RRP agreement, the drawings and specifications, and any other construction documents.

(5) The applicant shall identify the final submission of receipts as the last to be submitted. The final submission of receipts for reimbursement shall include a letter from the contractor(s) stating that the work has been completed in accordance with the construction documents.

(6) The department reserves the right to audit the expenditure of state funds to determine whether they were applied to the project. The department may bring action to recoup any funds expended for purposes other than the project or not expended in conformance with the procedures outlined in the RHAP or RRP agreement and in this rule, or if the applicant breaches the RHAP or RRP agreement in any manner.

(7) In the event of default by the applicant, the applicant shall reimburse the department in an amount equal to the contract amount including modifications minus a pro-rated dollar amount related to the number of months actually used for mental retardation services using the completion date as a percentage of the total fifteen year term of the contract.

(8) Before the applicant is reimbursed, acceptable evidence that contractors were paid must be submitted to the department. This evidence must be submitted within six months of the effective

date of the RHAP or RRP agreement.

(9) The department will not fund and will not incur any responsibility for operating costs or any other non-approved costs.

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CERTIFICATION:

Kenneth W. Ritchey

Kenneth W. Ritchey, Director

8/20/01

Date

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