

5123:1-1-17

Distribution of funds for the residential handicap accessibility project (RHAP) and residential renovation project (RRP) residential accessibility and renovation projects.

(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)~~ residential accessibility and renovation projects. ~~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 a request to the department for RHAP or RRP~~ a county board of developmental disabilities, governmental entity, or nonprofit corporation specifically chartered to provide a developmental disability service when such service fulfills a public purpose as provided by section 154.20 of the Revised Code and that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.
- (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 administrative head of the Ohio department of mental retardation and developmental disabilities or his or her designee.~~
- (5)(4) "Maintenance" ~~is~~ means a repair to a structure or component, if that structure has not reached the end of its useful life.
- (6)(5) "Project" means capital facilities as defined in section 154.01 of the Revised Code.
- (7)(6) "Renovation" means work done to a building to restore it to an acceptable condition and to make it functional for the ~~purpose~~ purpose(s) set forth in ~~the~~ an application, including architectural and structural changes and the modernization of mechanical and electrical systems. ~~"Renovation"~~ Renovation does not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.

(C) Eligibility

To be eligible for state funding, an applicant shall:

~~(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)(1) The applicant must have Have a stable programmatic and financial history; and~~

~~(e)(2) The applicant must provide Provide services, or be a nonprofit agency corporation which acquires residential properties for individuals requiring services, through the following:~~

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

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

~~(iii)(c) Family consortium program;~~

~~(iv)(d) Community-based ICF/MR program intermediate care facility for the mentally retarded licensed by the department; or~~

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

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

~~(a) The applicant must meet the criteria listed under paragraphs (C)(1)(a) to (C)(1)(e)(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 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~~ The department shall use data from the letters of intent ~~will be used~~ to determine the allocation for each project.
- (3) No funds shall be distributed until the appropriation is released by the controlling board.
- (4) The facility to be made accessible or renovated ~~must~~ shall house no more than eight individuals.
- ~~(5)~~ ~~One accessibility project per biennium may be requested per property.~~
- ~~(6)~~(5) An addition to an existing structure is allowed only as part of an authorized accessibility modification.
- ~~(7)~~(6) The department shall review 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 the accessibility modification or 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.
- ~~(8)~~(7) 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.

~~(9)~~(8) 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;~~ Construction document printing costs; and
- (e) Interest, subject to prior approval of the department at the time of application; ~~and~~
- (f) ~~Printing fee for blue prints.~~

~~(10)~~(9) 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~~ odd-numbered year, regarding the accessibility modification or renovation needed in the next two years for each project. Letters of intent shall ~~specify~~ include the following:

- (a) A detailed description of the proposed project;
- (b) The maximum estimated ~~renovation project~~ project costs; ~~and~~

(c) Justification for the project; and

(d) An appraisal, if requested.

(2) If the applicant is a not-for-profit nonprofit corporation, the applicant shall submit with the request for community capital assistance funds, in addition to all other documents required by this rule, a certified copy of a corporate resolution that states the person who signs any documents required by this rule has the authority to bind the corporation, corporate document (articles of incorporation), the articles of incorporation, the 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~~ shall 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)~~(i) A provision that upon dissolution of the corporation, if such dissolution occurs within the length of the participation project agreement as required by this rule, 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 project agreement which originally set forth disbursement of funds to the corporation.

(ii) A nondiscrimination provision stating that services will neither be rendered nor denied on the basis of race, color, religion, national origin, disability, age, or unless programmatically justifiable, sex.

~~(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~~ persons living in Ohio.

- (ii) A provision that no persons related by ~~consanguinity~~ blood or marriage (to a degree of first cousin) shall constitute a majority of the board of trustees.
 - (iii) A conflict of interest provision to require disclosure of any conflict of interest, including requiring the abstention of a trustee in a vote on a matter affecting persons employed or to be employed by the corporation and related to the trustee by blood or marriage, and procedures for the resolution of conflicts.
- (3) The 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.
- (4) The department ~~will~~ shall 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~~ Upon approval of a project and prior to any payment of state funds, the applicant shall enter into ~~an~~ a project 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 project agreement.
 - (d) The applicant ~~agrees~~ shall agree to use and maintain the property as a residential facility for persons with ~~mental retardation or other~~ developmental disabilities for the length of the project 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 project agreement shall expire as to the earlier of:
- (i) Fifteen years from the date of the project agreement; or
 - (ii) The date when all capital bonds, any of the proceeds of which were expended for project costs, are no longer outstanding.
- (f) If the applicant is a nonprofit corporation, the applicant shall execute a promissory note and mortgage between the department and the nonprofit corporation.
- (2) The applicant shall begin work on the project within the biennium budget period funding the project. Any changes to the project or scope of work, including changes in the physical location of the project, require approval by the department. 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~~ The applicant shall not be the contractor for ~~their~~ its own ~~projects~~ project.
- (5) The applicant ~~must~~ shall 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 project 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~~ are 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~~ shall certify that it has notified the owner of its intent to enter into ~~an a project~~ agreement with the ~~state department~~ 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~~ shall 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~~ shall state the exact location of the space being leased, if only a portion of the property is being leased.
 - (f) Documentation ~~must~~ shall be submitted establishing who owns the underlying land ~~and/or or building copy deed from the county recorder's office.~~ If the ~~county board applicant~~ 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~~ shall be submitted to the department that all leasehold ~~interest of three years or longer is~~ interests are 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~~ shall 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 project~~ agreement that all work will comply with Title III of the ~~"Americans with Disabilities Act (ADA),"~~ Americans with Disabilities Act, 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 fifty thousand dollars:
 - (i) The bids shall be solicited within sixty days of the effective date of the ~~RHAP or RRP project~~ agreement.
 - (ii) Bids may be solicited informally, without advertising, and submitted informally on the bidder's letterhead.
 - (b) For projects with a total estimated costs cost 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~~ once a week for not less than two consecutive 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~~ the 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~~ the contract.
 - (viii) No contract ~~can~~ shall be awarded if the low bid received (aggregate bids if multiple contracts) ~~exceed~~ exceeds 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 nor~~ any person acting on his or her behalf shall by reason of race, creed, sex, ~~handicap~~ disability or military status as defined in section 4112.01 of the Revised Code, or color, discriminate against any citizen of the state in the employment of labor or workers who ~~is~~ are qualified and available to perform the work to which the employment relates.
 - (b) The contractor agrees that no contractor, subcontractor, nor any person acting 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~~ disability or military status as defined in section 4112.01 of the Revised Code, 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~~ but not limited to, race, religion, sex, disability or military status as defined in section 4112.01 of the Revised Code, 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~~ material suppliers, or laborers.

- (17) The applicant shall keep all financial records in a manner consistent with generally accepted accounting procedures. 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~~ shall 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 fifty thousand dollars shall be reimbursed on a schedule 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~~ project 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~~ project agreement and in this rule, or if the applicant breaches the ~~RHAP or RRP~~ project 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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