

TO BE RESCINDED

5123:1-1-01 Community capital assistance funds - non-residential capital facilities.**(A) Purpose**

This rule sets forth a process for the department to make available community capital assistance funds to boards of county commissioners, county boards of developmental disabilities, and nonprofit corporations for the purchase, construction, and renovation of non-residential capital facilities.

(B) Definitions

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

- (1) "Applicant" means any of the following who submit an application to the department for community capital assistance funds:
 - (a) A board of county commissioners;
 - (b) A county board of developmental disabilities; or
 - (c) A nonprofit corporation incorporated pursuant to Chapter 1702. of the Revised Code, granted 501(c)(3) status by the internal revenue service, and 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. When the applicant is a nonprofit corporation, the applicant shall submit with the application, in addition to all other documents required by this rule, a copy of its articles of incorporation, code of regulations, and a current list of all directors, officers, and members.
 - (i) The articles of incorporation shall contain, in addition to provisions otherwise required by law, a specific statement of purpose that the corporation will provide a developmental disability service.
 - (ii) The code of regulations shall contain the following provisions in addition to those specifically required by law:
 - (a) A 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;

- (b) A provision that upon dissolution of the corporation, if such dissolution occurs within the length of the project 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 a distributee under such order or agreement to the extent of its participation and to the extent provided by law or the project agreement which originally set forth disbursement of funds to the corporation;
- (c) A provision that no persons related by blood, marriage, or adoption (to a degree of first cousin) shall constitute a majority of the board of directors; and
- (d) A provision requiring disclosure of potential conflicts of interest of a director, procedures for determining whether there is a conflict of interest, and establishing a course of action if a conflict of interest is identified.
- (2) "Approved project costs" means total costs of capital facilities and includes, without limitation thereto, site acquisition, design and project administration fees paid to an outside consultant, construction costs, costs of permits and inspections, bid advertising, construction document printing costs, and equipping the capital facility to accommodate the approved program. The applicant must obtain written approval from the department for costs other than those items listed in this paragraph.
- (3) "Capital facilities" has the same meaning as in section 154.01 of the Revised Code.
- (4) "Community capital assistance funds" means funds appropriated by the general assembly to the department for capital projects.
- (5) "Construction" means the construction of new buildings or renovation of existing buildings provided by section 154.01 of the Revised Code, except that renovation shall not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.
- (6) "Controlling board" means the board established by section 127.11 of the Revised Code.
- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Renovation" means work done to a building to restore it to an acceptable condition meeting Ohio basic building code and to make it functional for the purpose(s) set forth in an application for community capital assistance

funds, 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) Application

- (1) Prior to purchasing a capital facility or initiating a construction or renovation project, the applicant shall submit an application for community capital assistance funds to the department in a form and manner prescribed the department.
- (2) The department shall evaluate applications based upon:
 - (a) Submission of a complete and accurate application;
 - (b) Projects that are programmatically acceptable;
 - (c) Impact on the local service delivery system; and
 - (d) Availability of local matching funds.

(D) Awarding of funds

- (1) The department shall inform the applicant in writing of approval or disapproval of a project. If a project is approved, the letter shall indicate the amount of state funding approved, subject to favorable fund release action by the controlling board.
- (2) The applicant shall enter into an agreement with the department that assures the completion of the project in accordance with standards set forth by the department and other applicable federal, state, and local statutes. The agreement shall also assure operation of the capital facility in accordance with the agreement. The applicant agrees to use and maintain the project for the length of the agreement for the purposes stated in the application unless otherwise agreed to in writing by the department. If the project is not used for said purpose, the applicant shall pay to the department on a pro rata basis any state funds reimbursed to the applicant, or shall permit the department to operate or transfer the operation of the project, including the assignment of any contracts or other interests, to another approved organization for the balance of the agreement. The terms of the agreement shall expire as of the earlier of:
 - (a) Fifteen years from the date of the agreement; or

- (b) The date when all capital bonds, any of the proceeds of which were expended for project costs, are no longer outstanding.
 - (3) The department shall participate at a percentage level of the total project cost based upon a funding formula developed by the department.
 - (4) The department, as a part of a construction or purchase and renovation project and contingent upon the availability of department funds, may consider and include in the development of the participation schedule the value of property purchased by an applicant and may use such value as part or all of the applicant's share of approved project costs under the following provisions:
 - (a) The department shall have final discretion to:
 - (i) Approve the use of the value of property and/or buildings thereon which are owned by an applicant as part or all of the local participation share in a project;
 - (ii) Determine the part or percentage of a building and/or property which may be used as local participation share; and
 - (iii) Determine that the property and/or buildings thereon are suitable for the intended purpose both programmatically and economically.
 - (b) The property value to be used in the participation schedule for projects involving property owned by the applicant for less than one year shall be based on the purchase price or the appraised value, whichever is less. For projects involving property owned by the applicant for one year or more, the value to be used shall be based on the appraised value. The appraised value shall be determined by an appraisal made by an accredited appraiser. The appraisal shall be based on the fair market value of the property as determined by the appraisal. The appraisal fee shall be considered as an element of project cost eligible for state participation. Two appraisals are required if the value exceeds one hundred thousand dollars, and the appraisals must be descriptive narratives.
 - (5) The applicant shall verify that sufficient funds will be available to meet its share of project cost from project initiation through project completion.
 - (6) The applicant has one year from the date of controlling board approval to begin the construction/renovation project. The department has the discretion to withdraw funds at anytime if the project is not proceeding in a timely manner.
- (E) Standards of construction, design criteria, site criteria, and reimbursement

- (1) The department shall pay the applicant for approved costs for an amount up to but not exceeding the maximum state share of project cost stated in the approved application. No additional funds will be approved over the maximum state share of project cost once the funds are released from the controlling board.
- (2) The applicant shall hold the department harmless for any liability resulting from liens issued against the project by any contractors, subcontractors, material suppliers, or laborers.
- (3) The applicant shall obtain the services of registered architects or engineers to perform any design work required for the project. The applicant agrees that if design fees for the project equal or exceed twenty-five thousand dollars, any architectural or engineering services shall meet the requirements of sections 153.65 to 153.70 of the Revised Code. The applicant shall provide and maintain competent and adequate architectural or engineering supervision and observation at the construction site. On the basis of on-site observations as an architect, the architect shall keep the applicant informed of the progress and quality of the work, and shall endeavor to guard the applicant against defects and deficiencies in the work.
- (4) No funds for the project shall be used by the applicant for renovation, rehabilitation, or construction unless the mechanics, laborers, or workers are paid the prevailing wage rates as described in section 4115.04 of the Revised Code.
- (5) The applicant shall agree to solicit or cause to be solicited through a public solicitation or an invitation for bids, bids in accordance with federal, state, and local laws.
- (6) The applicant shall agree to complete a life cycle cost analysis when required by Chapter 123:4-1 of the Administrative Code.
- (7) The applicant shall agree to provide and maintain insurance or self-insurance against general liability for accidents or injuries that may occur on the premises of the project. The applicant shall also ensure that the facility design and construction conforms to all applicable building codes, standards, zoning, and licensing requirements.
- (8) The agreement between the department and the applicant shall include the following terms:
 - (a) That all contractors agree to comply with all applicable federal, state, and local laws in the conduct of the work hereunder. The contractors

shall accept full responsibility for payment of all unemployment compensation, insurance premiums, 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 the work authorized by this agreement.

- (b) That the project is located upon, or will be located upon, real estate which the applicant owns in fee simple or in which it has a leasehold interest; the terms of lease are subject to the department's approval. The applicant further covenants 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 project facilities, except such as may be imposed by zoning ordinances and regulations.
- (c) That requirements for approval of title on capital projects as approved by the office of the attorney general shall include a current title insurance policy (no more than sixty days old) or current attorney opinion of title, a map outlining the project site, and a deed.
- (d) That if leased property is being used, the following is required:
 - (i) The term of the lease shall be at least fifteen years.
 - (ii) 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.
 - (iii) The lease shall state the exact location of the space being leased, if only a portion of the property is being leased.
 - (iv) Documentation shall be submitted establishing who owns the underlying land or building. If the applicant is subleasing part of a building, 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.
 - (v) Proof shall be submitted to the department that all leasehold interests are recorded in the county recorder's office.

- (e) That a certified copy of a resolution with a secretary's certificate that the persons who signed the lease or sublease were authorized to do so must be provided.
 - (f) That the lease provision is consistent with the series II lease agreements and attachment A of the agreement and clearly stated that the property is to be leased for a minimum of fifteen years.
- (9) The department may participate in the cost or value of real property to be used for capital facilities. Such property may include land only or land with existing buildings thereon which is to be purchased.
- (a) All real property proposed as a project site shall be evaluated by the department as applicable to cost adaptability for renovation, programmatic suitability, economic feasibility, and ability or potential to meet applicable building and fire codes, licensure, and department or other governmental requirements and with consideration of the following criteria for construction project sites:
 - (i) Location, including sociological and demographic considerations of area and access to site;
 - (ii) Program needs;
 - (iii) Cost of property, including comparison of similar property in the area;
 - (iv) Size, including needs for future expansion;
 - (v) Zoning, transportation, and utilities, including gas, electric, water, and sewerage;
 - (vi) Configuration, topography, suitability for construction; and
 - (vii) Environmental assessment that includes, but is not limited to, asbestos, polyvinyl chlorides, and chemical contaminants that may be present on the site.
 - (b) Property value determination
 - (i) The value of real property proposed for a project shall be based on a descriptive narrative appraisal made by a qualified appraiser. The appraised value shall be based on the fair market value of

the property as determined by the appraisal and approved by the department.

- (ii) Department participation in real property shall be based on the purchase price or approved appraised value, whichever is the lesser.

(c) Existing buildings

- (i) In addition to all other provisions of this rule, for projects involving the purchase or purchase and renovation of existing buildings, the department shall determine the maximum approved renovation/acquisition cost excluding land. This maximum approved renovation/acquisition cost plus land cost shall be the basis upon which maximum state participation is calculated.
- (ii) To reflect the fact that older buildings generally are less suitable than newer buildings, the maximum approved project cost shall in all cases be less than one hundred per cent of the cost of new construction. This percentage shall be eighty-five per cent less one per cent for each year of age of the existing building. For buildings which have had additions, the age shall be the weighted average age of the various portions of the building. For existing buildings fifteen years old or older, the maximum percentage shall be seventy per cent.

(10) Payment schedule

- (a) Once the project has been bid and the contractors have been awarded their contracts, the applicant shall notify the department of the contract amount and also certify that the selected construction contractor(s) submitted the lowest best bid. An initial award installment that equals fifteen per cent of the total approved project costs shall be forwarded to the applicant at that point. Additional installments shall be made to the applicant in accordance with the construction project payment schedule contained in the appendix to this rule.
- (b) The department may adjust the construction project payment schedule based upon written justification provided by the applicant.
- (c) The applicant shall keep records of all receipts and expenditures for a project in a separate account which shall be available for inspection or audit by the department. The applicant shall submit paid receipts to the department when requesting the next installment. The department,

after appropriate audit or required documentation is received and a determination is made of the percentage level of project completion, shall promptly take necessary action to forward the next installment.

- (d) The department reserves the right to withhold an installment for any project.
- (11) The final submission of receipts for payment shall include a letter from the contractor(s) certifying that the work has been completed in accordance with the approved application, the drawings and specifications, and contract documents; that prevailing wages have been paid during the project; and that affidavits of release of liens from all prime contractors on the project have been obtained. The applicant shall certify that it or its agent has inspected the work and that it complies with the approved application, the drawings and specifications, and all other contract documents.
- (12) 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, disability or military status as defined in section 4112.01 of the Revised Code, or color, discriminate against any citizen of the state of Ohio in the employment of labor or workers who 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, disability or military status as defined in section 4112.01 of the Revised Code, or color.
- (13) The applicant shall ensure that the contractor(s) provide 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 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.
- (14) In awarding contracts for the project, the applicant shall ensure that equal consideration is given to contractors, subcontractors, or joint venturers who qualify as a minority business enterprise as defined in section 122.71 of the Revised Code.

- (15) 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 bond debt is retired.
- (16) The department reserves the right to audit the expenditure of community capital assistance 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 project agreement and in this rule, or if the applicant breaches the project agreement in any manner.

(F) Waiving a condition or requirement of this rule

The director of the department may, for good cause, waive a condition or requirement of this rule. The director's decision with regard to waiving a condition or requirement of this rule may not be appealed.

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CERTIFIED ELECTRONICALLY

Certification

04/24/2023

Date

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