



Ohio Administrative Code

Rule 5123-1-05 Community capital assistance funds - residential accessibility and renovation projects.

Effective: May 4, 2023

(A) Purpose

This rule sets forth a process for the department to make available community capital assistance funds to county boards of developmental disabilities, governmental entities, and nonprofit corporations for residential accessibility and renovation projects.

(B) Definitions

For the purposes of this rule, the following definitions apply:

(1) "Applicant" means any of the following who submit an application to the department for community capital assistance funds:

(a) A county board of developmental disabilities;

(b) A governmental entity; 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 will 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 will 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 will 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) will 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) "Community capital assistance funds" means funds appropriated by the general assembly to the department for capital projects.

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

(4) "Department" means the Ohio department of developmental disabilities.

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

(6) "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 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) Eligibility

To be eligible for community capital assistance funds for residential accessibility and renovation projects, an applicant shall:

(1) Have a stable programmatic and financial history; and

(2) Acquire residential properties for persons with developmental disabilities receiving services, through:

(a) The supported living program;

(b) A medicaid home and community-based services waiver; or

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

(D) Awarding of funds

(1) The department will develop priorities and program guidelines.

(2) The department will use data from the letters of intent to determine the allocation for each project.

(3) No community capital assistance funds will be distributed until the appropriation is released by the controlling board.

(4) The residential property to be made accessible or renovated will be home to no more than four persons with developmental disabilities.

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



(6) The department will review requests based upon:

(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. The cost of the project will not exceed seventy-five per cent of the appraised value of the home.

(7) Costs that are suitable for reimbursement are limited to:

(a) Design and project administration fees paid to an outside consultant;

(b) Construction costs;

(c) Costs of permits and inspections;

(d) Construction document printing costs; and

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

(8) Community capital assistance funds may not be used for:

(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; or

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



(E) Application process

(1) The applicant shall submit a letter of intent to the department which includes:

(a) A detailed description of the proposed project;

(b) The maximum estimated project costs;

(c) Justification for the project; and

(d) An appraisal, if requested.

(2) The department will review applications for community capital assistance funds and notify the applicant, in writing, of the approval or disapproval of a project. When the department approves a project, the department will indicate the maximum amount of community capital assistance funds 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 notification.

(3) 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 responsibility to administer the project and comply with this rule.

(F) Responsibilities of the applicant

(1) Upon approval of a project and prior to payment of community capital assistance funds, the applicant shall enter into a project agreement with the department that assures:

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

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



- (c) The operation of the residential property in accordance with the project agreement.
 - (d) The applicant will use and maintain the residential property for persons with 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, community capital assistance funds disbursed to the applicant. The terms of the project agreement will expire as of 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 will 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 community capital assistance funds may be withdrawn at any time for failure to comply with the applicable assurances, certifications, or requirements 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) The applicant shall not be the contractor for its own project.
- (5) The applicant shall assure that:
- (a) 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.

(b) The premises are, and will 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:

(a) The lease 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 shall certify that it has notified the owner of its intent to enter into a project agreement with the department and has obtained written commitment from the owner to permit operation of the residential property for a minimum of fifteen years.

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

(d) The department will 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 residential property or may transfer or assign the leasehold interest and the operation of the program in the residential property, upon approval of the lessor, which approval will not be unreasonably withheld, to a nonprofit corporation or other agency to provide substantially similar services in the residential property for the remainder of the lease term.

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

(f) Documentation will 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.

(g) Proof will be submitted to the department that all leasehold 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.

(8) The applicant 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 will 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 project agreement that all work will comply with 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 will 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 will be solicited within sixty calendar days of the effective date of the 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 cost equal to or exceeding fifty thousand dollars:
- (i) The project will be advertised with a legal notice in a newspaper of general circulation to solicit bids from all interested contractors.
 - (ii) The notice will be published once a week for not less than two consecutive weeks, with the bids due no sooner than eight calendar days after the last date of publication.
 - (iii) The legal notice will state the estimated construction cost.
 - (iv) The project may be bid as a single prime contract through a general contractor.
 - (v) The applicant shall prepare a bid tabulation sheet which shows the official estimate amount for the contract and lists all contractors who received bid documents.
 - (vi) The bid opening will 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 the contract.
 - (viii) No contract will be awarded if the low bid received (aggregate bids if multiple contracts) exceeds the estimate by more than ten per cent.
 - (ix) The applicant shall not enter into contracts and construction will not begin until notified by the department, in writing, that controlling board approval has been obtained. Any costs not authorized by the department will not be reimbursed by the department.
 - (x) If the applicant is an agency of the county government, the bidding procedures will comply with the conditions the county prosecuting attorney may require. If there is a conflict between the local and state requirements, the state requirements supersede the local requirements.



(11) No funds for the project will 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 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 will contain provisions by which the contractor agrees that in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, nor any person acting on the contractor's behalf will by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, discriminate against or intimidate any citizen of the state in the employment of labor or workers who are qualified and available to perform the work to which the employment relates.

(14) The applicant shall ensure that the contractor 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, 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, 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 will be filed in a manner allowing it to



be readily located. Such documentation will 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) The applicant 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 will 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 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 will 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 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.

(H) Waiving a condition or requirement of this rule



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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 is not subject to appeal.