

CHAPTER 10. BROADBAND GOVERNING BOARD GRANT PROGRAM

SUBCHAPTER 3. PROGRAM ADMINISTRATION

93:10-3-2.2. CPF overbuild prevention contest process

(a) Purpose.

- (1) The Oklahoma Broadband Office, at the direction of the Broadband Governing Board, is administering a statewide competitive grant program under the American Rescue Plan Act - Capital Projects Fund (ARPA-CPF). Applicants submit Proposed Projects through the OBO's ARPA-CPF portal during the Project Submission Period. An Overbuild Prevention Contest Process will follow, allowing ISPs to contest any of the submitted proposed projects, according to this process.
- (2) This Overbuild Prevention Contest Process will serve as an opportunity for providers with existing infrastructure within the Proposed Project Areas to submit the addresses that are already served, will be served via an enforceable commitment, or will be served within twelve (12) months, or up to eighteen (18) months if extended by the OBO, of the close of the Project Submission Period. The Overbuild Prevention Contest Process will allow for the program to meet the needs of unserved and underserved Oklahomans while also ensuring that the selected projects for the awards do not conflict with the existing services or services to be provided within twelve (12) months, or up to eighteen (18) months if extended by the OBO, of the close of the Project Submission Period, or with Grant Program funds awarded by other governmental entities that cannot be matched with ARPA-CPF funding.

(b) Definitions. The following words or terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) "Address" or "Addresses" or "BSL" or "Location" means a structure where Broadband Service could be installed (i.e., a Broadband Serviceable Location (BSL) as represented in the National Broadband Map. A location that is not in the Broadband Serviceable Location Fabric is an ineligible location even if a fabric challenge is pending with the FCC or the applicant provides evidence of the location through latitude and longitude data. Unbuilt parcels, adjacent outbuildings, and other non-BSL structures are considered ineligible locations for the purpose of this grant.
- (2) "Anchor Institution" or "Community Anchor Institution" or "CAI" means an entity, such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of Broadband Service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.
- (3) "Applicant" means an ISP that submits a valid Proposal for grant funding to the OBO during the Project submission period.
- (4) "ARPA-CPF Portal" means the online application tool administered by the OBO for submission of Proposed Projects.
- (5) "Board" or "BGB" means the Oklahoma Broadband Governing Board.
- (6) "Broadband Service" means internet service that meets the following criteria:
- (A) Is a wireline or fixed wireless service that reliably provides two-way data transmission with speeds of at least 100 Mbps for download transmission and 100 Mbps for upload transmission.
- (B) For locations where 100 Mbps symmetrical service is not feasible, Broadband Service may include service that reliably provide speeds of at least 100 Mbps download and 20 Mbps upload and is scalable to 100 Mbps download and 100 Mbps upload.
- (C) Broadband Service does not include a commercial mobile radio (cellular) service or internet service from a satellite connection.
- (7) "Business Location" means the definition set by U.S. Department of Treasury, consistent with FCC guidance, as a non-residential structure on a property without residential locations that would expect to demand internet access services.
- (8) "Community Anchor Institution Location" means the definition set by the U.S. Department of Treasury, consistent with FCC guidance, of an entity, such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization (this term is used broadly and includes any public housing agency, HUD-assisted housing organizations or Tribal housing organization), or community support organization that facilitates greater use of Broadband Service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.
- (9) "Contest" means a submission of all required information to the OBO by an ISP to contest a Proposed Project.
- (10) "Contest Period" means the timeframe set by the OBO for ISPs to contest one or more BSL's within a Project Area.
- (11) "Contested Applicant" means an ISP whose Proposed Project Area is being contested by another ISP.
- (12) "Contester" means an entity that provides Broadband Service, including, but not limited to, a for-profit, a non-profit, cooperative, local government, municipality or tribal entity submitting a Contest.
- (13) "CostQuest Fabric I.D." means the identification that is assigned by CostQuest to each Broadband Serviceable Location.
- (14) "Enforceable Funding Commitment" means a Location that has been awarded state or federal funding to build or improve infrastructure to provide a wireline connection that reliably delivers at least 100 Mbps of download speed and 20

Mbps of upload speed.

(15) "Existing Federal Commitment" means a Proposed Project Area is considered "ineligible" if at any point the federal government has awarded funding under a competitive process to support the deployment of Broadband Service to addresses within a Proposed Project Area. Addresses within a Proposed Project Areas that have received or have been designated to receive federal funding for the purposes stated above are considered ineligible.

(16) "Gbps" means gigabits per second.

(17) "Grant Program" or "Program" means the statewide competitive grant process administered by the OBO under the American Rescue Plan Act - Capital Projects Fund (ARPA-CPF).

(18) "Internet Service Provider" or "ISP" means an entity that provides Broadband Service, including, but not limited to, a for-profit, a non-profit, cooperative, local government, municipality or tribal entity.

(19) "Mbps" means megabits per second.

(20) "National Broadband Map" or "Map" means the Federal Communications Commission National Broadband Map which will be used to determine Broadband Serviceable Locations.

(21) "OBO" means the Oklahoma Broadband Office.

(22) "Overbuild Prevention Contest Process" means the challenge process detailed in this section by which a Contester may contest one or more BSL's within a Proposed Project Area.

(23) "Partnership" means an ISP or multiple ISPs that partner together on a Proposed Project.

(24) "Planned Service" means broadband will be deployed at this location within twelve (12) to eighteen (18) months, either without an enforceable commitment or because a provider is building out broadband offering performance beyond the requirements of an enforceable commitment.

(25) "Proposed Project" or "Proposal" means a complete submission for grant funding provided by an Applicant to the OBO pursuant to Program requirements.

(26) "Proposed Project Area" or "Project Area" means the designated areas specified in a Proposed Project that are eligible to receive funding as determined by the most current FCC Broadband Map.

(27) "Project Submission Period" means the timeframe set by the OBO to accept Proposed Projects.

(28) "Residential Location" means the definition set by the U.S. Department of Treasury, consistent with FCC guidance, as a location that is or contains "housing units" or "group quarters" based on the U.S. Census Bureau's definition of these terms. A housing unit is defined by the Census Bureau as a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied (or if vacant, is intended for occupancy) as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

(c) Submitting a Contest.

(1) Within thirty (30) calendar days of the close of the Project Submission Period, the OBO shall make available on its website the Proposed Projects' Areas.

(2) If multiple Proposed Projects include an identical BSL, a Contester is only required to submit a single Contest applicable to each contested BSL.

(3) To submit a Contest, a Contester shall provide the OBO, in a manner determined by the OBO as set forth in the Notice of Funding Opportunity, with evidence of the following:

(A) That all or part of a Proposed Project Area is:

(i) Currently served at a minimum of 100/20 Mbps; or

(ii) Already covered by Planned Service or an Enforceable Funding Commitment; or

(iii) The ISP has received funding from another funding source (state, federal, tribal, or private) for broadband deployment in the suggested Project Area that cannot be paired with or matched with Grant Program ARPA funding; and

(B) A copy of the signed affidavit as provided in subsection (g) of this section, certifying that the Contest is accurate and true.

(d) Burden of Proof.

(1) For a Contest submitted pursuant to subsection (c) of this section to be deemed eligible for consideration, the Contester must meet the burden of proof by submitting the Contest in the manner and form prescribed by the OBO. The Contester must provide evidence supporting their claim, such as grant award notification, grant agreements, existing agreements to construct infrastructure that would provide reliable, wireline service of no less than 100/20 Mbps, or evidence that construction has started including but not limited to existing permits. Contests of plans to deploy broadband infrastructure must clearly and conclusively prove the claimed deployment plans.

(2) Contests that are not submitted in the manner and form prescribed by the OBO will not be considered.

(e) Processing a Contest.

(1) The OBO shall open a contest submission window of no less than five (5) business days.

(2) Within five (5) business days of the close of the contest submission window, the Contested Applicants which submitted the Proposed Project shall be notified of the Contest in a manner determined by the OBO.

(3) Contested applicants shall be given no less than five (5) business days from the date of notification to respond to the Contest in a manner determined by the OBO.

(4) Upon receiving a completed response to the Contest from the Contested Applicant, the OBO shall resolve the dispute within fifteen (15) business days.

(f) Resolving a Contest.

(1) Upon processing all Contests, the OBO shall publish on its website a list of successful Contests, and Applicants will be notified of their Proposed Project Areas affected by said Contests.

(2) The OBO shall allow a successfully Contested Applicant to submit within five (5) business days of such notification a revised Proposed Project that excludes successfully contested addresses within the original Proposed Project Area.

(g) Template Contest Affidavit.

(1) The signed affidavit required by subsection (c) of this section shall be as follows:

(2) I, _____, certify that I am duly authorized by the Contester to submit this Contest and included materials; that the Contester has the capacity to provide minimum actual speeds of 100 Mbps downstream and 20 Mbps upstream for households and 1 Gbps symmetrical for Anchor Institutions; that if it is a Planned Service to be completed in twelve (12) months, or up to eighteen (18) months if extended by the OBO, it will provide service of at least 100/20 Mbps for households and 1 Gbps symmetrical for Anchor Institutions and scalable to equal or higher speeds than the Project Area it is contesting. The broadband infrastructure is designed to meet the identified needs of the contested Addresses, and that all the information submitted as part of this Contest is true and correct to the best of my knowledge.

(A) Signature:

(B) Print Name:

(C) Title:

(D) Contester:

(E) Email: