

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2010 Iowa Acts, Senate File 2389, sections 84 to 88, the Iowa Finance Authority hereby adopts new Chapter 38, “Iowa Jobs II Program,” Iowa Administrative Code.

The purpose of this amendment is to implement 2010 Iowa Acts, Senate File 2389, sections 84 to 88, by adopting new Chapter 38, governing the Iowa Jobs II Program.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the normal notice and public participation process would result in unnecessary expense and delays in the program, which is designed to provide assistance for disaster prevention projects.

The Authority finds that adoption of this amendment confers a benefit on the public in that these rules promote disaster prevention and economic stimulus and ease and speed the administration of the program. The Authority finds that these rules should be implemented as soon as feasible in order to facilitate the awarding of grants under the program and to avoid unnecessary expense and delays. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on June 9, 2010.

This amendment became effective June 10, 2010.

This amendment is intended to implement Iowa Code section 16.5(1)“r” and 2010 Iowa Acts, Senate File 2389, sections 84 to 88.

The following amendment is adopted.

Adopt the following **new** 265—Chapter 38:

CHAPTER 38
IOWA JOBS II PROGRAM

265—38.1(16) Purpose. The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs II program. The board will encourage and support public construction projects relating to disaster prevention.

265—38.2(16) Definitions. When used in this chapter, the following

“*Authority*” or “*IFA*” means the Iowa finance authority.

“*Board*” means the Iowa jobs board as established in 2009 Iowa Code Supplement section 16.191.

“*Disaster*” means an occurrence that causes widespread or extensive destruction and distress, including but not limited to floods, tornadoes, blizzards, fires, earthquakes, terrorist attacks, aviation and environmental accidents, and similar catastrophes.

“*Disaster prevention*” means the prevention, reduction (in number or in scope), mitigation, or amelioration of future disasters or the harm caused thereby.

“*Financial feasibility*” means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

“*Indirect jobs*” means jobs created by suppliers of materials used in the construction or operation of the project.

“*Induced jobs*” means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

“*Iowa jobs program review committee*” or “*review committee*” means the committee established by 2009 Iowa Code Supplement section 16.195.

“*Local infrastructure*” means projects relating to disaster prevention. “Local infrastructure” does not include routine, recurring maintenance or operational expenses or the leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“*Local support*” means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

“*Program*” means the Iowa jobs II program established in 2010 Iowa Acts, Senate File 2389, section 88.

“*Public construction project*” means a project for the construction of local infrastructure by a county or city.

“*Recipient*” means an entity under contract with the Iowa jobs board to receive Iowa jobs II program funds and undertake a funded project.

“*Smart planning principles*” means the principles set forth in division VII of 2010 Iowa Acts, Senate File 2389.

“*Sustainability*” means the use, development, and protection of resources at a rate and in a manner that enable people to meet their current needs while allowing future generations to meet their own needs; “sustainability” requires simultaneously meeting environmental, economic and community needs.

265—38.3(16) Allocation of funds. All Iowa jobs II funds shall be awarded and used as specified in 2010 Iowa Acts, Senate File 2389, division VII, and these rules. If a city or county that is awarded funds under the program has not begun drawing funds within one year of the date of the award, the grant shall terminate and no funds shall be disbursed, unless the board, in its sole discretion, prior to the first anniversary of the date of the award grants an extension due to extraordinary circumstances. Any portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for disaster prevention projects (pursuant to the local infrastructure competitive grant program) shall not exceed \$30 million for the fiscal year beginning July 1, 2010.

265—38.4(16) Iowa jobs II program. The board shall assist in the development and completion of public construction projects relating to disaster prevention by overseeing and providing approval of the administration of the Iowa jobs II grant program, as set forth herein.

38.4(1) Eligible applicants. Eligible applicants for Iowa jobs II local infrastructure competitive grant program funds shall be Iowa cities and counties that apply smart planning principles and guidelines pursuant to division VII of 2010 Iowa Acts, Senate File 2389. A city or county shall be deemed to apply smart planning principles if it has committed by resolution promptly to perform a review to determine the potential advantages and disadvantages to the city or county of adopting a comprehensive plan or, if the city or county already has a comprehensive plan, of amending that comprehensive plan. By such resolution, to be eligible, the city or county must also commit, in the event it is awarded a grant under the Iowa Jobs II local infrastructure competitive grant program, to complete the adoption or amendment of its comprehensive plan utilizing smart planning principles within three years of the award or such grant.

38.4(2) Eligible projects and forms of assistance. For a project to be eligible to receive a competitive grant under the program, the project must be a public construction project relating to disaster prevention to be located in the state of Iowa which will have a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. In the event that a project has multiple intended uses or purposes, of which only a portion is related to disaster prevention, then only that portion of the project intended or designed for disaster prevention shall be deemed eligible.

a. Any award of a competitive grant to a project shall be limited as follows:

- (1) Up to 90 percent of the first \$500,000 in total cost of the development and completion of a public construction project relating to disaster prevention;
- (2) Up to 50 percent of all additional costs of such project;

(3) An applicant or a combination of applicants for a project within the same county shall not be awarded more than 40 percent of the funds available under the program.

b. The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to awards that are within the intent of the terms of a board-approved award.

38.4(3) Ineligible projects. The board shall not approve an application for a competitive grant for the following purposes:

a. To refinance a loan existing prior to the date of the initial financial assistance application.

b. For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

38.4(4) Threshold application requirements. To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

a. Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 10 days prior to submitting its application;

b. The application must be submitted by an eligible applicant via the board's application Web site (<http://www.ijobsiowa.gov><http://www.ijobsiowa.gov>) prior to the applicable deadline;

c. The proposed project must be for the development and completion of one or more public construction projects relating to disaster prevention;

d. There must be demonstrated local support for the proposed project;

e. The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact;

f. The applicant must document its application of smart planning principles; and

g. The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

38.4(5) Application procedure.

a. Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 2, 2010. Subsequent rounds, if any, shall be at the discretion of the board as funding is available.

b. Applications will be reviewed by authority staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

c. The review committee members will score the applications according to the criteria set forth in subrule 38.4(7), and authority staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points on the scoring criteria listed in paragraphs 38.4(7) "a" to "e." The review committee shall meet to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

d. If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

e. Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

f. If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

g. Application resources for the Iowa jobs II program are available at the Iowa jobs Web site: www.ijobsiowa.gov.

h. IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

i. A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

38.4(6) Application review criteria. The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

a. *The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

b. *Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points).* The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) (0-15 points) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) (0 – 15 points) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) (0 – 10 points) The extent to which the applicant will use funds other than an Iowa Jobs II grant to fund its project. For each percentage (rounded to the nearest percentage divisible by 10) of the total projected project cost that is to be funded with non Iowa jobs II grant funds, the project shall receive one point.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

c. *Sustainability and energy efficiency.* The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors: ● Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project is designed to meet energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

d. Benefits for disaster prevention (0-40 points). The likely benefits for disaster prevention of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, whether the proposed project is designed to prevent, reduce (in number or in scope), mitigate, or ameliorate future disasters or the losses therefrom.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

e. The project's readiness to proceed (0-40 points). The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

f. General scoring criteria.

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

265—38.5(16) General grant conditions. As a condition of receipt

38.5(1) Documentation of jobs created or retained. Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

38.5(2) Recipient obligations. In the event a recipient fails to comply with the requirements of this program or the recipient's grant agreement, the board may cancel the recipient's grant and require the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers, employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

38.5(3) Grant acknowledgment. Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

38.5(4) Use of Iowa jobs Web site. All positions that need to be filled for a project shall be posted on Iowa workforce development's Iowa jobs Web site: www.iowajobs.org/.

265—38.6(16) Calculation of jobs created. For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Both permanent and temporary positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

265—38.7(16) Grant awards. The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered. In the event that a competitive grant recipient, prior to execution of an Iowa jobs II grant agreement, is awarded a federal grant for its project, in whole or in part, which federal grant, or the possibility thereof, was not disclosed as part of the recipient's application, the board may withdraw all or part of the Iowa jobs program grant.

265—38.8(16) Administration of awards.

38.8(1) A grant agreement shall be executed between successful applicants and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

38.8(2) Grant agreement.

a. Following the board's determination that a competitive grant application should be approved, authority staff shall propose a draft grant agreement to the recipient. Within 30 days of either transmission of the proposed grant agreement to the recipient or transmission of notice of how the proposed grant agreement may be accessed by the recipient via the Internet, the recipient shall notify the authority as to whether the recipient will execute the proposed agreement or whether the recipient would prefer to negotiate a different agreement. If the recipient elects to execute the proposed agreement, or if the recipient fails to make a timely election, the authority shall prepare and transmit to the recipient on behalf of the board a final contract for execution.

b. If the recipient elects to negotiate a different agreement, the recipient shall, at the time it makes such election, notify the authority of the requested changes to the proposed grant agreement. The authority shall consider the requested changes and may make such revisions to the proposed agreement as the authority determines to be prudent and in the best interests of the Iowa jobs program and the state of Iowa under the circumstances.

c. Once the authority and the recipient have reached an agreement, the authority shall prepare and transmit to the recipient on behalf of the board a final contract, subject to approval by the board.

d. If the authority and the recipient are unable to reach an agreement, the authority shall, with the board's approval, draft and transmit to the recipient on behalf of the board a final contract consisting of the Iowa jobs board's best and final offer.

38.8(3) The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

38.8(4) Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

38.8(5) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

38.8(6) Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2010 Iowa Acts, Senate File 2389, sections 84 to 88.

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