

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 50. FINANCIAL ASSISTANCE

SUBCHAPTER 17. OKLAHOMA DAM REHABILITATION (OKDR) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-17-1. Program description

Senate Bill 429 authorizes the American Rescue Plan Act (“ARPA”) grant program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury’s Coronavirus State and Local Fiscal Recovery Funds Final Rule for Oklahoma dams in poor or unsatisfactory condition. Projects funded by this grant program shall be limited to up to One Million Dollars (\$1,000,000.00) per community. The Board's rules applicable to OKDR grants shall be construed to consider only the OKDR grant program administered by the Board and shall not be construed to consider OKDR grant programs administered by other governmental persons.

785:50-17-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Applicant” means a qualified entity which applies for an OKDR grant on its own behalf, or for whom an application is submitted shall be deemed not to be an applicant.

“Community” means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

“Qualified project” means any necessary investment to rehabilitate public non-federal dams subject to the Board’s jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

“Qualified entity” means a community which own a public non-federal dam subject to the Board’s jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

“Improvements” means correction of design flaws, including but not limited to, engineering and/or construction deficiencies considered inconsistent with current state-of-practice dam design and construction.

“Routine maintenance and repair” mean activities performed routinely to prevent deterioration of structures and equipment required to maintain a dam in a safe and functioning condition, failure of which to perform timely results in dam deterioration or impairment. Routine maintenance activities include but are not limited to replacement of parts, systems, or components; and other activities needed to preserve or maintain the dam.

“High Hazard-Potential Dam” means dams where failure will probably cause loss of human life as classified under the provisions of 785:25-3-3(a) (2) (C).

785:50-17-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the OKDR grant program shall be as follows:

(1) **Notification of potential eligibility.** The Board may notify potentially eligible

dam owners of the availability of the OKDR grant program.

(2) **Pre-application conference**

- (A) While not specifically required, all potential applicants are encouraged to contact the Board for purposes of arranging participation in a pre- application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.
- (B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be discussed to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(3) **Application**

- (A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity
- (B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.
- (C) All applicants shall submit a proposed scope of work, operation and maintenance plan, schedule, and budget packet outlining the proposed activities that will be completed using grant funds.
- (D) Engineering studies, plans, or design drawings and specifications must be approved, signed, and stamped by a qualified design professional registered in Oklahoma.
- (E) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(4) **Submittal to Board.** Upon completion of staff review, the submitted application (with recommendations, if any from the Board Dam Safety Program Manager) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the OKDR grant program, the Board shall follow the priority ranking system set forth in 785:50-17-5. The Board shall also give consider the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in complying with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation. Prior to commencement of construction, recipients shall submit a dam safety construction permit application form along with all construction documents to OWRB as stated in the OAC:785-25 to be approved by the Board.

(2) **Dam rehabilitation.** Qualified projects must result in improvements to the overall condition of the dam and shall not be used for routine maintenance and repair.

(3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs.

The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

(5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project is feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.

(6) **Statewide needs and public interest.** The Board shall consider the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(7) **OKDR grant amount and availability of funds.** In sizing an OKDR grant, the Board shall take into consideration the current and anticipated availability of OKDR program funds.

(8) **Commitment by applicant.** The applicant shall commit to provide operation and maintenance of the project for the expected life of the dam following completion of rehabilitation.

(c) **Criteria applicability.**

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) **Criteria for denying an application.** The Board may deny an application for an OKDR grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the grant assistance is not a qualified entity.

(2) Any other reason based upon applicable law or the Board's judgment and discretion.

(e) **Board action.**

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be

applicable.

- (D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.
- (2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

785:50-17-4. Applicable law; deadline for applications; eligible project costs

- (a) The Board shall administer applications for OKDR funds in accordance with any provisions of law applicable to such applications and OKDR funds. To be considered for and receive funding from funds available for OKDR, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.
- (b) For purposes of evaluating, approving, and funding an application for an OKDR grant, categories of project costs which are eligible for assistance shall include architecture and/or engineer fees construction costs, and other costs related to construction of a qualified project. Provided, however, that for construction costs to be eligible for award, applicants shall provide documentation that all construction funding is available. Failure to secure construction funding timely shall result in forfeiture of grant assistance for construction costs.
- (c) Funds made available by the Board to an applicant for approved projects may be utilized and expended by an applicant as approved by the Board.
- (d) The OKDR grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted unless the applicant can provide sufficient justification for why their application was not received during the open application period.

785: 50-17-5. Period of performance. Period of performance for selected projects commences upon finalization of the funding agreement by the Board and dam owner and shall have a term of twenty-four (24) months following finalization or until the project has been completed, whichever is shorter.

785: 50-17-6. Evaluation of performance. Progress of selected projects may be monitored during the period of performance by the Board Dam Safety Program as described in Chapter 25 and may include evaluation of subrecipients ability to meet proposed deadlines and ability to provide required documentation to the Board. Subrecipient's consulting engineer shall function as the primary technical assistance provider throughout the period of performance. Board staff may provide technical assistance at their discretion.

785:50-17-7. OKDR grant priority system

- (a) **Basis of priority system and formula.**
- (1) **Prioritization.** The Board or its staff shall prioritize the selection of projects. Prioritization criteria include community size, dam hazard-potential classification, dam

condition, and number of persons at risk from dam failure.

(A) **Community size.** Communities with a population of 7,000 people or less shall receive higher priority than communities with a population of over 7,000 as reported in the most recent decennial census published by the United States Bureau of the Census.

(B) **Dams hazard-potential classification.** Following prioritization for community population, project dams shall be prioritized by hazard-potential classification as defined in 785:25-3-3. High hazard-potential dams are prioritized highest; significant hazard-potential dams shall be prioritized second highest, and low hazard-potential dams shall be prioritized lowest.

(C) **Dam condition rating.** Following prioritization for hazard-potential classification, project dams shall be prioritized by a combination of condition rating and the number of persons at risk due to dam failure. The inspecting engineer for the project dam shall report condition ratings for verification by the Board Dam Safety staff. Dam condition ratings are reported to USACE for the National Inventory of Dams (NID) by the Board which has final authority on assignment of official condition ratings. Only dams assigned a condition rating of poor or unsatisfactory are eligible for funding through this program.

(D) **Number of persons at risk.** The number of persons at risk due to dam failure (PAR) shall be calculated by Board staff using dam breach inundation maps required by 785:25-7-6, population data obtained from the Department of Homeland Security, and roadway maps. PAR is calculated by overlaying breach inundation maps with population grid datasets for both day and night scenarios.

(b) **Final ranking.**

Once all eligible projects have been prioritized as set forth above, they are then ranked by the following priority system based on dam condition and PAR.

1. Unsatisfactory condition, greater than 1,000 PAR
2. Unsatisfactory condition, between 100 and 1,000 PAR
3. Poor condition, greater than 1,000 PAR
4. Unsatisfactory condition, between 10 and 100 PAR
5. Poor condition, between 100 and 1,000 PAR
6. Unsatisfactory condition, between 1 and 10 PAR
7. Poor condition, between 10 and 100 PAR
8. Poor condition, between 1 and 10 PAR
9. Unsatisfactory condition, 0 PAR
10. Poor condition, 0 PAR

785:50-17. Disbursement of funds.

(a) **Action following Board approval and prior to disbursement of funding.**

(1) **Notification of approval.** Upon approval of an OKDR grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six (6) months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

(3) **Additional conditions prior to disbursement of grant funds.**

(A). Applicant shall establish and maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant. Once the Board or its staff has deemed the proposed activities listed in the invoice are eligible for OKDR Grant funding, are within the approved scope of work, and meet all legal requirements, the Board shall deposit the grant funds into the (appropriate account). The applicant shall then expend funds from the account only as permitted in the grant agreement, Board rules, and state guidelines

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project.

(C) If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(D) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) **Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the OKDR grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

- (A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or
- (B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased OKDR

grant amount during the following fiscal year. The request for an increased OKDR grant amount shall be treated as a new application on its own merits; provided, the original application shall not be counted for purposes of the previous grant assistance portion of the priority point determination.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of OKDR grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the OKDR grant amount disbursed by the Board, then any request for additional OKDR grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) **Post-disbursement requests for changes in scope of approved project.** If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return or de-obligate the unexpended amount to the Board.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or

expenditure by the applicant of OKDR grant funds, all as may be deemed appropriate by the Board.