



NEW MEXICO
FINANCE AUTHORITY

To: Members of the New Mexico Finance Authority Legislative Oversight Committee
From: Marquita D. Russel, Chief of Programs
Date: November 16, 2012
Re: Approval of Revisions to the Local Government Planning Fund Rules

Item:

Approval of proposed revisions to the Local Government Planning Fund Rules (“Rules”).

Background Summary:

Over the past several months, the NMFA has been reviewing proposed changes to the Local Government Planning Fund to accommodate amendments to the statute that broadened the use of the fund. Originally called the Water and Wastewater Planning Fund, the Local Government Planning Fund (“LGPF”) was established in 2002 to provide communities with critical funding for planning documents that are required to access federal funding. With the passage of the 2102 amendments, qualified entities can now access the LGPF to fund planning documents for a wide variety of public projects. To date, the LGPF has received \$6 million in funding: \$5 million from transfers from the PPRF and \$1 million general fund appropriation. The LGPF currently has approximately \$2.5 million in available funding.

The Rule promulgation process under the NMFA Act requires that the NMFA Legislative Oversight Committee and Board of Directors approve the same set of Rules. At its October meeting, the NMFA Legislative Oversight Committee approved revised Rules adding only the requirement for NMFA to establish minimum criteria for the various plans it will fund through the LGPF. Since that time, the NMFA Board has requested two additional changes. The first is to increase the amount of funds available to an entity from \$50,000 per 24-month period to \$100,000 per 24-month period, while keeping in place the \$50,000 per planning document cap. The second is to include Metropolitan Redevelopment Plans as eligible “Economic Development Plans.” These requested changes are reflected in the attached the Rules, which have been marked to show the changes since the Committee’s adoption of the Rules in October.

Additionally, as part of its approval in October, the Committee required that the NMFA establish minimum criteria for the plans it funds. To accommodate this request, the NMFA Board will adopt policies that reference established guidance documents for each type of plan it funds and require that these guidance documents be available on the NMFA’s website. NMFA is currently gathering best practice templates for planning documents, such as USDA Bulletins on Preliminary Engineering Reports for Water, Wastewater and Solid Waste projects.

Action Requested:

Staff recommends approval of the Local Government Planning Fund Rules as revised.

RULES
GOVERNING THE
LOCAL GOVERNMENT PLANNING FUND
AS ADOPTED ON
[_____ 2012]
BY THE BOARD OF DIRECTORS
OF THE
NEW MEXICO FINANCE AUTHORITY
AND APPROVED BY THE
NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE
ON

~~OCTOBER 12, 2012~~NOVEMBER 30, 2012

SECTION 1. AUTHORITY FOR AND PURPOSE OF RULES

The Local Government Planning Fund (the "Fund"), originally called the Water and Wastewater Planning Fund, was created by Laws 2002, Chapter 26, as amended by Laws 2005, Chapter 180, and Laws 2012, Chapter 49 (the "Act"). Pursuant to the Act, the Authority is required to establish rules necessary to administer the Fund. The purpose of these Rules, which may be supplemented by Authority Board policies as provided herein, is to define the terms and conditions under which the Authority will make grants available from the Fund and to govern the implementation and administration of the Fund. These Rules do not apply to other programs established by the Authority.

SECTION 2. DEFINITIONS

- A. "Applicant" means a Qualified Entity which has filed a request for a Planning Grant from the Authority;
- B. "Application" means a written document filed with the Authority by an Applicant for the purpose of obtaining a Planning Grant to evaluate and to estimate the costs of implementing the most feasible alternatives for meeting Water and Wastewater Public Project and other Infrastructure needs or to develop Water Conservation Plans, Long-Term Master Plans, Economic Development Plans or energy audits; an Application may include a form prescribed by the Authority, written responses to requests for information by the Authority, or other format as determined by the Authority;
- C. "Authority" means the New Mexico Finance Authority;
- D. "Board" means the New Mexico Finance Authority Board of Directors created by the New Mexico Finance Authority Act;
- E. "Economic Development Plan" means the plan necessary to implement a Qualified Entity's Local Economic Development Act ordinance as provided in Sections 5-10-1 to 5-10-13, NMSA 1978, [a plan necessary to implement a Qualified Entity's Metropolitan Redevelopment Plan as provided in Sections 3-60A-1 to 3-60A-48, NMSA 1978](#), or a feasibility study designed to determine the viability, need and impact of a proposed economic development opportunity;
- F. "Fund" means the Local Government Planning Fund;
- G. "GGRT" means the portion of the Governmental Gross Receipts Tax received by the Authority pursuant to Section 7-1-6.38, NMSA 1978, as amended.

- H. "Local Average Annual Residential Rate" means the amount, on an annualized basis, a residential customer of a Planning Grant Qualified Entity would pay for 6,000 gallons of water or wastewater service per month;
- I. "Local Match" means the percentage of Unmet Need not eligible for Planning Grant funds as determined under Section 5. Such match may include state or federal funding, but may not include a regional partner's Planning Grant;
- J. "Local Median Household Income" means the median household income, as determined by the Board, for the relevant service area of the Planning Grant Qualified Entity;
- K. "Long-Term Master Plan" means a plan that evaluates the infrastructure needs of a Qualified Entity that are anticipated to exist for a period of at least 5 years, and methods of addressing such needs;
- L. "Oversight Committee" means the joint interim legislative committee established pursuant to § 6-21-30 NMSA 1978;
- M. "Planning Grant" means financial assistance from the Authority in the form of a grant pursuant to Laws 2012, Chapter 49, and these Rules for the purpose of financing a Planning Document;
- N. "Planning Grant Agreement" means an agreement between the Authority and an Applicant for a Planning Grant providing for the terms and conditions of the use and, if applicable, reimbursement of the Planning Grant;
- O. "Planning Grant Qualified Entity" means a Qualified Entity excluding water or wastewater systems or other entities to whom a grant would constitute an impermissible donation within the meaning of Section 14, Article IX of the Constitution of the State of New Mexico;
- P. "Planning Document" means a project to evaluate and to estimate the costs of implementing the most feasible alternatives for meeting public infrastructure project needs, including Environmental Information Documents compliant with the New Mexico's State Environmental Review Plan, Comprehensive Plans and Asset Management Plans, or to develop a Water Conservation Plan, Long-Term Master Plan, Economic Development Plan or energy audit for the Planning Grant Qualified Entity;
- Q. "Qualified Entity" means the state or any agency or institution of the state or any county, municipality, school district, special district, community water association or an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo;

- R. “Rules” means these Rules Governing the Local Government Planning Fund;
- S. "State Average Residential Rate for Water or Wastewater" means the average residential rate for water or wastewater service within the State as determined by the Authority.
- T. “Statewide Median Household Income” means the median household income for the State of New Mexico as most recently determined by the United States Bureau of the Census;
- U. “Unmet Need” means the maximum amount of planning grant funding that an entity may receive for its project limited by the lesser of the planning grant limit or local match requirement;
- V. "Water and Wastewater Public Project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a Planning Grant Qualified Entity for its water or wastewater system;
- W. "Water Conservation Plan" means a comprehensive program, including training, change in maintenance practices or facilities, or landscape alteration, designed to reduce water consumption or operating costs through the implementation of conservation measures.

SECTION 3. PROJECT FUNDING AVAILABLE AND ELIGIBLE PROJECTS

Initial funding for this program was made available via the issuance of bonds in an amount not to exceed one million dollars (\$1,000,000) payable from an amount of GGRT not to exceed thirty-five percent (35%) of the GGRT deposited in the PPRF, which net proceeds of the bonds was deposited in the Fund and used for purposes of the Fund. Funding has or may also be made available from general fund money and Public Project Revolving Funds appropriated by the legislature to the Fund or from any other public or private money dedicated to the Fund.

Because of the relatively small amount of Planning Grant funding available, the total amount of Planning Grant funding available per planning document may not exceed \$50,000 and the total amount of Planning Grant funding per entity may not exceed \$100,000- per 24 month period ~~may not exceed \$50,000~~ unless the Board waives the requirement due to additional availability of funds or critical need. The Board shall have discretion to prioritize applications received by Planning Grant Qualified Entities as outlined in the Board’s policies. Planning Grant funding may be made available only for the portion of a Planning Document that the Planning Grant Qualified Entity cannot cash fund, as determined by the Authority.

Any Planning Grant Qualified Entity that receives a Planning Grant from the Fund in excess of \$50,000 shall be required under a Planning Grant Agreement to reimburse the Fund for

the amount of the Planning Grant when the entity receives financing from any federal source. Pursuant to a Planning Grant Agreement, each Planning Grant Qualified Entity that receives a Planning Grant from the Fund shall be required to submit annual financial statements and shall be required to report annually to the Authority on the status of the project and any financing applied for or received, if applicable.

Grants from the Fund may be made to Planning Grant Qualified Entities without specific authorization by law as required in Section 6-21-6 and 6-21-8, NMSA 1978.

SECTION 4. EVALUATION OF APPLICANT AND PROJECT

To be considered for a Planning Grant, a Planning Grant Qualified Entity must submit an Application to the Authority for financial assistance for a Planning Document. The Authority will analyze the Application to determine if the Planning Grant Qualified Entity has the financial capacity to fund the Planning Document completely from its available financial resources. The amount of the Planning Document that cannot be funded from available financial resources, such as unrestricted cash balances, will be considered to be the Planning Grant Qualified Entity's Unmet Need for that project. The maximum amount of a Planning Grant award that the Authority will provide for the Planning Document is the lesser of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit of \$50,000, with a maximum of \$100,000 per entity per 24-month period, unless otherwise waived by the Board.

The Authority's Board of Directors shall establish minimum criteria for acceptable plans. All final Planning Documents must be in a form acceptable to the Authority.

SECTION 5. DETERMINATION OF QUALIFIED ENTITIES FINANCIAL NEED

5.1 Base Planning Grant Award Determinations

To determine the base amount of any Planning Grant award for an Applicant (except as provided in Section 5.2 of these Rules in connection with a Planning Document for an Economic Development Plan, Environmental Information Document or an Urgent project), the Authority will evaluate the Planning Grant Qualified Entity's Local Median Household Income and place it into a Planning Grant category, as described below in Section 5.1 (A). Second, the Authority will calculate for projects proposed to be financed with utility system or other enterprise system revenues derived from user charges the Local Burden Ratio of the Planning Grant Qualified Entity, as described in Section 5.1 (B) or for Economic Development Feasibility Studies the determination of relative economic need of the Planning Grant Qualified Entity, as described in Section 5.1 (C) to determine if the Planning Grant Qualified Entity is eligible to qualify for an additional Planning Grant award. These two calculations taken together provide the total Planning Grant award, if any.

(A) Local Median Household Income.

Based on the Planning Grant Qualified Entity's Local Median Household Income, the Authority will classify each Planning Grant Qualified Entity into one of the following three categories:

(1) Category I - Planning Grant Qualified Entities with Local Median Household Incomes of less than one-hundred percent (100%) but greater than seventy-five percent (75%) of the State Median Household Income. Planning Grant Qualified Entities in this category may be eligible for a Planning Grant of twenty-five percent (25%) of their Planning Document cost, not to exceed the amount of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(2) Category II - Planning Grant Qualified Entities with Local Median Household Incomes of less than or equal to seventy-five percent (75%) but greater than fifty percent (50%) of the State Median Household Income. Planning Grant Qualified Entities in this category may be eligible for a Planning Grant of fifty percent (50%) of their Planning Document cost, not to exceed the amount of the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(3) Category III - Planning Grant Qualified Entities with Local Median Household Incomes of less than or equal to fifty percent (50%) of the State Median Household Income. Entities in this category maybe eligible for a Planning Grant of seventy-five percent (75%) of their Planning Document cost, not to exceed the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(B) Additional Consideration for Projects Proposed to be Financed with Utility System or other Enterprise System Revenues

The Authority may provide additional grant funding for projects proposed to be financed with utility system or other enterprise system revenues based upon a calculation of the Planning Grant Qualified Entity's Local Burden Ratio as described below to determine if the Planning Grant Qualified Entity is eligible to qualify for an additional Planning Grant award. These two calculations taken together provide the total Planning Grant award, if any.

(1) Local Burden Ratio. In addition to taking Local Median Household Income into consideration, the Authority may also consider the Planning Grant Qualified Entity's efforts to generate revenue streams sufficient to cash fund the Planning Document.

In evaluating Local Burden Ratio, the Authority will determine the Planning Grant Qualified Entity's local water, wastewater or solid waste rate burden. The Authority will then compare the local rate burden with the state average rate burden as follows:

$$\frac{\text{Local Average Annual Residential Rate}}{\text{Local Median Household Income}}$$

$$\text{Local Burden Ratio} = \frac{\text{State Average Residential Rate}}{\text{State Median Household Income}}$$

If the Local Burden Ratio for the Planning Grant Qualified Entity is greater than or equal to 1.0 but less than 1.5, then the Planning Grant Qualified Entity may be eligible to receive an additional twenty-five percent (25%) of its Planning Document in the form of a Grant, not to exceed the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

If the Local Burden Ratio for the Planning Grant Qualified Entity is greater than or equal to 1.5 but less than 2.5, then the Planning Grant Qualified Entity may be eligible to receive an additional fifty percent (50%) of its Planning Document in the form of a Grant, not to exceed the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

If the Local Burden Ratio for the Planning Grant Qualified Entity is greater than or equal to 2.5, then the Planning Grant Qualified Entity may be eligible to receive an additional seventy-five percent (75%) of its Planning Document in the form of a Grant, not to exceed the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit.

(C) Additional Consideration for Economic Development Feasibility Studies or Metropolitan Redevelopment Plans

The Authority may provide funding for economic development feasibility studies or Metropolitan Redevelopment plans ~~plansy funding~~ to those Planning Grant Qualified Entities that have adopted their Local Economic Development Act ordinances. To determine the amount of the Economic Development feasibility study Planning Grant award greater than the base amount provided under Section 5.1 (A), the Authority will consider the Applicant's relative economic need in determining whether to provide a Planning Grant and the amount of the Planning Grant. Using figures available from the latest census, the Authority will consider two measures which are computed for the Applicant and then compared to the State:

(1) Job Availability. Are there sufficient jobs available given the working age population? To determine jobs available in relation to working age population (age 16 and above), the Authority will calculate the:

$$\frac{\text{Qualified Entity's Employed Persons 16+} / \text{Qualified Entity's Population 16+}}{\text{Statewide Employed Persons 16+} / \text{Statewide Population 16+}}$$

If the Applicant's percentage of working age population is less than the State's percentage, then the Planning Grant Qualified Entity may be eligible to receive an additional twenty five percent (25%) of its Planning Document in the form of a Grant, not to exceed the Planning Grant Qualified Entity's unmet need or the Planning Grant limit.

(2) Wage sufficiency. Wage sufficiency shall be determined solely by the median earnings of those workers using the following calculation:

Median earnings of Employed Persons within the Qualified Entity
Median earnings of Employed Persons Statewide

If the Applicant's median earnings among those employed are lower than the statewide median, then the Planning Grant Qualified Entity may be eligible to receive an additional twenty five percent (25%) of its Planning Document in the form of a Grant, not to exceed the Planning Grant Qualified Entity's Unmet Need or the Planning Grant limit. employed than that percentage for the state as a whole shall be awarded an additional

Section 5.2 Waivers of Local Match Requirement

Applications for infrastructure feasibility studies needed to cure Urgent needs, such as chronic or acute violations of state or federal regulations, Economic Development Plans needed to implement the Local Economic Development Act, Sections 5-10-1 to 5-10-13, NMSA 1978, and Environmental Information Documents that are compliant with New Mexico's State Environmental Review Process plan approved by the US EPA, will be provided with 100% grant funds for the identified project as further provided under the Board's policies.

SECTION 6. ADMINISTRATIVE FEES AND COSTS

Administrative fees and costs associated with any Planning Grant award under these Rules and the Act will come from the Fund.

SECTION 7. PLANNING GRANT APPROVAL REQUIREMENTS

Based on Sections 4 and 5 above, the Board may award a Planning Grant to the Applicant provided the following requirements are satisfied.

- A. In approving a Planning Grant award, the Board must find that the Planning Grant Qualified Entity does not have the ability to cash fund the Planning Document with legally available funds.
- B. To be eligible for a Planning Grant, the Planning Grant Qualified Entity must agree to properly maintain separate project accounts in accordance with generally accepted accounting principles and to conduct an annual audit or review of the Applicant's financial records.
- C. In addition to the foregoing, the Planning Grant Qualified Entity must satisfy any other requirements as may be determined by the Authority.

SECTION 8. COOPERATION WITH STATE AGENCIES

The Authority or its staff may request the assistance of other state agencies, e.g. the Department of Finance and Administration, the New Mexico Environment Department, New Mexico State Engineer, the Department of Transportation, the Energy, Minerals and Natural Resources Department or New Mexico Economic Development Department, in determining the sufficiency or adequacy of an applicant and/or application, as well as in evaluating the completed Planning Document.

SECTION 9. AMENDMENT OF RULES

These Rules may be amended or repealed at any time by the Authority with the prior approval of the Oversight Committee.

Adopted: May 30, 2002
First Revision: December 15, 2005
Second Revision: [_____2012]