

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

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 19. American Rescue Plan Act (ARPA) Tribal Cooperation Grant Program Requirements and Procedures [NEW]

785:50-19-1. Program description [NEW]

785:50-19-2. Definitions [NEW]

785:50-19-3. Application review and disposition [NEW]

785:50-19-4. Applicable law; deadline for applications; eligible project costs [NEW]

785:50-19-5. Project Selection [NEW]

785:50-19-6. Disbursement of funds [NEW]

AUTHORITY:

Senate Bill 4, Second Extraordinary Session, 58th Oklahoma Legislature (2022); Oklahoma Water Resources Board; 82 O.S., § 1085.2

ADOPTION:

August 16, 2022

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2023, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Water and wastewater infrastructure systems that do not meet state standards or are insufficient for the needs of the community present a threat to public health and safety. Ensuring disbursement of these funds as quickly as possible will help communities meet these needs more effectively. Additionally, emergency rules are necessary in this instance to comply with deadlines of the federal programs. To meet ARPA requirements, funds must be obligated in both grant programs for a project by December 31, 2024 and expended by December 31, 2026.

GIST/ANALYSIS:

Subchapter 19 is proposed to add language to implement provisions of Senate Bill 4 of the Second Extraordinary Session of the 58th Oklahoma Legislature (2022). This measure allocates funds to OWRB to establish a grant program to match tribal investment in rural water infrastructure projects as authorized by the American Rescue Plan Act ("ARPA"). The funds shall be used as recommended and approved by the Joint Committee on Pandemic Relief Funding on March 10, 2022. The legislation directs OWRB to create rules and establish procedures for evaluation and awarding grant applications. The intended effect of the emergency rules is to provide a structure for the OWRB to review ARPA Tribal Cooperation Grant program requirements, clarify the approval process, disburse funds, and provide necessary information to potential applicants regarding laws, guidelines, and the process.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

SUBCHAPTER 19. AMERICAN RESCUE PLAN ACT TRIBAL COOPERATION GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-19-1. Program description

The Oklahoma Legislature has authorized the American Rescue Plan Act ("ARPA") Tribal Collaboration 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 water and wastewater investments. The Board's rules applicable to ARPA grants shall be construed so as to consider only the ARPA grant program administered by the Board and shall not be construed so as to consider ARPA grant programs administered by other governmental persons or other grant programs administered by the Board.

785:50-19-2. 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 submits an application for an ARPA grant on its own behalf, or for whom an application is submitted.

"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.

"Project" means any project that meets the federal eligibility requirements of the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments, a part of the American Rescue Plan Act, Public Law 117-2.

"Qualified entity" means a Community as defined above.

785:50-19-3. 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 ARPA grant program shall be as follows:

(1) Pre-application conference.

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating 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 generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) 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 in a form which meets the requirements of the Board.

(C) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(D) All applicants shall have executed all necessary and incidental instruments, commitments, and documents from all other revenue or funding sources needed to finance and complete the project.

(E) All applicants shall provide documentation stating the financial commitment for the project that is being matched from the identified tribal entity.

(3) Submittal to Board. Upon completion of staff review, the submitted application (with staff recommendations, if any) 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 ARPA grant program, the Board shall give consideration to 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 compliance 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.

(2) Eligibility. The applicant must be qualified, and the proposed project must be for a qualified purpose as defined in 785:50-15-2.

(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.

(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 appears to be 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 give consideration to 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) ARPA grant amount, availability of funds. In sizing an ARPA grant, the Board shall take into consideration the current and anticipated availability of ARPA program funds.

(8) Conservation Measures. The Board shall consider whether the applicant has taken all reasonable measures to limit waste and conserve water.

(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. Such criteria shall not be deemed exclusive. In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(2) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as 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 ARPA 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 an eligible entity.

(2) Failure to complete the application and provide the required documentation.

(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 of funds and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

785:50-19-4. Applicable law; deadline for applications; eligible project costs

(a) The Board shall administer applications for ARPA funds in accordance with any provisions of law applicable to such applications and ARPA funds, which may include, but is not limited to:

(1) Recipients are required to complete procurement procedures according to 2 CFR 200.317-200.327.

(2) Recipients may be required to complete a Single Audit pursuant to 2 CFR Part 200, Subpart F.

(3) Recipients are required to have an active registration on Sam.gov pursuant to 2 CFR Part 25.

(b) To be considered for and receive funding from funds available for the ARPA grant program, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all material attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(c) For purposes of evaluating, approving, and funding an application for an ARPA grant, categories of project costs which are eligible for assistance shall include, but are not limited to:

(1) Architecture and/or engineer fees related to the project.

(2) Fees for soil testing.

(3) Fees for surveying.

(4) Payments to contractor(s) for construction of the improvements.

(5) Legal fees and expenses of counsel for the applicant which are related to the project.

(6) Services of full-time or part-time inspector.

Provided, however, administrative expenses shall not be eligible project costs.

(d) The ARPA 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.

785:50-19-5. Project selection

(a) Projects for this grant program shall be selected by the Cabinet Secretary for Energy and Environment in cooperation with representatives from tribal entities, as identified in the authorizing legislation.

(b) The Office of the Secretary for Energy and Environment shall provide the project list to Board staff no later than November 1, 2022. If additional funding becomes available after the submission of the original list, the Office of the Secretary for Energy and Environment shall submit a list of additional projects within thirty (30) days of the funding becoming available.

785:50-19-6. Disbursement of funds

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

(1) **Notification of approval.** Upon approval of an ARPA 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 in compliance with the Competitive Bidding Act 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 6 months following the date of Board approval of the application, then the Board's approval shall expire, and no funds shall be released.

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

(A) Applicant shall 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.

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

- (i) the amount of funds 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.

(C) 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 ARPA 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) that the Board reconsider the application with an increased ARPA grant amount.

(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.

(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 ARPA 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 by pay requests 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) **Disbursement of funds for project costs.** ARPA funds shall be expended for the designated project only after the other identified sources of funds for the project have been expended. This shall in no way limit the Board from expending ARPA funds according to the Public Law 117-2 and in order to meet the required deadlines.

(4) **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 ARPA grant amount disbursed by the Board, then any request for additional ARPA grant money shall follow the rules in this Subchapter governing new applications.

(5) **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 reasonable 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.

(6) Post-disbursement action regarding unexpended funding. If following completion of the project, it develops that the applicant needed less money for the project the applicant shall deobligate the unexpended amount to the Board in accordance with the grant agreement.

(7) 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 ARPA grant funds, all as may be deemed appropriate by the Board.