

TITLE 93. BROADBAND GOVERNING BOARD
CHAPTER 10. BROADBAND GOVERNING BOARD GRANT PROGRAM

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 3. PROGRAM ADMINISTRATION

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93:10-3-2.1. ARPA Overbuild Prevention Contest Process

(a) Purpose.

(1) The Oklahoma Broadband Office, at the direction of the Broadband Governing Board, is administering a statewide competitive grant program under the American Rescue Plan Act – State and Local Fiscal Recovery Fund (ARPA-SLFRF). Applicants submit proposed projects through the OBO's ARPA-SLFRF portal during the project submission period. An Overbuild Prevention Contest Process will follow, allowing ISPs to contest any of the submitted proposed projects, according to this process.

(2) This Overbuild Prevention Contest Process will serve as an opportunity for providers with existing infrastructure within the proposed project areas to submit the addresses that are already served or will be served within twelve (12) months, or up to eighteen (18) months if extended by the OBO, of the close of the project submission period. The Overbuild Prevention Contest Process will allow for the program to meet the needs of unserved and underserved Oklahomans while also ensuring that the selected projects for the awards do not conflict with the existing services or services to be provided within twelve (12) months, or up to eighteen (18) months if extended by the OBO, of the close of the project submission period, or with grant program funds awarded by other governmental entities that cannot be matched with ARPA-SLFRF funding.

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

(1) "Address" or "Addresses" or "BSL" means a broadband serviceable location as determined by the Federal Communication Commission's National Broadband Map.

(2) "Anchor Institution" or "Community Anchor Institution" or "CAI" means an entity, such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals.

(3) "ARPA-SLFRF portal" means the online application tool administered by the OBO for submission of proposed projects.

(4) "Applicant" means an ISP that submits a valid Proposal for grant funding to the OBO during the Project submission period.

(5) "Board" or "BGB" means the Oklahoma Broadband Governing Board.

(6) "Contest" means a submission of all required information to the OBO by an ISP to contest a Proposed Project.

- (7) "Contest Period" means the timeframe set by the OBO for ISPs to contest one or more Proposed Projects.
- (8) "Contested Applicant" means an ISP whose Proposed Project is being contested by another ISP.
- (9) "Contester" means an entity that provides broadband service, including, but not limited to, a for-profit, a non-profit, cooperative, local government, municipality or tribal entity, submitting a Contest.
- (10) "CostQuest Fabric I.D." means the identification that is assigned by CostQuest to each broadband serviceable location.
- (11) "Gbps" means gigabits per second.
- (12) "Grant Program" or "Program" means the statewide competitive grant process administered by the OBO under the American Rescue Plan Act – State and Local Fiscal Recovery Fund (ARPA-SLFRF).
- (13) "Internet Service Provider" or "ISP" means an entity that provides broadband service, including, but not limited to, a for-profit, a non-profit, cooperative, local government, municipality or tribal entity.
- (14) "Partnership" refers to an ISP or multiple ISPs that partner together on a proposed project.
- (15) "Proposed Project" or "Proposal" means a complete submission for grant funding provided by an Applicant to the OBO pursuant to Program requirements.
- (16) "Project Area" means the addresses covered by a Proposed Project.
- (17) "Project Submission Period" means the timeframe set by the OBO to accept Proposed Projects.
- (18) "OBO" means the Oklahoma Broadband Office.
- (19) "Overbuild Prevention Contest Process" means the challenge process detailed in this section by which a Contester may contest one or more Proposed Projects.
- (20) "Map" means the Federal Communications Commission National Broadband Map which will be used to determine Broadband Serviceable Locations.
- (21) "Mbps" means megabits per second.

(c) Submitting a Contest.

- (1) One Contest should be submitted for each Proposed Project. In the event that multiple Proposed Projects include an identical BSL, a Contester must submit a Contest for each Project.
- (2) To submit a Contest, a Contester shall provide the OBO, in a manner determined by the OBO as set forth in the Notice of Funding Opportunity, with evidence of the following:
 - (A) That all or part of a Proposed Project Area is:
 - (i) Currently served at a minimum of 100/20 Mbps scalable to 100/100 Mbps; or
 - (ii) Will be under construction for broadband service within twelve (12) months, or up to eighteen (18) months if extended by the OBO, of the Project Submission Period; or
 - (B) The ISP has received funding from another funding source (state, federal, tribal, or private) for broadband deployment in the suggested project area that cannot be paired with or matched with Grant Program ARPA funding.
 - (C) A copy of the signed affidavit as provided in subsection (g) of this section, certifying that the Contest is accurate and true.

(D) Within fourteen (14) calendar days of the close of the portal submission period, the OBO shall publish on its website, broadband.ok.gov, the proposed projects' unserved and underserved areas and the proposed broadband internet speeds for each potential application submitted.

(d) Burden of Proof.

(1) For a Contest submitted pursuant to subsection (c) of this section to be deemed eligible for consideration, the Contester must meet the burden of proof by submitting the Contest in the manner and form prescribed by the OBO.

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

(e) Processing a Contest.

(1) Within five (5) business days following the date of a valid Contest being submitted to the OBO, the Contested Applicant which submitted the Proposed Project shall be provided copies of the Contest materials in a manner determined by the OBO.

(2) Within five (5) business days of receiving Contest materials from the OBO, the Applicant shall respond to the Contest and acknowledge receipt of same in a manner determined by the OBO.

(3) Upon receiving a completed response to the Contest from the Contested Applicant, the OBO shall resolve the dispute within twelve (12) business days.

(f) Resolving a Contest.

(1) A Contest will be resolved by either:

(A) A determination that the Contest is unsuccessful and a declaration of formal acceptance of the Proposed Project as eligible for funding. The OBO will notify both the Contester and the Applicant of this resolution; or,

(B) A determination that the Contest is successful. The OBO will notify the Contester and the Applicant of this resolution.

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

(ii) Upon receipt of a revised Proposed Project, the OBO may elect to determine the Project is eligible for funding.

(2) Upon processing all Contests, the OBO shall post on its website a list of successful Contests and the Proposed Project Areas affected by said Contests.

(g) Template Contest Affidavit.

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

(2) I, _____, certify that I am duly authorized by the Contester to submit this Contest and included materials; that the Contester has the capacity to provide minimum actual speeds of 100 Mbps downstream and 20 Mbps upstream for households and 1 Gbps symmetrical for Anchor Institutions; that if it is a proposed project to be completed in twelve (12) months, or up to eighteen (18) months if extended by the OBO, it will provide service of at least 100/20 Mbps for households and 1 Gbps symmetrical for Anchor Institutions and scalable to equal or higher speeds than the project area it is contesting. In the event of a Contest that involves a Contester's plans to deploy broadband in the proposed area, and those addresses are not under construction within twelve (12) months, or eighteen (18) months if extended by the OBO, that the broadband infrastructure is designed to meet the identified needs of the

contested addresses, and that all the information submitted as part of this Contest is true and correct to the best of my knowledge.

(A) Signature:

(B) Print Name:

(C) Title:

(D) Contester:

(E) Email: