

Chapter Adm 44

ENERGY CONSERVATION AND EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS

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Note: Chapter Adm 44 was created as an emergency rule effective August 22, 2000.

Adm 44.01 Authority. Sections 16.004 (1) and 16.957 (2) (c), Stats., authorize the department to promulgate rules for energy conservation and efficiency and renewable resource public benefits programs.

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.02 Purpose. The purposes of this chapter are to establish requirements, procedures and criteria to be followed by program administrators in soliciting and selecting applications for grant funding to be awarded by the department for energy programs established under s. 16.957 (2) (b) 1., Stats., and to determine public benefits program continuation or reduction.

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.03 Definitions. In this chapter:

- (1) "Commission" means the public service commission.
- (2) "Contractor" means a person who enters into a grant agreement with a program administrator.
- (3) "Department" means the department of administration.
- (4) "Division administrator" means the administrator of the division of energy and public benefits in the department of administration, or a designee.
- (5) "Grant" means a financial award by the department to a contractor selected by a program administrator for the purpose of implementing a public benefits program.
- (6) "Grant agreement" means a contract between a program administrator and a contractor containing the terms and conditions of a grant awarded under s. 16.957 (2) (b), Stats.
- (7) "Person" has the meaning set forth in s. 990.01 (26), Stats.
- (8) "Program administrator" means a non-stock, non-profit corporation organized under ch. 181, Stats., that contracts with the department to administer and select contractors for a public benefits program under s. 16.957 (3) (b), Stats., or a designee approved by the department.
- (9) "Public benefits program" means a program established in accordance with s. 16.957 (2) (b) 1., Stats., and designated as such in a contract between the department and a program administrator under s. 16.957 (3) (b), Stats.

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.04 Grant solicitation and public notice.

(1) **COMPETITIVE SOLICITATION.** A program administrator soliciting proposals for grants under s. 16.957 (3) (b), Stats., shall ensure that all solicitations are conducted in a manner that provides for fairness and competition whenever practicable.

(2) **PUBLIC NOTICE.** (a) A program administrator shall provide reasonable public notice of all solicitations of grant proposals under s. 16.957 (3) (b), Stats. Notice may be made through the print, broadcast, or telecommunications media, including the Internet, at the discretion of the program administrator. The notice period shall be as specified in the contract entered into between the

department and the program administrator under s. 16.957 (3) (b), Stats., which shall be commensurate with the scope of the grant.

(b) The notice shall include the purpose of the grant, the selection criteria, application procedures, and all applicable solicitation deadlines that an applicant is required to meet, or shall contain instructions for obtaining this information.

(3) **APPLICATION REQUIREMENTS.** All applications for a grant under s. 16.957 (2) (b) 1., Stats., shall be submitted to the department or the program administrator as directed in the notice provided under this section, on forms prescribed by the department. All applications shall be fully completed, executed by an individual having authority to act for the applicant, and submitted by the required filing deadline.

Note: Application forms may be obtained by contacting the Division of Energy and Public Benefits, Department of Administration at 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, Wisconsin 53707-7868, or by telephone at (608) 266-8234.

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.05 Contractor selection criteria. (1) Prior to the solicitation of a grant under s. 16.957 (2) (b) 1., Stats., the program administrator shall submit to the department the selection criteria to be used to evaluate grant applications and to select a contractor. Selection criteria for all proposals shall be designed to evaluate the following:

- (a) Compliance with s. 16.957 (2) (b) 1., Stats.
- (b) Qualifications and financial soundness of the applicant.
- (c) Technical feasibility and quality of the proposed work plan, including the feasibility of the proposed goals and performance measures and feasibility of the environmental and economic benefits identified as objectives of the application.
- (d) Compliance with any of the policies and goals of the public benefits program issued by the department.
- (e) Other factors the department or program administrator considers relevant.

(2) The department may modify or reject the proposed criteria in writing to the program administrator. The division administrator and the program administrator may negotiate new criteria to replace any modified or rejected criteria.

(3) The program administrator shall notify the division administrator in writing of its intent to make a grant award to a contractor, but shall not enter into a grant agreement with the selected contractor for at least 5 business days after notice is received by the division administrator. The program administrator may choose to negotiate a combination of proposals from various contractors, if the program administrator determines that such a combination would better meet the objectives of its contract with the department.

(4) The department may reject a proposed contractor for cause in writing within 5 business days of the receipt of a program administrator's notice of intent to award. A program administra-

tor may appeal a rejection of a proposed contractor under s. Adm 44.06.

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.06 Appeals. (1) RIGHT TO PROTEST. A program administrator that disputes the department's rejection of a selected contractor under s. Adm 44.05 may protest to the department. The protest shall be served in writing on the division administrator within 15 days of the receipt of the department's rejection of a selected contractor.

(2) AUTHORITY TO RESOLVE PROTESTS. The division administrator may settle and resolve any protest brought under this subsection. If the protest is not resolved by mutual agreement, the division administrator shall issue a written decision to the program administrator.

(3) APPEAL. A program administrator may appeal the decision of the division administrator by alleging a violation of statute or a provision of this chapter to the secretary of the department within 30 calendar days of issuance of the division administrator's decision. The secretary or designee shall take necessary action to settle and resolve the appeal and shall issue a decision in writing which shall be mailed or otherwise served on the program administrator.

(4) GRANT AGREEMENT STATUS DURING APPEAL PROCESS. A program administrator shall not enter into a grant agreement with a proposed contractor while a decision is pending from the division administrator under a protest, or from the department secretary under an appeal. A grant agreement entered into while a protest or appeal is pending shall be voidable.

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.07 Grant agreements. The department shall provide the program administrator with terms and conditions to be used in all grant agreements between a program administrator and a contractor. Failure of a selected contractor to execute a grant agreement shall result in withdrawal of the offer to award. Upon approval of the division administrator, the program administrator may negotiate modifications to the terms and conditions of the standard grant agreement prior to its execution. The grant agreement shall include the following minimum terms and conditions:

(1) Quantifiable goals and performance measures that contribute to meeting the priorities of s. 16.957 (2) (b) 1. a., Stats. and the specific objectives of the grant agreement.

(2) A requirement to cooperate fully with independent evaluators and financial auditors, identified by the department, in evaluations and audits of the work performed under the terms of the grant agreement.

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.08 Program continuation, discontinuation or reduction.

(1) Beginning December 31, 2003 and each succeeding December 31 thereafter, the department shall submit to the council on utility public benefits a report containing recommendations for the continuation, discontinuation or reduction in the energy conservation and efficiency and renewable resource programs operated under s. 16.957 (2) (b) 1., Stats. The report shall include a determination as to whether each program need has been satisfied by the private sector market.

(2) After receiving advice from the council on utility public benefits, the department shall annually determine and make public, no later than March 1, 2004 and every March 1 thereafter, its decision to continue, discontinue or reduce the energy efficiency and renewable energy program operated under s. 16.957 (2) (b) 1., Stats. The department shall also determine the total funding need for the programs to be continued or continued at reduced funding levels.

(3) The total funding amount determined under this section shall be used in the calculation of the aggregate public benefits fee under s. Adm 43.05. The department shall notify the commission of this amount as required under s. 16.957 (2) (b) 2., Stats.

Note: The term "aggregate public benefit fee" in sub. (3) corresponds to the term "public benefits funding level" defined in s. Adm 43.03 (16).

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.

Adm 44.09 Establishing continuation, discontinuation or reduction criteria.

The department shall include the following in the report submitted to the council on utility public benefits under s. Adm 44.08 (1):

(1) An analysis demonstrating whether the need for a program established under s. 16.957 (2) (b) 1., Stats., is satisfied by the private sector market and, if so, a determination whether the program should be discontinued or reduced.

(2) An assessment of the progress of efforts to transform relevant markets into markets that capture a significant portion of the available cost-effective energy efficiency potential.

(3) An analysis of the benefits that state residents receive as a result of the programs under s. 16.957 (2) (b) 1., Stats.

(4) An analysis of the accomplishments of the program in meeting the priorities of s. 16.957 (2) (b) 1. a., Stats.

(5) An analysis of the geographic distribution of funds and benefits under programs operated under s. 16.957 (2) (b) 1., Stats.

(6) Other information and analysis that will assist the council on utility public benefits to provide advice under s. Adm 44.08 (2).

History: Cr. Register, November, 2000, No. 539, eff. 12-1-00.