NEW YORK STATE OF OPPORTUNITY. | Empire State Development

FOR CONSIDERATION
September 21, 2023

TO: The Directors

FROM: Hope Knight

SUBJECT: ConnectALL Office – Regional and Local Assistance Program

REQUEST FOR: Adoption of Regional and Local Assistance Program Guidelines; and Authorization to Take Related Actions

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I. BACKGROUND

The ConnectALL Initiative, announced by Governor Kathy Hochul in January 2022, is an ambitious set of programs and activities aimed at addressing New York State's digital divide, transforming the state's digital infrastructure, and ensuring that all New Yorkers have access to reliable and affordable high-speed broadband internet service. ConnectALL programs are designed and administered by the ConnectALL Office ("CAO"), which is housed within the New York State Urban Development Corporation d/b/a Empire State Development ("ESD").

As part of the ConnectALL Initiative, Governor Hochul designated CAO to administer a Regional and Local Assistance Program ("RLAP"). Through RLAP, ConnectALL will provide funding to assist local governments, counties, municipalities, Tribal Governments, and other government entities or entities created by units of government to plan or prepare for broadband deployment or other digital equity initiatives.

RLAP is a critical complement to the other programs of ConnectALL, including the Affordable Housing Connectivity Program, the Municipal Infrastructure Program, the Digital Equity Program, and the ConnectALL Deployment and Rural Broadband Program. To maximize their effectiveness, these programs require effective planning and partnership on the regional and local level across the state. RLAP will support building local capacity to implement these programs.

II. REGIONAL AND LOCAL ASSISTANCE PROGRAM GUIDELINES

CAO is designated as the administrator of RLA as duly authorized representative to determine program structure and requirements, evaluate applicant information, monitor grantees for project completion and satisfactory performance, collect grantee data to ensure compliance with all program requirements and verify allowable uses of funds, and approve disbursement of grant funds to selected grantees. CAO may provide technical assistance to the applicants during the application and/or the application curing process, at CAO's discretion.

ESD will execute a Grant Disbursement Agreement (GDA) with each Grantee that will describe the planned use of funds, the timeline, the geographic area of focus, and the intended impact on digital equity and a robust broadband marketplace in the area.

III. STATUTORY AUTHORITY

Section 16-GG*2 of the New York State Urban Development Corporation Act ("UDC Act"), Chapter 174 of the Laws of 1968, as amended, establishes the Division of Broadband Access, with the stated goal to "assist in ending the digital divide, supporting a more robust and competitive internet marketplace, and carrying out other actions to ensure universal access to high-speed, reliable, and affordable broadband." See UDC Act, §16-GG*2(1).1. The statute also establishes the ConnectALL municipal assistance program "to provide grant funding to municipalities, state and local authorities, and entities established pursuant to section 99-y of the general municipal law to plan and construct infrastructure necessary to provide broadband services, support the adoption of broadband services, or other purposes for maximizing the effectiveness of municipal broadband programs as determined by the division." See UDC Act, §16-GG*2(8). While the FCC has the authority to set minimum standards for internet speed, the NYS WIRED ACT authorizes the ConnectALL office to establish speed standards for grants (which are higher than the federal minimum standards).

IV. ENVIRONMENTAL REVIEW

ESD staff has determined that the requested adoption of RLAP Guidelines constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this approval.

V. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned businesses ("MWBEs") in the performance of ESD contracts. In accordance with the requirements of Article 15-A of the New York State Executive Law: Participation by Minority Group Members and Women with Respect to State Contracts, Projects awarded funding shall be reviewed by ESD's Office of Contractor and Supplier Diversity, which may set business and participation goals for minorities and women, to the extent not preempted by federal requirements pertaining to participation by socially and economically disadvantaged individuals ("SEDI").

[1] https://www.nysenate.gov/legislation/laws/UDA/16-GG*2

VI. SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Pursuant to New York State Executive Law Article 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified service-disabled veteran-owned businesses ("SDVOBs") in the performance of ESD contracts.

VII. REQUESTED ACTION

The Directors are requested to adopt the attached Regional and Local Assistance Program Guidelines, and authorize the taking of related actions.

Attachments
Resolution
Regional and Local Assistance Program Guidelines

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT – ConnectALL Office – Regional and Local Assistance Program - Adoption of Regional and Local Assistance Program Guidelines; and Authorization to Take Related Actions

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the "Materials"), relating to implementation and administration by the ConnectAll Office ("CAO") of the Regional and Local Assistance Program, the Corporation hereby determines pursuant to Section 10(g) of the UDC Act that there are no families or individuals to be displaced by the project at issue; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or her designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation of the Guidelines and to take related actions; and be it further

RESOLVED, that the President and Chief Executive Officer or her designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as she or he may in her or his sole discretion consider to be necessary or proper to effectuate the foregoing resolutions, including without limitation, to make findings and hold public hearings that may be necessary pursuant to applicable law and to act on behalf of the Corporation to affirm, modify or withdraw any contemplated funding or assistance as a result of testimony given at any such hearing, if necessary; and be it further

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the "Materials"), relating to the Regional and Local Assistance Program Guidelines (the "Guidelines"), the Guidelines are hereby approved and adopted.

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Subject to Board Approval

Grant Program Guidelines

ConnectALL Regional and Local Assistance Program

September 2023

State of New York

Kathy Hochul, Governor

Empire State Development

ConnectALL Office

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A. Statutory Authority

Section 16-GG*2 of the New York State Urban Development Corporation Act ("UDC Act"), Chapter 174 of the Laws of 1968, as amended, establishes the Division of Broadband Access, with the stated goal to "assist in ending the digital divide, supporting a more robust and competitive internet marketplace, and carrying out other actions to ensure universal access to high-speed, reliable, and affordable broadband." See UDC Act, §16-GG*2(1).[1] The statute also establishes the ConnectALL municipal assistance program "to provide grant funding to municipalities, state and local authorities, and entities established pursuant to section 99-y of the general municipal law to plan and construct infrastructure necessary to provide broadband services, support the adoption of broadband services, or other purposes for maximizing the effectiveness of municipal broadband programs as determined by the division." See UDC Act, §16-GG*2(8). While the FCC has the authority to set minimum standards for internet speed, the NYS WIRED ACT authorizes the ConnectALL office to establish speed standards for grants (which are higher than the federal minimum standards).

B. Program Background

The ConnectALL Initiative, announced by Governor Kathy Hochul in January 2022, is an ambitious set of programs and activities aimed at addressing New York State's digital divide, transforming the state's digital infrastructure, and ensuring that all New Yorkers have access to reliable and affordable high-speed broadband internet service. The Governor's announcement included a "Local Connectivity Planning and 21st Century Municipal Infrastructure [grant program] … providing grants to municipalities, non-profits and other entities to construct open and accessible public broadband infrastructure." ConnectALL programs are designed and administered by the ConnectALL Office ("CAO"), which is housed within the New York State Urban Development Corporation d/b/a Empire State Development ("ESD").

CAO is implementing the Governor's mandate through a Regional and Local Assistance Program (RLAP)**.** Through RLAP, ConnectALL will provide funding to assist local governments, counties, municipalities, Tribal Governments, and other government entities or entities created by units of government to plan or prepare for broadband deployment or other digital equity initiatives.

This program is a critical complement to the other programs of ConnectALL, including the Affordable Housing Connectivity Program, the Municipal Infrastructure Program, the Digital Equity Program, and the ConnectALL Deployment and Rural Broadband Program. To maximize their effectiveness, these programs require effective planning and partnership on the regional and local level across the state. RLAP will support building local capacity to implement these programs.

RLAP is informed by engagement between CAO and municipalities, counties, regional planning boards, regional economic development organizations, tribal governments, municipal utilities, internet service providers, and broadband network investors. Local and county government entities have been active partners, but many also have identified a range of capacity challenges, including specialized technical knowledge, data acquisition and analysis, staffing for permitting divisions or program coordination, the

[1] https://www.nysenate.gov/legislation/laws/UDA/16-GG*2

development of financial or engineering plans to support new broadband investment, and the grant application or other fund acquisition process to support implementation.

C. Program Administration

RLAP will provide grant funding or in some cases technical assistance directly to Eligible Applicants (see Section E) based on proposals received through a Request for Applications.

CAO will be the administrator of RLAP. As such, CAO, or its duly authorized representative will determine program structure and requirements, evaluate Applicant information, monitor Grantees for project completion and satisfactory performance, collect Grantee data to ensure compliance with all program requirements and verify allowable uses of funds, and approve disbursement of grant funds to selected Grantees. CAO may provide technical assistance to the Applicants during the application and/or the application curing process, at CAO's discretion.

ESD will execute a Grant Disbursement Agreement (GDA) with each Grantee that will describe the planned use of funds, the timeline, the geographic area of focus, and the intended impact on digital equity and a robust broadband marketplace in the area.

D. Eligible Applicants

Applicants

Eligible Applicants are Public Entities, such as cities, counties, towns, villages, Tribal Nations, or entities acting on their behalf, such as special units of government, regional planning boards, or government-controlled nonprofits. Eligible applicants may choose to subcontract for certain aspects or even a majority of project implementation, but in that case the applicant would need to identify that subcontractor through a public procurement process.

E. Program Assistance

The RLAP makes available financial assistance in the form of one-time grants for use by Applicants. Funds are available for the eligible uses described in Section G – Eligible Uses, and for the additional activities set forth in the GDA CAO will share with, negotiate, and agree upon with Grantees.

To the extent this Program's funding comes from the U.S. Treasury Capital Projects Fund (CPF), the State and its Grantees are required to follow the respective compliance requirements of that program, as described under *U.S. Treasury Guidance for The Coronavirus Capital Projects Fund for States, Territories & Freely Associated States and the New Yor State WIRED broadband act.* The State and its Grantees will be required to follow additional compliance requirements of other future program funding sources.

CAO may choose to provide non-capital resources to Grantees in the form of technical assistance related to Eligible Uses, coordination between Grantees and relevant State agencies, or reporting requirements.

F. Eligible Uses

Eligible uses for program funding include non-capital resources, technical assistance, and the following categories of planning, technical assistance, and planning:

- Identify and prepare areas in need of internet service or new investments in broadband infrastructure
- Development the financing for broadband facilities
- Prepare feasibility studies, financial forecasts, market surveys, environmental studies, technical designs, regional plans, digital equity research and plans, and other plans or reports necessary to support broadband deployment
- Analyze and improve operations related to the management of broadband facilities (i.e., implement automation, adopt new software, conduct training, etc.) and to the efficiency of the applicant.

Award funds cannot be used to pay for the following types of expenses:

- Construction (in any form)
- Duplicative project costs such as pre-application expenses that have been funded by another award
- Indirect Costs

G. Application and Selection Process

CAO will issue an RLAP Request for Applications (RFA), in which it will set forth specific program details and eligibility/selection criteria in line with the RLAP guidelines.

CAO will accept applications to this Program on a rolling basis until funds are expended or until CAO pauses or closes the RFA. Respondents are encouraged to submit applications as soon as they are able; applications will be reviewed in the order in which they are received. Applications submitted early may be advanced to detailed project scoping and awards more quickly, depending upon prioritization.

Because awards are offered as an incentive to undertake a project, the project should not begin, and expenses should not be incurred, before funding awards have been announced. Expenses incurred prior to submission of an application should not be included in the project budgets, nor should expenses that will be incurred after submission of an application but prior to an award announcement.

ESD requires that the Applicant contribute a minimum of ten percent (10%) of the total project cost in the form of equity contributed after the Applicant's acceptance of ESD's incentive proposal. Equity is defined as cash injected into the project by the Applicant or by investors, and should be auditable through the Applicant's financial statements or accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project or grants from a government source.

The Applicant must always disclose whether it is pursuing or intends to pursue multiple ESD funding sources, including grants, loans and tax incentives. Projects should focus on economic development purposes, such as increasing the viability of existing businesses, stimulating new enterprises, and analyzing potential development opportunities or obstacles to development.

Projects should focus on capacity building for projects and efforts relating to expanding broadband access, such as increasing internet access, stimulating new enterprises, and analyzing potential development opportunities or obstacles to development.

The ConnectALL Office encourages multi-regional or multi-county collaboration.

H. Application Requirements

The RLAP application requirements will be further defined in the Request for Applications (RFA). These grants are intended to address planning and local capacity challenges that are under-resourced at the very local level. As such, matching funding may be factored in as criteria, but will not be a requirement for award. We may also factor in other criteria to assess applicants' level of commitment and readiness to ensure adequate "skin in the game".

Furthermore, in accordance with the requirements of Article 15-A of the New York State Executive Law: Participation by Minority Group Members and Women with Respect to State Contracts, Projects awarded funding shall be reviewed by ESD's Office of Contractor and Supplier Diversity, which may set business and participation goals for minorities and women.

Applicants must submit the EEO Policy Statement (Form OCSD-1) https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf with their application confirming their understanding of the MWBE requirements and agreeing to show due-diligence and make good faith efforts to provide meaningful participation by MWBE's, whenever possible, if awarded grant funding.

ESD's agency wide MWBE utilization goal is 30%. Each Project will be assigned an individual contract-specific goal, which may be higher or lower than 30%. Should an Applicant receive a funding award, the Applicant shall be required to use good faith efforts to achieve the prescribed MWBE goals assigned to this Project. Applicants must maintain such records and take the actions necessary to demonstrate such compliance. Failure to achieve the specified MWBE goal may result in award reduction.

In 2014, the Service-Disabled Veteran-Owned Business Act was signed into law. The new law created the Division of Service-Disabled Veterans' Business Development in Office of General Services to certify, promote and encourage economic development among disabled veterans throughout the state. Project Applicants are urged to work with Service-Disabled Veteran-Owned Businesses (SDVOBs) and a directory can be found at https://ogs.ny.gov/Veterans.

I. Evaluation Criteria

The MIP application evaluation criteria will be defined in the Request for Applications (RFA).

J. Compliance, Monitoring, and Reporting Requirements

CAO will provide guidance on compliance procedures and eligible costs. CAO will require Grantees to include along with their reports:

- A certification that program funds were spent only on eligible uses and in compliance with state and federal guidelines; and
- Detailed documentation of all expenditures.
- The deliverables or other documented program outcome.

CAO may provide technical assistance and support to Grantees for completing project and expenditure reports. CAO may work with Grantees to revise report materials or provide additional documentation if required.

CAO may require Grantees to submit materials including, but not limited to:

- Detailed project construction plans and network designs;
- Permitting, licensing, and access approvals necessary for construction;
- Detailed documentation of project expenses;
- Regular reports on project progress, risks, expenditures, and impact against objectives.