

Virginia Office of Broadband

Broadband Equity, Access, and Deployment (BEAD) Program

Policy Notice Regarding Expected Contracting Provisions

General Statement: For purposes of federal contracting regulations, the Virginia Department of Housing and Community Development’s (“DHCD’s”) Office of Broadband (“OoB”) will function as a pass-through entity and subgrantee manager for the federal BEAD program. There will be a direct contractual relationship between OoB and winning BEAD applicants (hereinafter “providers”) and, consistent with federal requirements, the authority of OoB over individual projects will flow through the agreement between OoB and the provider. Such agreements will, at a minimum, comply with the Infrastructure Investments and Jobs Act (“IIJA”), [BEAD’s Notice of Funding Opportunity \(“NOFO”\)](#), ongoing and iterative guidance released by the National Telecommunication and Information Administration (“NTIA”), DHCD’s NTIA-approved BEAD Program Initial Proposal (Volumes [1](#) and [2](#)), and any other state or federal requirements.

Expected Contract Provisions

Pursuant to the BEAD NOFO and DHCD’s BEAD Program Initial Proposal (the “Initial Proposal”), all agreements between OoB and the provider will include provisions allowing for recovery of funds in the event of the provider’s noncompliance with the BEAD Program’s requirements, including, but not limited to, failure to deploy network infrastructure in accordance with mandated deadlines. Accordingly, contracts between OoB and providers will, at a minimum, employ the following practices:

1. distribution of funding to providers for, at a minimum, all deployment projects on a reimbursable and/or performance basis (which would allow the OoB to withhold funds if the provider fails to take the actions the funds are meant to subsidize);
2. the inclusion of clawback provisions (i.e., provisions allowing recoupment of funds previously disbursed by OoB);
3. timely provider reporting mandates; and
4. robust project monitoring practices.

Providers that do not fulfill their legal and contractual obligations will be subject to enforcement actions by OoB, including the clawback of funds.

Consistent with NTIA’s Policy Notice: [Tailoring the Application of the Uniform Guidance to the BEAD Program](#), OoB intends to structure agreements with providers as “fixed amount subawards.” OoB will consider alternative arrangements on a case-by-case basis if requested by a provider.

For fixed amount award contracts, awards will be paid on a reimbursement basis in partial payments based on provider completion of project milestones. Such milestones, as well as the amount of such milestone payments, will be negotiated on a case-by-case basis. When requesting such milestone payments, providers will submit a progress report, including information regarding the number of service locations and a report on any matching funds then expended by the provider in connection with the project, as well as other reasonable milestone reporting requirements. The OoB will also establish other monitoring and reporting requirements outside of the milestone reporting process at its sole discretion.

The OoB, based on the results of ongoing monitoring, may establish additional reporting requirements and conditions to a subaward. The OoB may also establish additional reporting requirements and conditions to a subaward based on findings in an applicant's application materials or an applicant's performance under existing state broadband expansion programs overseen by the OoB.

Providers will comply with all state and federal reporting requirements and shall, at a minimum, provide progress reports and compliance reviews consistent with the Initial Proposal. Contracts between OoB and providers will include reasonable measures for OoB to monitor provider costs, including measures to validate that fixed amount subawards reasonably approximate the actual cost of broadband infrastructure projects. Such measures may include, but are not limited to, requiring providers to periodically report their expenses using Generally Accepted Accounting Principles or other standard accounting practices, or monitoring the relative proportion of costs across the following key spending areas, the format of which will be prescribed by the OoB:

- Professional services (e.g., engineering, environmental and historic preservation permitting, legal expenses, etc.);
- Construction services (e.g., digging trenches, erecting towers, blowing fiber, constructing and improving buildings, etc.); outside plant, towers, and poles (e.g., fiber plan, conduit, towers, poles, emergency power generational equipment, etc.);
- Network and access equipment (e.g., broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, etc.); and
- Operating equipment (e.g., office furniture and fixtures, work equipment and vehicles, etc.); customer premise equipment; contingency funds; and all other expenses.

Pursuant to the [recommendation of the Joint Legislative Audit & Review Commission](#) ("JLARC"), contracts between OoB and providers will require that corrective action plans be completed by a provider when projects do not meet performance requirements or otherwise do not comply with BEAD program requirements or appear unlikely to do so. OoB shall monitor the implementation of such corrective action plans, which may affect the delivery of milestone payments.

Again, consistent with JLARC's recommendations, contracts will require that providers periodically report to OoB about "make-ready" and permitting work associated with the project, including project progress, and explaining any changes to project make ready costs since application.

Per DHCD's published BEAD [Application Guidance](#), OoB requires applicants to include a 10% contingency in all application budgets. The contingency must be included under the funding requested. This contingency funding, once an applicant is awarded, may be accessed but is subject to approval by the OoB prior to incurring such expense. Contracts will specify procedures for providers to seek OoB approval of contingency funding. Please note that this contingency requirement is distinct from the "retainage" provision noted below.

Additional Federal Contracting Requirements

Contracts will comply with the federal requirements of the BEAD program, which includes several technical requirements. Details regarding such federal technical requirements are on DHCD's BEAD website. Technical assistance regarding these requirements is available by emailing broadband@dhcd.virginia.gov.

Contracts will be negotiated consistently with OoB's published policy notices, as well as other relevant state and federal guidance and laws. While not an exclusive or exhaustive list, below are some other areas the OoB anticipates will be addressed in the final template subgrantee agreement:

- Monitoring/Reporting. Providers will comply with federal BEAD monitoring and reporting requirements, including mandatory transparency, accountability, and oversight measures, and consequences associated with the unauthorized use of BEAD Program funds. *See generally* NOFO at Sections VII.E (BEAD Reporting Requirements); IX.G (Transparency, Accountability, and Oversight Requirements).
- Audit Requirements. *See generally* NOFO Section VII.G (BEAD Audit Requirements).
- Compliance. DHCD must ensure that providers carrying out activities in a competent manner and in compliance with all applicable federal, State, Territorial, and local laws. NOFO at Section IV.D.2.d. To ensure compliance, projects will be subject to inspection by state and federal entities, such as the U.S. Department of Commerce Office of Inspector General. NOFO at Section XI.G.
- Collective Bargaining and Labor Regulations. Virginia is a right-to-work state. The only requirements of subgrantees under this section will be what is explicitly and minimally required in the BEAD NOFO. Initial Proposal, Volume 2 at 2.7.2.
- Disbursement. DHCD anticipates that contracts will be fixed-amount subawards with payments made upon completion of milestones. Providers approved for cost reimbursable projects will need to submit cashflows and other data to predict spending. NOFO at Section IV.D.2.a.iv; Initial Proposal, Volume 2 at 2.4.11.
- Unauthorized Use of Funds. Federal award funds may only be used to pay for allowable costs under the BEAD program. A profit, fee, or other incremental charge above actual cost incurred by a provider is not an allowable cost under this Program. NOFO at Section V.H.
- Cost Share/Match. Provider's proposed match must, absent a waiver, cover no less than 25 percent of the project cost. Initial Proposal, Volume 2, at 2.4.2. Matching funds may be provided in the form of either cash or in-kind contributions, so long as contributions are made consistent with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth at 2 C.F.R. Part 200. NOFO at Section III.B.
- Network Project Deployment Testing and Verification. OoB will verify that funded projects meet BEAD speed and latency requirements before closing out projects. NOFO Section IV.C.2; Initial Proposal, Volume 2 at 2.4.13.

- Retainage. Contracts will establish retainage amounts and remittance procedures.. Per DHCD’s NTIA-approved Initial Proposal, Volume 2 at 2.16.2: “The last 10% of the grant award...shall be retained until all contract obligations have been met.”
- Deployment Deadlines and Milestones. OoB requires that all providers submit a network design, diagram, project costs, build-out timeline and milestones for project implementation, and a capital investment schedule evidencing complete build-out and the initiation of service **within four years of the date** on which the entity is under contract. Initial Proposal, Volume 2 at 2.4.13. OoB will monitor projects for compliance with deployment deadlines and buildout milestones.
- Administrative and National Policy Requirements. Unless a waiver is granted, providers must comply with relevant policy requirements, such as Environmental and Historic Preservation and Build America, Buy America Act requirements. NOFO at Section VII.D; Initial Proposal, Volume 2 at 2.4.5. Technical resources are posted on the [DHCD BEAD website](#).
- Creditworthiness. In the BEAD subgrantee application process, applicants will be required to demonstrate their preferred model of creditworthiness that is in compliance with the guidelines outlined in NTIA’s [November 1st waiver](#). Initial Proposal, Volume 2 at 2.4.11.
- Consumer Protection Monitoring. OoB must ensure that providers do not impose data usage caps on any plans offered over a funded network or impose unjust or unreasonable network management practices. NOFO at Section IV.C.2.c.ii.
- Public Notice. Providers must carry out public awareness campaigns. NOFO Section IV.C.2.c.
- Cybersecurity and Supply Chain Management. OoB must ensure that providers develop a cybersecurity risk management plan and a supply chain risk management plan. NOFO at Section IV.C.2.c.vi. Technical resources are posted on the [DHCD BEAD website](#).
- Encumbrance / Federal Interest. In accordance with 2 C.F.R. § 200.316, any real property, equipment, or intangible property acquired or improved with a federal award must be held in trust for the beneficiaries of the project, other eligible activity, or program under which the property was acquired or improved. NOFO at Section VII.D.5. In a [policy notice](#), NTIA specified that ***the Federal Interest Period for BEAD Projects is 10 years***. DHCD may require certain public notices (e.g., UCC-1 Forms) to ensure compliance with this requirement.
- Enforcement and Inspection. OoB will take enforcement action as is necessary and appropriate in accordance with program requirements. NOFO at Section XI.G.4. Federal entities may also take necessary and appropriate enforcement actions either directly or in collaboration with OoB.