

**Written Response and other Preissuance Changes to
NOFA #002
Preissuance Publication Comments and Questions**

Pursuant to Section 1.7.1 (NOFA Pre-Issuance Publication) of NOTICE OF FUNDING AVAILABILITY #002 (“NOFA”): “The Office will provide advance notice to Communications Service Providers and other interested stakeholders of the upcoming funding opportunity, and terms and conditions related thereto, by posting a draft of the NOFA online at <https://ocio.iowa.gov/broadband> on [August 19, 2019]. This pre-issuance publication process is designed to provide an opportunity for interested Applicants and other interested stakeholders to review the terms and conditions of or related to the upcoming funding opportunity, ask questions and receive official responses in accordance with Section 1.7.2 (Written Questions and Responses), and make suggestions as to how the NOFA and related processes could be modified/clarified prior to the official issuance of the NOFA pursuant to and in accordance with Section 1.7.3 (NOFA Issued). The version of the NOFA published as part of this pre-issuance publication process is subject to change prior to the official issuance of the NOFA pursuant to Section 1.7.3 (NOFA Issued), the Office makes no guarantee as to the degree to which the NOFA published as part of this pre-issuance publication process will be the same or similar to the NOFA that is officially issued pursuant to Section 1.7.3 (NOFA Issued), and Applicants remain solely responsible for ensuring they understand any differences between the pre-issuance NOFA and officially issued NOFA and that their Applications comply with the terms, conditions, and requirements of the officially published version.”

In turn, pursuant to Section 1.7.2 (Written Questions and Responses). “Questions regarding the scope, interpretation, application, or contents of this NOFA must be raised as part of the formal Written Question and Response process set forth herein. While the Office will make available administrative support throughout the application process to Applicants as more fully described in Section 1.8 (Inquiries), below, only written communications made in response to questions submitted through this process shall be binding on the Office.

- 1.7.2.1 Written questions related to this NOFA must be submitted to the Office by email, to ociogrants@iowa.gov, no later than [September 6, 2019].
- 1.7.2.2 Written questions submitted after [September 6, 2019] will not be considered and a response will not be provided by the Office. If a question or comment pertains to a specific section of this NOFA, the section and page must be referenced.
- 1.7.2.3 The Office will prepare written responses to all pertinent, timely, and properly submitted questions and post such responses as an addendum to the NOFA online at <https://ocio.iowa.gov/broadband>. The Office’s written responses will be considered part of the NOFA. Verbal responses to any questions will not be binding on the Office. It is the responsibility of the Applicant to check <https://ocio.iowa.gov/broadband> for written questions and responses to this NOFA.

- 1.7.2.4. Failure to raise a question or issue regarding the scope, interpretation, application, or contents of this NOFA as part of this question and response process shall be deemed a waiver or failure to exhaust administrative remedies for purposes of a subsequent appeal of an Award; such waiver is intended to ensure the Office is able to correct any material issues or errors in an orderly, efficient fashion and in a manner that is fair to all prospective Applicants.”

Consistent with the above Sections of NOFA #002, the Office posted a draft of NOFA #002 online at <https://ocio.iowa.gov/broadband> on August 19, 2019. Written questions and suggestions were due by September 6, 2019. Consistent with the above Sections of NOFA #002, this document marks the Office’s response, and includes the following:

1. Section 1 of this document sets forth the timely and properly submitted written questions and suggestions received by the Office and provides the following written responses, and change log of corresponding implemented changes, to NOFA #002 based on such comments and suggestions.
2. Section 2 of this document sets forth any additional changes the Office anticipates making between the pre-publication of NOFA #002 and official publication of NOFA #002. The official publication is estimated to occur on September 20, 2019. The Office has outlined such changes to aid Applicants in identifying and understanding any differences; however, Applicants remain solely responsible for ensuring they understand any differences between the pre-issuance NOFA and officially issued NOFA.

1. Comments, Questions, and Written Responses and Corresponding Changes to NOFA #002. This Section sets forth the timely and properly submitted written questions and suggestions received by the Office and provides the following written responses, and change log of corresponding implemented changes, to NOFA #002 based on such comments and suggestions.

a.

Q - As it relates to Section 1.2.22 (Definition of Responsible Applicant) of NOFA # 002, does being a previous broadband grant award winner in any way impact the scoring/review of applications submitted by that same entity in NOFA #002?

A - No, not in and of itself. However, the definition of a Responsible Applicant means, in relevant part:

An Applicant that has the capability in all material respects to successfully complete and deliver a Project in accordance with the terms, conditions, requirements, and restrictions of Iowa Code chapter 8B, Iowa Administrative Code rule 129—22, this NOFA, and the resulting Grant Agreement if Awarded grant funds. In determining whether an Applicant is a Responsible Applicant, the Office may consider various factors including, but not limited to: the Applicant’s competence and qualifications to successfully complete and deliver a Project; the Applicant’s integrity and reliability; the past performance of

the Applicant, including Applicant’s past contract terminations, litigation, debarments, compliance with applicable terms, conditions, or requirements, or timely completion of past projects; Applicant’s criminal history; Applicant’s financial stability; and the best interests of the Office, the Program, and the State. An Applicant’s inability to fully certify/attest to all of the items identified in the Certification Letter may result in the Office concluding an Applicant is not a Responsible Applicant.

(Emphasis added).

In turn, pursuant to Section 1.16 (Rejection/Disqualification or Cancellation of NOFA), if the Office concludes an Applicant is not a Responsible Applicant, the Application may be rejected outright and not evaluated. Thus, being a “previous broadband grant award winner” could result in disqualification/rejection if the Applicant’s “past performance . . . , including Applicant’s past contract terminations, litigation, debarments, compliance with applicable terms, conditions, or requirements, or timely completion of past projects” demonstrates Applicant does not possess “the capability in all material respects to successfully complete and deliver a Project in accordance with the terms, conditions, requirements, and restrictions of Iowa Code chapter 8B, Iowa Administrative Code rule 129—22, this NOFA, and the resulting Grant Agreement if Awarded grant funds.”

Please also refer to Section 3.6 (Certification Regarding Suspension or Debarment) of Exhibit F (Certification Letter), which generally identifies the standard for rejection/disqualification for past performance. Specifically, an Applicant would be disqualified if they “have received a Notice of Default, Notice of Non-Compliance, or otherwise been found in non-compliance with the requirements of Iowa Code section 8B.11, Iowa Administrative Code chapter 129—22, or a grant agreement entered into by the Office and Applicant in connection with another award issued by the Office under this Broadband Grant’s Program.”

b.

Q - Section 1.5.2.1.2 of NOFA #002 provides: “Allowable Expenditures to be incurred on or after the date of the submission of an Application.” Whereas Section 1.2.2.2 states, “Not incurred prior to the date of the issuance of this NOFA”. These seem to be contradicting statements, so could you please clarify what is the date where Allowable Expenditures are able to start?

A - Thank you for pointing out this discrepancy. The Office has updated Section 1.5.2.1.2 to be consistent with the definition of Allowable Expenditures. The Office has concluded this is the appropriate date because it ensures all Applicants use the same date (the NOFA issuance date), rather than potentially different dates (their individual Application submission date) which could vary slightly from applicant to applicant.

c.

Q - Section 1.25.3.6 of NOFA #002 prevents “Applicants or other persons or parties [from] request[ing] confidential treatment with respect to . . . [i]ndividual estimated or actual Allowable Expenditures, including but not limited to as stated as line-item/cost-category costs/expenditures in the Budget Plan or Outside TSA Infrastructure Worksheet.” Individual expense line items and dollar amounts should be able allowed to be submitted confidentially as they can give some pretty significant insight into our network plans to competitors. Could this specific piece be reconsidered, please?

A - The Office has updated NOFA #002 to permit Applicants to request confidential treatment of “individual estimated or actual Allowable Expenditures, including but not limited to as stated as line-item/cost-category costs/expenditures in the Budget Plan or Outside TSA Infrastructure Worksheet.” However, Applicants still may not request confidential treatment of non-cost related data or information supplied in the Budget Plan or Outside TSA Infrastructure Worksheet or “the estimated or actual Total Project Cost, including but not limited to as stated in the Budget Plan or Outside TSA Infrastructure Worksheet.” The public has a strong interest in knowing both estimated and actual Total Project Costs as it relates to Applications received by the Office.

Notwithstanding this change, the Office would note that, although Applicants may now request confidential treatment of such line-item expenses as part of the application process, whether the Office may be legally permitted to maintain such information in confidence under the State’s public records law (Iowa Code chapter 22, and corresponding implementing rules) is not well settled, and the Office may ultimately be compelled to disclose such information. Additionally, the Office would emphasize that Applicants generally bear the burden of justifying and defending requests for confidential treatment, including as provided in Section 1.25.5 of the NOFA:

“If the Office receives a request for information or materials related to an Application marked as confidential or if a judicial or administrative proceeding is initiated to compel the release of such materials or information, Applicant shall, at its sole expense, appear in such action and defend its request for confidentiality. If, upon reasonable notice to Applicant, Applicant fails to appear to defend its request for confidentiality, the Office may release the information or material, or otherwise bill the Applicant any costs or expenses incurred in defending the same (including but not limited to the reasonable time and value of the Iowa Attorney General’s Office or other attorney or law firm utilized by the Office or the State). Additionally, if Applicant fails to comply with the confidentiality process set forth herein, Applicant’s request for confidentiality is unreasonable, Applicant fails to supply the Office with sufficient information to determine whether Applicant’s request for confidential treatment is founded, or Applicant rescinds its request for confidential treatment, the Office may release such information or material with or without providing advance notice to Applicant and with or without affording Applicant the opportunity to obtain an order restraining its release from a

court of competent jurisdiction. Applicant waives any claims it may have against the Office or the State of Iowa related to the confidential treatment of any information or materials submitted as part of this application process that result, in whole or in part, from any deficiencies with or related to compliance with this Section 1.25 (Disposition of Applications/Public Records Law), or that otherwise result from Applicant's failure to comply with the terms, conditions, or requirements of this NOFA."

d.

Q - Section 3.1.6.1 relates to how the Office will score service availability in the context of the prospective product attributes factor. Is there any guidance as to how we are supposed to estimate availability? Is it just based on our network design?

A - "Availability" as the term is used in the NOFA means the "percentage of total time service is operative or available when measured over a thirty (30) day calendar month (720 hours), upon Project completion. Service is considered inoperative or unavailable when degraded to a level at which packets are not passing between the user point of demarcation and the host point of demarcation." Put another way, "Availability" refers to network uptime from a consumer's perspective. Once the proposed Project is complete, what percentage of the time in any given calendar month will 25/3 Broadband be available (*i.e.*, the network is not down or experiencing an outage). For example, in determining Availability for purposes of a Project, Communications Service Providers may refer to their standard customer agreements and stated representations, warranties, or service levels of or relating to availability/uptime, or could use availability data/metrics of or relating to other similar networks owned, operated, or managed by the Provider. However, please remember that successful Providers/Grantees will ultimately be held to the Availability standard represented in their Applications for purposes of performance and Grant Agreement compliance/administration. Thus, Providers should not overstate the capabilities of their products in connection with the Prospective Product Attributes factor.

e.

Q - The initial paragraph of Exhibit B (Broadband Grants Program Project Worksheet) states: "Applicants may use the most favorable product offering that will be made within a commercially reasonable time and at a commercially reasonable price within the Project area upon request by a consumer as a result of the Project." Is that statement meant solely for the Prospective Product Attributes table, or can it be utilized for the Delivery Platform table as well? In other words if we are going to have some fiber and some fixed wireless, do we only respond with a Delivery Platform of FTTH?

A - The Office has amended the introductory language of Exhibit B as follows:

Applicants should identify all Delivery Platforms forming the basis of their Project by selecting all Delivery Platform types that are projected to be deployed as part of the Project. Consistent with the definition of Facilitates, Applicants must identify the upload/download speeds on an individual census block basis that their Project will Facilitate in the "Facilitated Speeds" column below; this may be based on the most

favorable product offering that will be made available within each of the census blocks forming the basis of a Project and that will be made available within a commercially reasonable time and at a commercially reasonable price. In identifying Prospective Product Attributes, Applicants may use the most favorable product offering that will be made available within a majority of the census blocks forming the basis of their Project and that will be made available within a commercially reasonable time and at a commercially reasonable price within the Project area upon request by a consumer as a result of the Project.

f.

Q - I assume if you receive some federal grant funding to overbuild a serving area (for example from the RUS ReConnect grant program), this does not prevent you from being awarded state broadband grant funds as well – is this correct?

A - Correct. Federal matching funds are encouraged under the State of Iowa program and are not disqualifying in and of themselves. However, if the proposed Project would proceed without State funds because federal incentives (or other funding sources) are, alone, sufficient for the Project to occur with or without State support, an Application may be rejected by the Office. In addition, the proposed Project must still occur within Targeted Service Areas as identified on the official State of Iowa Broadband Map V2 that was adopted on September 20, 2019 and published at: <https://ocio.iowa.gov/broadband-availability-map-version-2>. Targeted Service Areas as defined on the map are those United States Census Blocks within which no Communication Service Provider was reported to offer or Facilitate broadband service at speeds greater than or equal to 25 mbps download and 3 mbps upload as of June 30, 2018. Further, generally all other applicable program requirements and conditions must be satisfied as it relates to the proposed Project.

2. Additional Changes to NOFA #002. This Section sets forth any additional changes the Office anticipates making between the pre-publication of NOFA #002 and official publication of NOFA #002. The official publication is estimated to occur on September 20, 2019. The Office has outlined such changes to aid Applicants in identifying and understanding any differences; however, Applicants remain solely responsible for ensuring they understand any differences between the pre-issuance NOFA and officially issued NOFA. Changes include, but are not limited to:

- a. In Section 1.2.7 of the NOFA, the Office updated the definition of “Authorized Contact” to have the same meaning as “Authorized Official.” The term “Authorized Official” is a term of art precoded into the Iowa Grants System, and the Office wanted to clarify that although the terminology in the Iowa Grants System and NOFA documentation are slightly different, the two terms have the same meaning.
- b. The Office removed the following language from Section 1.4 (Eligibility Requirements): “Projects eligible for an Award include only prospective Projects, meaning Projects for which the commencement of the installation of Broadband Infrastructure has not begun as of the date of the posting of this NOFA.” The Office concluded this language was inconsistent with other language in the NOFA, and that the construction start date of a Project should not, strictly

speaking, be a limitation. However, Applicants may still only include in Allowable Expenditures in their estimated Total Project Costs that are incurred on or after the official NOFA issuance date. Additionally, the degree to which a Project has commenced or progressed at the time of Application submission is still relevant as, pursuant to Section 1.16.4 (Rejection/Disqualification or Cancellation of NOFA), Applications may be rejected where “the Project is likely to proceed regardless of whether grant funds are awarded to the Applicant for the Project.” Put another way, the State does not have an interest in funding Projects that are likely to proceed whether or not the State provides an incentive.

- c. The Office added language to Section 1.6.4 permitting it to issue a partial award where “[t]he Applicant indicates that the Project is likely to proceed regardless of whether grant funds are awarded to the Applicant for the Project.” As noted in the immediately preceding item, the State does not have an interest in funding Projects that are likely to proceed whether or not the State provides an incentive; however, depending on the particular facts and circumstances, a partial award, rather than outright rejection of an Application, may be appropriate.
- d. The Office modified Section 2.2.3 (Executive Project Summary) to, consistent with several of the above changes, require that Applicants explain why State funds are necessary for the Project to *proceed* (previously required explanation of why funds were necessary for the Project to be *initiated*), and explain “the current status of the Project, including the phase it is in, such as pre-planning, planning, or that building has commenced.”
- e. The Office added the following exclusionary language to Exhibit G (Authorization to Release Information Letter) to help Applicants protect their business interests in trade secrets and other proprietary information. Underlines indicate changes from prior version.

Except where and to the extent a confidentiality agreement, nondisclosure agreement, or similar agreement with a person or entity precludes the disclosure of trade secrets or other proprietary or confidential technical, financial or business information, Applicant authorizes any and all persons and entities to provide information, data, and opinions with regard to its performance under any contract, agreement, or other business arrangement, its ability to perform, business reputation, and any other matter pertinent to the evaluation of Applicant’s Application. To the extent of such authorization, Applicant hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting Applicant that it may have or ever claim to have relating to information, data, opinions, and references supplied to the Office, the Review Committee, or other agents, independent contractors, or other third parties acting on behalf of or directed by the Office in the evaluation and selection of a successful Applicant in response to the NOFA.