

250-RICR-170-05-1

## **TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

### **CHAPTER 170 - RESILIENCE AND CLIMATE CHANGE**

#### **SUBCHAPTER 05 - FINANCIAL ASSISTANCE**

##### **PART 1 - Rules and Regulations for the Climate Resilience Fund**

### **1.1 Purpose**

The purpose of these regulations is to create a Climate Resilience Fund to receive, hold and administer the use of the \$5,000,000 portion of the '2018 RI Green Economy and Clean Water Bond' and any future bond allocations earmarked for the same purposes. The funds will provide grants to Governmental and Non-profit entities for restoring and improving the climate resilience of vulnerable coastal habitats, as well as river and stream floodplains with specific priority to projects that improve community resilience and public safety. These funds will be used to enhance environmental sustainability and resilience across communities.

### **1.2 Authority**

These rules and regulations are promulgated pursuant to the authority provided by R.I. Gen. Laws Chapters 42-6.2 and 42-17.1.

### **1.3 Administrative Findings**

Climate resilience projects shall be subject to all applicable state and federal permitting requirements. This Fund is meant to provide funding assistance for design, construction and implementation of climate resilience projects and associated work at the discretion of the Review Committee.

### **1.4 Definitions**

A. For the purposes of this regulation, the following terms are defined as follows:

1. "Applicant" means any governmental entity or non-profit entity applying for monies under these rules and regulations.
2. "Climate resilience project" means projects that restore and/or improve the resilience of vulnerable coastal zones and rivers and stream floodplains in the face of climate change impacts (e.g. increasing precipitation, sea level

rise, increasing temperatures, and severe weather events). Projects can include the removal, relocation or redesign of infrastructure combined with, or solely, nature-based solutions.

3. "Construction" means the implementation and/or installation of a project, including the removal, relocation or redesign of infrastructure, and can include necessary planning, design and engineering activities associated with the project.
4. "Department" means the Rhode Island Department of Environmental Management.
5. "Director" means the Director of the Department of Environmental Management or the designee(s) to whom the Director has delegated powers and duties vested in the Director by these regulations.
6. "Fund" means the Climate Resilience Fund as established by these regulations.
7. "Governmental entity" means any Rhode Island state or local governmental body or Rhode Island state agency and any entity publicly funded, appointed or otherwise organized by federal, R.I. state or local government for governmental purposes.
8. "Grant" means money given to eligible entities with no repayment due if the grantee is in substantial compliance with all terms of the grant.
9. "Grant match" means the required twenty-five percent (25%) match on bond funding. At the discretion of the Review Committee, in-kind services may be considered as credit towards the twenty-five percent (25%) match.
10. "Infrastructure" means the basic, physical systems of the state or municipalities, including, but not limited to, transportation, communication, sewage, water supply/impoundment, and electric systems deemed important for the state's health, welfare, and economy.
11. "In-kind services" means a non-cash contribution of value provided by the applicant, and typically is the calculated value of approved personnel, goods, or services.
12. "Non-profit entity" means an entity, no part of the income or profit of which is distributable to its members, directors or officers.
13. "Overburdened community" means minority, low-income, tribal and indigenous populations or communities that experience disproportionate

environmental harms and risks due to exposures or cumulative impacts or greater vulnerability to environmental hazards.

14. "Permit" means an authorization, license, approval or equivalent control document issued by the Department or another governmental entity.
15. "Recipient" means any party (or parties), governmental or non-profit, that has been awarded funding pursuant to these regulations and is responsible for the implementation of a climate resilience project.
16. "Resilience" means the capacity of individuals, institutions, businesses and natural systems within Rhode Island to survive, adapt and grow no matter what chronic stresses and weather events they experience.

## **1.5 Notification of Available Funds**

### **A. Availability of Funds**

1. The Director shall publicly announce via Request for Proposals the availability of all funds under the Climate Resilience Fund. During each announcement of availability of funds, the Director may allocate portions of the available funding for either Governmental or Non-Profit Entities in the Climate Resilience Fund.
2. The funds will be available to eligible applicants in the form of grants of up to seventy-five percent (75%) of eligible costs. Applicants must be able to match at least twenty-five percent (25%) of eligible costs. At the Director's discretion, a grant for less than seventy-five percent (75%) of eligible costs may be awarded based on site or project characteristics per the grant agreement.
3. The announcement of the availability of funds issued per this rule shall include the weighting of the evaluation criteria listed in § 1.8(A) of this Part for the round of grants being offered.

### **B. Frequency of Awards and Announcements**

1. Grants using these funds will be made periodically, on a competitive basis, based on announcements regarding requests for applications pursuant to § 1.6 of this Part. At a minimum the announcement will state:
  - a. The approximate amount of money available under the fund;
  - b. The deadline for all applications; and

- c. Any other information that the Director determines necessary and pertinent.

## **1.6 Application Requirements**

- A. Applications shall be submitted to the Department on a form provided by the Department and shall be signed by the applicant's chief executive or chief financial officer, or other designated and qualified representative.
- B. Applications shall be submitted to the Department via: R.I. Department of Environmental Management, Permit Application Center, 2nd Floor, 235 Promenade Street, Providence, RI 02908.
- C. In the alternative, the Department may provide mechanisms for electronic submission of grant applications.

## **1.7 Project Categories and Eligible Costs**

- A. Proposed climate resilience projects must demonstrate that a project conducts on-the-ground implementation, not solely research or planning. Climate resilience projects shall be designed to demonstrate tangible, on-the ground solutions to climate driven challenges facing RI communities, both inland and coastal.
  - 1. Applications for funds to support resilience planning processes will not be considered. Necessary resilience planning processes that have identified possible resilience projects should be completed before the project start date. However, projects that have a minor amount of planning remaining that is needed to inform final siting or design of climate resilience projects may be considered.
  - 2. Climate resilience projects that involve the acquisition of land shall be considered so long as the acquisition is deemed part (50 percent or less) of the overall cost of the project. Projects focused solely on land acquisition will not be considered.
  - 3. Climate resilience projects whose primary purpose is to undertake scientific research, data analyses or vulnerability assessments will not be considered. However, funds can be utilized for data collection as part of monitoring activities to track progress and determine the effectiveness of the implemented climate resilience project.
- B. Climate resilience projects should show a clear nexus between climate change impacts to the ecological health of the area that is the subject of the application and the proposed resilience actions and outcomes. Applications for funds should highlight:

1. the specific climate change impacts that the project is designed to address;
2. both the expected near-term (0-10 years) and long-term (10-25 years) benefits to improve ecosystems and community resilience; and
3. how the project is consistent with state resilience plans, local hazard mitigation plans, and all applicable laws.

### **1.7.1 Project Categories**

- A. The following categories of grants will be considered either alone or in combination:
1. Removal, Relocation or Redesign of Infrastructure - engineering and construction projects to redesign, relocate or remove vulnerable facilities and infrastructure (e.g., culverts, dams, buildings/facilities, roadways/evacuation routes in both coastal and riverine areas) to protect and preserve function over the design life of the infrastructure or eliminate risk by removing the structure, given projected climate change impacts (e.g. increasing precipitation, sea level rise and increasing temperatures).
  2. Nature-Based Solutions - projects that protect or enhance Rhode Island's natural systems in the face of projected climate change impacts. Projects can include green infrastructure projects that utilize vegetation and pervious surfaces to manage coastal, riverine, and inland flooding, erosion and storm damage. Projects can also include the restoration of natural shorelines and riparian habitats so as to enhance the protection of communities.

### **1.7.2 Project Costs**

- A. Specifically, the following types of costs are eligible to receive grant monies from the Fund pursuant to these regulations:
1. Environmental consulting.
  2. Engineering consulting.
  3. Plantings, reforestation, landscaping.
  4. Construction.
  5. Materials.
  6. Professional survey services.

7. Land acquisition in accordance with § 1.7(A) of this Part.
  8. Monitoring.
  9. Personnel costs directly related to the performance of the project.
  10. Community engagement.
- B. Types of costs that are ineligible to receive grant monies from the Fund include:
1. Pre-award costs, unless incurred within ninety (90) days of application approval and pre-approved by the Department.
  2. Administrative costs including clerical support, monthly utility expenses, the purchase of office equipment, personnel costs associated with fund raising for the nongovernmental entity, etc.
  3. State or federal lobbying costs, penalties or fines.
  4. Land acquisition activities that do not meet the requirements set forth in § 1.7(A) of this Part.
  5. Response costs for emergency response actions caused or exacerbated solely by the applicant or their agents or assigns.
  6. Proposed projects associated with unresolved litigation (administrative or judicial) with the Department or conditions or activities that have violated or are violating statutes or regulations administered by the Department shall be ineligible to receive Fund monies without the express written consent of the Director and the resolution of said litigation or violation(s).

## **1.8 Application Review and Selection**

### **1.8.1 Application Review**

- A. The Director shall establish a Review Committee to review the completed applications. The Committee, appointed by the Director, may include the following members: the Executive Director of the Coastal Resources Management Council (CRMC), or his or her designee, the state's Chief Resilience Officer, and at least one representative from DEM. Additional members may include a representative from NOAA or other federal agencies involved in habitat and community resiliency. The Review Committee shall review all applications to determine eligibility and completeness. In order to satisfy the eligibility determination, the following criteria will be considered:

1. The applicants and their proposed projects must meet the requirements of §§ 1.6 and 1.7 of this Part.
2. Projects accepted by the Department as complete and consistent with these regulations will be ranked in a manner specified in the announced Request for Proposals based upon the following criteria, which shall be applied so as to promote the goals and requirements of these Regulations.
  - a. The extent to which the project addresses climate change impacts, improves ecosystems and community resilience, and is aligned with the goals set forth in § 1.7(B)(3) of this Part;
  - b. Readiness and timeliness to proceed;
  - c. The extent to which the project addresses equity in overburdened communities;
  - d. Ability of the project to improve the resilience of state and local infrastructure;
  - e. The beneficial environmental impact to the land, waters, fish and wildlife, and people of the State;
  - f. Ability of the applicant to perform required/necessary long-term maintenance where applicable;
  - g. The extent to which the project helps improve and maintain continued public access to natural resources;
  - h. The total estimated costs, and cost effectiveness, of the project;
  - i. Ability of applicant to complete the project, including financial solvency, past experience of similar projects and likelihood of success; and
  - j. The public benefits derived from the project.
3. Applicants may request a de-briefing on their application package scoring after awards are announced. At least one member of the Review Committee shall be present for the de-briefing and requests for de-briefings shall be made in writing within thirty (30) days of the relevant grant announcement and shall be accommodated within ninety (90) days of the request.

4. Recommendations for awards will be made to the Director on the basis of a majority vote of the Review Committee. The final decision on any award shall be made by the Director.

## **1.9 Grant Awards**

- A. Grant Award - Successful applicants will receive a grant offer specifying the amount, duration and conditions of the award. The offer will be in the form of a binding contract. Other requirements to secure funding shall be:
  1. Recipients will be required to sign, accept and return the offer to the Department within forty-five (45) days of the date of mailing. Failure to execute the agreement within the forty-five (45) days may result in the cancellation of the grant award and may result in these funds being awarded to the next highest rated project.
  2. Recipients will have ninety (90) days from the date of the acceptance of the grant offer to provide proof of the necessary Grant match by letters of credit, loan agreements, dedicated escrow accounts, letters from city/town councils, or other pre-approved proof of matching funds. Recipients are hereby allowed to ask for an extension beyond ninety (90) days to provide proof of the necessary Grant match.
  3. The recipient is responsible for obtaining all necessary permits or approvals from any federal, state or local agency with authority over the project or project area. Copies of these permits/approvals must be submitted to the Department for inclusion in the project file before the first payment request.
  4. All grant payments will be paid in the form of reimbursement payments for eligible expenses incurred in accordance with an approved project. In general, up-front costs or prepayment will not be allowed, however, if, at the sole discretion of the Director, such costs are small compared to the overall value of the project or are clearly demonstrated to be necessary for the success of the project, and sufficient documentation and collateral are presented, they may be considered. Requests for reimbursement must include documentation of the incurred, eligible costs. Such type of documentation required to receive reimbursement will be detailed in the grant offer and/or grant agreement.
- B. Suspension, modification or revocation - The Director may suspend, modify or revoke any awards granted pursuant to these regulations in the event that subsequent examination reveals any data included in an application form,

submittal, reimbursement request, plan or sketch to be incorrect or not in compliance with these regulations.

- C. Stop Payment - The Director may take appropriate action to stop payment of and/or seek the return of grant funds expended for any project where:
1. The applicant has obtained said grant based upon incomplete, false, misleading or erroneous information; or
  2. The applicant has not completed the work approved under the grant in accordance with any and all conditions of approval issued by the Director in the grant award.

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