

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER a: GENERAL

PART 5
DISADVANTAGED BUSINESS REVOLVING LOAN PROGRAM

Section

| | |
|-------|---|
| 5.10 | Program Overview |
| 5.20 | Effective Date |
| 5.30 | Purpose |
| 5.40 | Definitions |
| 5.50 | Eligibility |
| 5.60 | General Application Information |
| 5.70 | Loan Application Contents |
| 5.80 | Place of Filing |
| 5.90 | Terms and Conditions of Loan |
| 5.100 | Pre-Eligibility Process |
| 5.110 | Loan Selection Committee |
| 5.120 | Review of Loan Application |
| 5.130 | Eligible Expenditures |
| 5.140 | Ineligible Expenditures |
| 5.150 | Funds Control Process |
| 5.160 | Repayment Procedures |
| 5.170 | Failure to Complete the Work Authorized for Loan Assistance |
| 5.180 | Failure to Repay the Loan |
| 5.190 | Ethics Training for Loan Selection Committee and Fund Control Agent or Agents |
| 5.200 | Conflicts of Interest |
| 5.210 | Confidentiality |

AUTHORITY: Implementing Section 2705-610, and authorized by Section 2705-610(c), of the Department of Transportation Law of the Civil Administrative Code of Illinois [20 ILCS 2705/2705-610].

SOURCE: Adopted by emergency rulemaking at 37 Ill. Reg. 15531, effective September 13, 2013, for a maximum of 150 days; adopted at 38 Ill. Reg. _____, effective _____.

Section 5.10 Program Overview

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

- a) Section 2705-610 of the Department of Transportation Law of the Civil Administrative Code of Illinois (Law) [20 ILCS 2705/2705-610] establishes a low-interest loan program for *disadvantaged business enterprises* (DBEs) *certified by the Department for participation on Department-procured construction and construction-related contracts*. (Section 2705-610(c) of the Law.) The Department is authorized *to provide for assistance to DBEs with project financing costs for those firms that are ready, willing, and able to participate on Department construction contracts. The Department's disparity study recommends and supports a financing program to address this barrier faced by DBEs*. (Section 2705-610(a) of the Law)
- b) The funds for this program are appropriated annually by the Illinois General Assembly from the Working Capital Revolving Loan Fund established as a special fund in the State treasury. (Section 2705-610(d) of the Law)

Section 5.20 Effective Date

This Part applies to loans made for the fiscal year beginning July 1, 2013 and ends June 1, 2018.

Section 5.30 Purpose

The purpose of this Part is to implement Section 2705-610 of the Law by providing procedures, conditions and limitations applicable to low-interest loans made to DBE loan applicants.

Section 5.40 Definitions

Each term in this Part has the meaning set forth as follows unless its use clearly requires a different meaning.

"Applicant" means any eligible DBE who is applying for a loan under the Law and this Part.

"Application" means those forms and documents required by the Department to be submitted by an applicant in support of its request for a loan granted under this Part.

"Certified by the Illinois Department of Transportation" means the DBE is certified by the Unified Certification Program, of which the Department is a member, for all purposes under this Part.

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

"Code" means the Illinois Procurement Code [30 ILCS 500].

"Committee" means the Loan Selection Committee created by the Department in accordance with Section 7705-610(c) of the Law and Section 5.110 of this Part.

"Construction" means building, altering, repairing, improving, or demolishing any public structure or building, or making improvements of any kind to public real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. (Section 2705-610(b) of the Law)

"Construction-related Services" means those services including construction design, layout, inspection, support, feasibility or location study, research, development, planning, or other investigative study undertaken by a construction agency concerning construction or potential construction. (Section 2705-610(b) of the Law)

"Contractor" means one who participates, through a contract or subcontract at any tier, in a United States Department of Transportation-assisted or Illinois Department of Transportation-assisted highway, rail, transit, or airport program. (Section 2705-610(b) of the Law)

"Conventional Lender" means a federally or state chartered bank or credit union.

"Department" means the Illinois Department of Transportation.

"Disadvantaged Business Enterprise" or "DBE" has the meaning ascribed to it under 49 CFR 26.5 (2013), unless rebutted pursuant to 49 CFR 26.67(b).

"Eligible Expenditures" means expenditures that are current liabilities or working capital expenses associated with participation in the performance of contracts procured and awarded by the Department for transportation construction and construction-related purposes. (Section 2705-610(f) of the Law)

"Escrow Account" means a fiduciary account established with:

a banking corporation which is both organized under the Illinois Banking Act [205 ILCS 5] and authorized to accept and administer trusts in this State; or

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

a national banking association which has its principal place of business in this State and which is authorized to accept and administer trusts in this State. (Section 2705-610(b) of the Law)

"Escrow Agent" means the State or national bank or trust company having authority to administer an escrow account.

"Fund Control Agent or Agents" means a person who provides managerial and technical assistance to DBEs and holds the authority to manage a loan under this Part. The Fund Control Agent or Agents will be procured by the Department under a request for proposal process governed by the Illinois Procurement Code [30 ILCS 500] and rules adopted under that Code (see 44 Ill. Adm. Code 6). (Section 2705-610(b) of the Law)

"Ineligible Expenditures" means the expenses listed in Section 5.130.

"Law" means the Department of Transportation Law of the Civil Administrative Code of Illinois [20 ILCS 2705/2705-610].

"Loan" or "Loan Assistance Funds" means a low-interest line of credit made available to a selected DBE under this Part for the purposes set forth in Section 5.30. (Section 2705-610(b) of the Law)

"Partial Payment" means a payment made to the prime contractor, subcontractor or lower tiered subcontractor based upon the engineer's written estimate of the quantity of work performed and material allowances that are advanced.

"Prime Contractor" means the individual, firm, partnership, joint venture or corporation contracting with the Department for performance of prescribed work.

"Prime Rate" means the minimum interest rate charged by a commercial bank on short-term business loans to large, best-rated customers or corporations.

"Program" means the Disadvantaged Business Revolving Loan Program.

"Secretary" means the Secretary of the Illinois Department of Transportation.

"State" means the State of Illinois.

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

"Unified Certification Program" has the meaning established in Subpart E of 49 CFR 26.

Section 5.50 Eligibility

To be eligible to receive a loan under this Part, the applicant will meet all of the following criteria:

- a) The applicant must be a DBE *certified by the* Unified Certification Program, of which the *Department* is a member, *for participation on Department-procured construction and construction-related contracts.* (Section 2705-610(c) of the Law)
- b) The applicant must demonstrate in the loan application not less than two years of experience participating in transportation construction or construction-related projects.
- c) The applicant must have been denied a loan for operating expenses or costs from two or more conventional lenders, such as a bank or credit union.
- d) The loan denials referenced in subsection (c) must have requested a loan amount that is no more than 50% greater than the loan amount requested under this Part.
- e) If the applicant is incorporated, the corporate entity must not have had a bankruptcy or foreclosure in the past five years. If the applicant is not incorporated, the owners and principals of the entity must not have had a bankruptcy or foreclosure in the past five years.
- f) The applicant must not currently be encumbered by tax liens, criminal liens or restitution orders, judgment liens or offsets that could attach to, or require payment from, the loan or that requires repayments to be made by the loan funds granted under this Part.
- g) The applicant must not be delinquent in payment of any debt to the State of Illinois, as defined by Section 50-11 of the Illinois Procurement Code (Code) [30 ILCS 500/50-11], that has not been satisfied or for which a repayment plan has not been entered into with the State.

Section 5.60 General Application Information

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

- a) The loan application is available on the Department's website at www.dot.il.gov/doingbusiness/dbe/revolvingloan.html.
- b) For assistance in filling out the loan application, an applicant should call the Department's Office of Business and Workforce Diversity at 217/782-5490.

Section 5.70 Loan Application Contents

The following required loan application contents will be considered by the Loan Selection Committee when awarding an applicant with a loan:

- a) A completed application signed by the socially and economically disadvantaged person having a minimum of 51% ownership of, and with management and daily business operational control of, the DBE that will receive the loan.
- b) A description of the applicant's need for the loan, how the applicant will use the funds from the loan, and the anticipated term/length of the need for loan funds.
- c) Complete contact information, including name, address, phone number and email address for at least two references who can speak on behalf of the applicant's experience participating in transportation construction or construction-related projects without defaults or non-completion.
- d) Letters of rejection from two or more conventional lenders indicating that the applicant has been denied a loan from each lender (see Section 5.50(c) and (d)). The letters of rejection must not be more than one year old at the time of submission of the loan application.
- e) Applicable financial information, including, but not limited to, three years of federal income tax returns, profit/loss statements, balance sheets, personal financial statements, and IRAs.
- f) Bank account balances for the past 90 days and an inventory of construction-related equipment currently owned by the DBE.
- g) Copy of an approved contract or other documentation indicating selection of the DBE as a contractor or subcontractor on a Department construction project, if known at time of application. If not known at time of application, the applicant shall provide this information within five calendar days after its selection as a contractor or subcontractor.

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

Section 5.80 Place of Filing

Applications shall be returned to:

DBE Loan Selection Committee
Illinois Department of Transportation
2300 South Dirksen Parkway, Room 300
Springfield, Illinois 62764

Section 5.90 Terms and Conditions of Loan

- a) Loan applications will be accepted at any time. For a loan to be considered for a particular letting, the loan application must be received a minimum of 30 calendar days prior to that letting.
- b) Loan applications will be valid for a period of six months from the date the application is signed. Prior to final loan approval, applicants will be required to certify that there have been no changes to the information or documentation contained in the loan application.
- c) Applicants will be limited to three loans during the duration of the loan program (see Section 5.20). Individuals with 20% or more ownership or stock in more than one DBE firm will be limited to a total of three loans, in aggregate, during the duration of the program. Multiple loans will not be concurrently awarded. *An applicant shall not be permitted to obtain a loan under this program for a different and additional project until payment in full of any outstanding loans previously awarded under this program have been received by the Department.* (Section 2705-610(g) of the Law)
- d) The interest rate for loans awarded under this Part will be calculated as the Prime Rate + 0.5%. The interest rate will be calculated as of the Monday preceding execution of the loan agreement and the interest rate will remain fixed for the duration of the loan term.
- e) The loan amount awarded to any successful applicant will not exceed the lesser of 55% of the contract value supporting the loan or \$249,000.

Section 5.100 Pre-Eligibility Process

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

- a) The Department will perform a preliminary eligibility determination based upon the submittal of the application and required documentation.
 - 1) Incomplete applications or applications that do not include the required documentation will be rejected.
 - 2) Applicants who meet all of the requirements, outlined in Section 5.70, will be determined to be pre-eligible to qualify for a loan.
 - 3) A determination of pre-eligibility is not a guarantee that the applicant will receive a loan under this Part.
- b) Notification of an incomplete application, pre-eligibility, eligibility or ineligibility will be sent to the applicant within 10 calendar days after receipt of the application by the Department.
- c) A determination of pre-eligibility will be valid for six months after the date of the notification.
- d) Approvals for loans under this Part will be made by the Committee in accordance with Section 5.110.
- e) In the event of a loan denial that affects DBE participation, the process will be administered by the Department by adhering to federal regulations for the substitution of a DBE for reasons including, but not limited to, the DBE's voluntary withdrawal from the project or because the DBE refuses to perform work on the subcontract because the loan impacts its ability to mobilize. Written approval from the Department for substitution of a DBE is required. (See 49 CFR 26.53(f).).
- f) Withdrawal from a contract or subcontract as a result of a loan rejection will not disqualify a DBE from consideration for future loans.

Section 5.110 Loan Selection Committee

- a) The Committee will review the applications and select eligible DBEs for low-interest loans pursuant to this Part.
- b) *The Committee shall be comprised of at least three members appointed by the Secretary of the Department and shall include:*

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

- 1) *At least one voting public member from the construction or financing industry.*
 - 2) *The voting or non-voting public member or members may not be employed or associated with any vendor, consultant, contractor or DBE holding a contract or subcontract with the Department nor may the public member or his or her firm be considered for a contract or subcontract with the Department while he or she is serving as a public member of the Committee.*
 - 3) *Terms of service for voting public members shall be five years.*
 - 4) *No voting public member of the Committee shall hold full consecutive terms of service, nor shall any member receive any compensation other than for reasonable expenses for service related to this Committee (Section 2705-610 of the Law). Reasonable expenses for travel reimbursement will be in compliance with current policies of the Governor's Travel Control Board (see 80 Ill. Adm. Code 2800).*
 - 5) *The Secretary may appoint additional non-voting members that have particular knowledge and expertise in the Department's overall function and operation, DBE utilization, and financing. Non-voting members will serve at the discretion of the Secretary and will not have a term of service limit.*
- c) *The Secretary will have authority to remove a voting or non-voting member at any time. Upon the death, incapacity, resignation or removal of a voting member, the Secretary will fill the vacancy for the remainder of the unexpired term. An appointment of four or more years to an unexpired vacancy will be limited as a full term appointment as set forth in subsection (b)(4).*
 - d) *The Committee will meet and organize within 30 calendar days after the appointment of its members and, at that meeting, will elect a Recorder of the Committee.*
 - e) *The Committee will create a charter and by-laws governing its activities that must receive approval by the Secretary prior to ratification by the Committee.*

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

- f) Regular meetings of the Committee will occur within 10 calendar days after each letting, or as often as deemed necessary by the Department, at a date, time and place to be fixed by the Committee and at such additional times as the Committee deems necessary, for consideration of loan applications, reviews and transaction of any other business as properly may come before it.
- g) The Committee will provide 10 calendar days prior notice of each regularly scheduled meeting to the Fund Control Agent or Agents. No later than five calendar days prior to each meeting, the Fund Control Agent or Agents will provide a fiscal report to the Committee including, at a minimum, the number of outstanding loans and the balance of outstanding loans. The Committee will perform due diligence to ensure that approved loans do not exceed appropriated funds.

Section 5.120 Review of Loan Application

- a) Applications will be evaluated by the Committee. The Committee will review and rank the applications based upon assessment of need, total budget of applicant, DBE participation, and information provided in the loan application.
- b) After the Committee's review and ranking of approved applications, loan dollar amounts will be assigned to the loan applications up to the maximum amount of funding available for loans under this Part.
- c) The Committee will perform due diligence to ensure that approved loans do not exceed appropriated funds.

Section 5.130 Eligible Expenditures

Loan proceeds may be used for current liabilities or working capital expenses associated with participation in the performance of contracts procured and awarded by the Department for transportation construction and construction-related purposes, including, but not limited to, labor costs, salaries, wages, materials, supplies, equipment rental, utility costs, permit and right-of-entry fees, taxes, insurance and bonding. (Section 2705-610(f) of the Law)

Section 5.140 Ineligible Expenditures

Loan funds shall not be used for:

- a) *refinancing or payment of existing long-term debt exceeding 12 months;*

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

- b) *payment of non-current or delinquent taxes;*
- c) *payments, advances, loans, dividends or bonuses to stockholders, officers, directors, partners, or member owners of limited liability companies;*
- d) *the purchase or lease of non-construction motor vehicles or equipment (Section 2705-610(f) of the Law);*
- e) payment of expenses incurred on projects that are not within the scope of the loan or this Part; or
- f) security or collateral for another or different loan or debt.

Section 5.150 Funds Control Process

- a) The Fund Control Agent or Agents shall direct the Escrow Agent to disburse escrow funds to the DBE for eligible expenses in accordance with written directive from the DBE and as supported by the contract.
- b) The DBE will have full authority to direct the Fund Control Agent or Agents to disburse funds on its behalf. The DBE will have full authority to make other business decisions as is required to maintain its commercially useful function as a DBE.
- c) A DBE subcontractor, at any tier, will be required to provide lien waivers, releases, material certifications and certified payrolls to the prime contractor as may be required by the subcontract agreement. A DBE subcontractor, at any tier, will also be required to provide lien waivers, releases, material certifications and certified payrolls to the Fund Control Agent or Agents, as may be required for disbursement of funds pursuant to this Part.

Section 5.160 Repayment Procedures

- a) In accordance with this Part and as agreed to by the Fund Control Agent or Agents and the DBE, loan terms and amounts will be as set forth in the loan agreement.
- b) *The loan agreement shall provide for the terms and conditions of repayment, which shall not extend repayment longer than final payment made by the*

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

Department following completion and acceptance of the work authorized for loan assistance under the program. (Section 2705-610(f) of the Law)

- c) Loan payment amounts will be based upon the completed work-in-place for which partial payment is made and will be calculated as a percentage by dividing the partial payment amount by the total contract value multiplied by the loan principal plus accrued interest.
- d) The initial loan payment and subsequent loan payments will be due 15 calendar days from the applicant's receipt of partial payment whether disbursement is from the Department, the prime contractor, or another subcontractor.
- e) Fees or costs charged by the Fund Control Agent or Agents and Escrow Agent will be borne by the Department.
- f) A loan recipient may prepay the balance due on the loan in its entirety at any time without penalty, provided that the loan recipient first contacts the Fund Control Agent or Agents to obtain the total amount of the final payment due at that time.

Section 5.170 Failure to Complete the Work Authorized for Loan Assistance

- a) Failure to complete the work may cause the DBE to be ineligible for future loans.
- b) Failure to complete the work will cause the unpaid loan balance to immediately become due.

Section 5.180 Failure to Repay the Loan

- a) Failure to make two or more consecutive loan payments will be considered a default and will cause the unpaid loan balance to immediately become due.
- b) Within five calendar days after a borrower's failure to make two or more consecutive payments, the Fund Control Agent or Agents will notify the Secretary of the amount of the delinquency and the unpaid loan balance including principal and accrued interest.
- c) The Secretary may certify the loan in default and refer the matter to the Department's Chief Counsel for further action.

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

- d) The Department, through its Office of Chief Counsel, will take other action as may be required to enforce recovery of the debt, including, but not limited to, internal offset, Comptroller offset and legal action.
- e) Default of a loan authorized under this Part will cause the DBE to be ineligible for consideration for further loans.
- f) Any unresolved debt delinquency, as defined in Section 50-11 of the Code and as governed by 44 Ill. Adm. Code 500.1217, will disqualify the DBE from obtaining a contract or subcontract with the Department or other agencies of the State.

Section 5.190 Ethics Training for Loan Selection Committee and Fund Control Agent or Agents

- a) Members of the Committee and the Fund Control Agent or Agents are required to participate in annual ethics training.
- b) Upon completion of the ethics training program, members of the Committee and the Fund Control Agent or Agents must certify in writing that they have completed the training program.

Section 5.200 Conflicts of Interest

- a) Members of the Committee cannot be related in any way to or involved with an entity submitting an application for a loan, may not be in a position of authority to participate personally and substantially in the decision to award a State contract or with oversight relative to the procurement process for the State, nor may a member have a material, personal, financial or fiduciary interest that would affect his/her participation on the Committee.
- b) The Fund Control Agent or Agents cannot be related in any way to or involved with an entity that has been approved for a loan, may not be in a position of authority to participate personally and substantially in the decision to award a State contract or with oversight relative to the procurement process for the State, nor may a member have a material, personal, financial or fiduciary interest that would affect his/her participation in the program.
- c) Members of the Committee and the Fund Control Agent or Agents are required to report to the Department's ethics officer any situation that might indicate a conflict of interest or create the appearance of a conflict.

ILLINOIS REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTED RULES

Section 5.210 Confidentiality

- a) Members of the Committee are required to execute a confidentiality statement agreeing not to disclose any information gained during the course of their service on the Committee.
- b) The Fund Control Agent or Agents are required to execute a confidentiality statement agreeing not to disclose any information gained during the course of his/her participation in the program.