

## **109 KAR 9:010. Area Development Fund.**

RELATES TO: KRS 42.345-42.370

STATUTORY AUTHORITY: KRS 42.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.360 requires the Department for Local Government to promulgate administrative regulations necessary to implement KRS 32.350 and 42.355, regarding capital projects in area development districts. This administrative regulation establishes procedures relating to implementation of KRS 42.345 to 42.370, including submission and approval of proposed capital projects, expenditure of moneys from the Area Development Fund and completion of capital projects.

### Section 1.

(1) In determining the eligibility of a capital project pursuant to KRS 42.350(2) and (3), the board of directors of each area development district shall give priority consideration to a proposed project which has funds allocated in addition to area development funds and shall consider need and long-term benefits in selection of a project.

(2) The boards of directors of two (2) or more area development districts may propose joint capital projects to be financed by funds allocated to each participating area development district.

### Section 2.

(1) A project proposal shall be submitted to the Department for Local Government on a completed Project Profile (Area Development Fund) form.

(2) Except for a project conditionally approved pursuant to Section 4 of this administrative regulation, a proposal shall not be considered officially submitted until complete information and documentation required has been received by the Department for Local Government.

### Section 3.

(1) In addition to the requirements established in subsections (2), (3), and (4) of this section, each proposal submitted by an area development district shall be accompanied by:

(a) The minutes of the area development district board meeting specifying project approval and the amount of area development funds allocated to the project;

(b) Except as provided by paragraph (c) of this subsection:

1. Itemized cost estimates prepared within thirty (30) days prior to the date of submission by a licensed architect or engineer; or

2. A price quote on each item from one (1) or more vendors or contractors obtained within thirty (30) days prior to submission;

(c) If a bid has already been acquired, all bid documentation including a copy of the advertisement, bid tabulation, a certification that the opening time and place was accurate, the contract, change order, purchase order, letter of award, minutes or state price contract;

(d) A statement of assurances by the chief executive officer of the beneficiary agency that all applicable laws and administrative regulations have been or will be met with attestation of the county clerk that the written assurances required by KRS 42.355 are recorded in the office of the county clerk in the county in which the project is located; and

(e) Other information required pursuant to KRS 42.350(3).

(2) Each proposal submitted by an entity other than a city or county shall be accompanied by:

(a) A court order containing a reference to the authorizing statute by which the special district was established;

- (b) An executive agreement approved by the Attorney General as an agency created under the Interlocal Cooperation Act, KRS 65.210 to 65.300; or
  - (c) Articles of incorporation of a nonprofit corporation organized for a public purpose and performing governmental functions and services.
- (3) If funds from a source other than area development funds are to be used, the availability of those funds shall be verified by:
- (a) A resolution, minutes of the legislative body, or adopted budget of a local government;
  - (b) A copy of the grant or loan award notice which states the amount of funds and date the grant or loan funds will be available from the federal or state agency disbursing the funds;
  - (c) An affidavit by the authorized agent of a private funding source; or
  - (d) Other documentation the commissioner shall require in order to verify the availability of funds pursuant to this subsection.
- (4) The following conditions shall require the inclusion of the specified documentation in addition to other required documentation:
- (a) A proposal to acquire real property or acquire interest in real property shall be accompanied by a licensed attorney's statement which sets forth the present holder of title, book and page number of the deed by which the holder received the title and sets forth each lien, mortgage, and claim against the property;
  - (b) If the beneficiary agency owns property rights by lease, the proposal shall be accompanied by a copy of the executed lease which shall be for a term longer than the life expectancy of the project, generally not less than a twenty-five (25) year period;
  - (c) A proposal to extend new water, sewer or other utilities shall be accompanied by easements, rights-of-way, or attorney determination and certification of existence of those easements or rights-of-way; and
  - (d) A proposal for purchase of real property shall be accompanied by an appraisal, and a survey by a licensed surveyor.

#### Section 4.

- (1) If requested by an area development district, the commissioner shall conditionally approve a project that he determines complies with the provisions of KRS 42.350 and 42.355 pending submission of the information required in Sections 2 and 3 of this administrative regulation.
- (2) Payment for a project conditionally approved pursuant to this section shall not be made until all the information required by Sections 2 and 3 of this administrative regulation have been received and approved by the department.

#### Section 5. A beneficiary agency shall maintain and furnish the following records to the Department for Local Government upon request:

- (1) A Project Completion Report (Area Development Fund).
- (2) A copy of advertisement for bids, indicating each date and source of publication.
- (3) A tabulation of all bids received with certification by the chief executive officer that all bids were opened at the time and place stated in the advertisement, the tabulation is true and accurate and all laws applicable to advertisement and award have been met.
- (4) A copy of official records documenting award of the bid.
- (5) A copy of each executed contract (or purchase order) and change order to the contract.
- (6) Specifications upon which the bid and award were based.
- (7) A copy of the fully executed deed.
- (8) A copy of each statement or invoice.
- (9) A copy of note or other document marked paid.

(10) Another record the Department for Local Government deems necessary to verify appropriate use of grant funds.

Section 6.

(1) Upon the area development district receiving either conditional or final approval of a project proposal by the commissioner of the Department for Local Government, the area development district shall have two (2) years to implement and complete the project from the date at which the earliest approval was granted.

(2)

(a) Funds remaining in a Department for Local Government, Area Development District's Fund Account, and not granted and disbursed to a beneficiary agency for a capital project, as of close of business, June 30 of the last year of a biennium, shall be forfeited and returned to the Department for Local Government to be reallocated among the area development districts.

(b) Excess grant money disbursed to a beneficiary agency for a capital project but not expended, as of close of business, June 30 of the last year of a biennium, shall be returned in accordance with KRS 42.355(2).

Section 7.

(1) A local government unit that has received Department for Local Government project approval shall complete that project prior to being eligible to engage in a future area development fund project.

(2) A project shall not be deemed completed until all work has been completed and approved, and the project completion report submitted to the Department for Local Government.

Section 8. A beneficiary agency that received a grant in aid as authorized by KRS 42.345 through 42.370 shall expend the granted funds for the payment of the costs of the capital project for which the grant was made. A grantee beneficiary agency shall be liable to repay to the area development fund granted funds expended by the agency in violation of this section or the provisions of KRS 42.345 through 42.370.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Project Profile (Area Development Fund)", July 1999; and

(b) "Project Completion Report (Area Development Fund)", July 1999.

(2) This material may be inspected, copied, or obtained at the Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(11 Ky.R. 93; eff. 8-7-84; Am. 25 Ky.R. 2182; 26 Ky.R. 368; eff. 8-16-99; Crt eff. 2-27-2020.)