

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 8. GREATER ARIZONA DEVELOPMENT AUTHORITY

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R20-8-101 | Amend |
| R20-8-102 | Amend |
| R20-8-103 | Amend |
| R20-8-104 | Amend |
| Table A | New Table |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 41-1554.04
Implementing statute: A.R.S. §§ 41-1554.04 and 41-1554.05
- 3. The effective date of the rules:**
April 15, 1999
- 4. A list of all previous notices appearing in the register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 4 A.A.R. 4044, December 4, 1998.
Notice of Rulemaking Docket Opening: 4 A.A.R. 4124, December 11, 1998.
Notice of Proposed Rulemaking: 4 A.A.R. 4230, December 28, 1998.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Shawn Dralle, Executive Director |
| Address: | Greater Arizona Development Authority
3800 North Central Avenue, Suite 1650
Phoenix, Arizona 85012 |
| Telephone: | (602) 280-8121 |
| Fax: | (602) 280-8145 |
- 6. An explanation of the rule, including the agency's reasons for amending the rule:**
During its 1997 session, the Arizona State Legislature established the Greater Arizona Development Authority for the purpose of making funds available to provide technical assistance to infrastructure projects of political subdivisions, Indian tribes, and special districts, and financial assistance for infrastructure projects of political subdivisions and Indian tribes. These proposed amendments would establish a point system for the prioritization of technical assistance applications received by the Greater Arizona Development Authority (Authority.)

A.R.S. § 41-1554.04 provides that the Authority shall establish application forms for technical assistance, a procedure to review and approve or disapprove applications for technical assistance, criteria by which technical assistance will be awarded, and a means to prioritize applications for technical assistance. A.R.S. § 41-1554.05(C) provides that the Authority shall establish an application process and method of determining the allocation of technical assistance in accordance with A.R.S. § 41-1554.04. These proposed amendments will strengthen the process for awarding technical assistance by providing a more uniform and consistent method for prioritizing technical assistance applications.

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Table A contains the proposed point system for prioritization of technical assistance applications made to the Authority. The point system will provide the Authority a mechanism for awarding technical assistance awards as well as the ability to transfer award monies to the next highest ranking applications if, for any reason, an applicant who receives a technical assistance award is not able to use that award. The point system also provides a mechanism for prioritizing 2 applications that receive the same point score. It should be noted that, in certain instances, the point system uses a range of points for scoring a particular priority criterion, as opposed to using a set point value for scoring the criterion. These point ranges are necessary for the following reasons:

(1) The types of infrastructure projects that the Authority was designed to foster are highly diverse. Creating set point scores requires very specific prioritization criteria. Determining the specific criteria necessary to prioritize the variety of projects that are reviewed by the Authority would create an unnecessarily complicated point system.

(2) The Authority has only finished 1 round of technical assistance. These proposed rules are a product of several meetings with stakeholders concerning the outcome of this 1st round of technical assistance. The proposed rules target the shortcomings of the initial rulemaking and it is the intent of the Authority to continue revising the application prioritization process so that the process is as objective as possible.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The rule does not diminish a previous grant of authority to a political subdivision of this state.

9. The summary of the economic, small business, and consumer impact:

The impact is expected to be positive. While small business and consumers may have user rates and fees increased to pay for the new infrastructure financed by the Greater Arizona Development Authority, the net effect is expected to be positive for 2 reasons:

(1) The projects will be developed more quickly with GADA participation, thereby accelerating the benefits to the local community.

(2) The Authority will provide financial support and technical assistance to local communities for infrastructure development.

Because of the wide range of possible projects with varying local impacts, it is difficult to estimate or generalize about the potential economic impact of the Authority. It can be said that the Authority's beneficial contribution will be in the acceleration of the development of necessary projects. In some cases, the acceleration may be 2 years, in other cases, longer. This allows the community to begin utilizing this benefit at an earlier date to improve the economic well being of its residents and improve the overall quality of life.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

No changes were made to the proposed rules.

11. A summary of the principal comments and the agency response to them:

No oral or written comments were received from the public.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

13. Incorporations by reference and their location in the rules:

None.

14. Was this rule previously adopted as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 8. GREATER ARIZONA DEVELOPMENT AUTHORITY

ARTICLE 1. TECHNICAL ASSISTANCE

Section

- R20-8-101. Definitions
- R20-8-102. Application Process
- R20-8-103. Eligibility Criteria
- R20-8-104. Priority; Approval and Disapproval; Protest
- Table A. Priority Criteria

ARTICLE 1. TECHNICAL ASSISTANCE

R20-8-101. Definitions

In addition to the definitions prescribed in A.R.S. § 41-1554, the following definitions apply in this Article:

1. "Administratively complete" means that an applicant has completed the application for technical assistance and provided all of the required information.
2. "Applicant" means a political subdivision, special district, or Indian tribe that applies to the Authority for technical assistance.
3. "Authority" means the Greater Arizona Development Authority.
4. "Board" means the board of directors of the Authority.
5. "Economic impact summary" means an economic analysis that establishes the economic context for a project based on information provided by the applicant.
56. "Economic overview" means an economic analysis that establishes the economic context for a project based on public data.
67. "Infrastructure" means any facility located in this state for public use owned by a political subdivision, special district or Indian tribe that retains responsibility for its operation and maintenance.
78. "Project" means the whole, or any distinguishable segment or segments, of publicly owned infrastructure for which technical assistance is being requested or provided.
89. "Staff" means the Executive Director and the Finance Director of the Authority.
910. "Technical assistance round" means a period of time established by the Board during which applications for technical assistance are sent to potential applicants, returned to the Authority, analyzed by Staff, and submitted to the Board for approval or disapproval.

R20-8-102. Application Process

- A. The Board shall annually establish a due date by which applications for technical assistance shall be submitted for each technical assistance round, and the number of technical assistance rounds to be held in a given state fiscal year.
- B. The Authority shall send solicitation letters to potential applicants at least 60 days before applications are due. Other interested persons may submit requests to the Authority to be placed on a mailing list to be utilized by the Authority in sending out solicitation letters.
- C. An applicant shall provide the following information to the Authority by the established due date for such applications on a form provided by the Authority:
 1. Contact information for the applicant, including name, address, and telephone number;
 2. A description of the ~~kind~~ type of technical assistance being requested and an estimate of the cost of the technical assistance;
 3. A detailed description of the project;
 4. A summary of the anticipated economic impact the project will have on the community as estimated by the applicant;
 45. The estimated starting date, completion date, and projected cost of the infrastructure project for which the technical assistance is being requested;
 56. The projected sources and uses of funds for the infrastructure project, including public and private in-kind contributions; and
 67. A list of professional and outside service providers, ~~including their professional qualifications~~, who have worked with the applicant on any part of the project.
- D. In addition to the application required in subsection (C), an applicant shall provide the following information to the Authority by the established due date for such applications:

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1. A planning document specific to the locality of the project for which the technical assistance is being requested that includes the project, such as a capital improvement plan, local strategic plan, or similar planning document; or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
 2. If the project is listed on the project priority list of the Water Infrastructure Finance Authority or on the Department of Transportation's Five-Year State Plan, a document evidencing this fact;
 3. A resolution from the governing body of the applicant stating the following:
 - a. The project is in the best interests of the residents;
 - b. The estimated economic impact on the community; and
 - c. The commitment of local funds, if applicable; and
 4. The applicant's most recent financial statements.
- E.** Staff shall analyze each application received on or prior to the due date for applications for technical assistance to determine whether the application is administratively complete and whether an applicant meets the eligibility criteria prescribed in R20-8-103. Applications for technical assistance which are determined to be both administratively complete and eligible for technical assistance under R20-8-103 shall be submitted to the Board for prioritization and possible funding. Applications which are either not administratively complete or do not meet the criteria in R20-8-103 shall not be submitted to the Board. ~~with a recommendation that they be disapproved.~~

R20-8-103. Eligibility Criteria

To be eligible to receive technical assistance, an applicant shall satisfy the following criteria:

1. The applicant is a political subdivision, Indian tribe, or special district;
2. The technical assistance requested is for the development or financing of an infrastructure project;
3. The application is administratively complete;
4. The applicant provides evidence that the project has public support;
5. The applicant provides evidence that the project is part of an adopted comprehensive plan, for example, a capital improvement plan, a local strategic plan, or similar planning document; or evidence that the project has been discussed in meetings or in study sessions of the governing body of the applicant;
6. The applicant has the capacity to provide managerial support to the project; and
7. The cost of the technical assistance does not exceed 10% of the total cost of the final project.

R20-8-104. Priority; Approval and Disapproval; Protest

- ~~**A.** The Board shall disapprove an application for technical assistance which does not meet the eligibility criteria in R20-8-103.~~
- ~~**B.A.** The Authority shall request the Department of Commerce prepare an economic overview for each of the projects eligible for technical assistance that establishes the economic context for the project.~~
- ~~**C.B.** During each technical assistance round, the Board shall determine the order and priority of infrastructure projects for which an eligible application for technical assistance has been received, based on the following factors listed below in order of importance. A project shall be given a higher priority to receive technical assistance for each of the following: The Board shall use 95 points maximum for tribal applications and 100 points maximum for all others based on Table A. Application scores shall then be prioritized based on a percentage of the points received to total points possible.~~
- ~~1. The project has been determined to be a likely candidate for future financial assistance from the Authority, based upon an assessment made at the time of the application by Staff of the applicant's inability to access lower cost funding from other sources~~
 - ~~2. The project is close to construction and permanent financing; or~~
 - ~~3. There is evidence of a high degree of certainty of the project's economic benefits based on one or more of the following:
 - ~~a. The economic overview prepared by the Department of Commerce;~~
 - ~~b. Partnerships, to the extent that they exist, both public and private, providing financial and in-kind services, in support of the project; or~~
 - ~~e. The public support.~~~~
- ~~**C.** Applications with tied scores shall be prioritized by comparing the scores that each application received in Table A under the following categories in descending order of importance:
 1. Evidence of local support for the project;
 2. Evidence of a permanent funding source for the project;
 3. Evidence of the project's impact on the community; and
 4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.~~
- ~~**D.** The prioritization under subsection (C) is as follows:
 1. The tied application with the higher score under subsection (C)(1) shall have priority over other applications;
 2. If the tied applications have the same score under subsection (C)(1), the application with the higher score under subsection (C)(2) shall have priority over the other applications;~~

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3. If the tied applications have the same score under subsections (C)(1) and (C)(2), the application with the higher score under subsection (C)(3) shall have priority over the other applications;
 4. If the tied applications have the same score under subsections (C)(1), (C)(2), and (C)(3), the application with the higher score under subsection (C)(4) shall have priority over the other applications.
 5. If tied applications have the same score under subsections (C)(1), (C)(2), (C)(3), and (C)(4), the Board shall determine the priority of the applications.
- DE.** The Board shall approve or disapprove each eligible application for technical assistance based upon the priority list and available funding for technical assistance. The Board may fund all or a portion of a technical assistance request.
- EE.** The Authority shall mail the Board's written determination to each applicant within 90 days after the date that all applications for technical assistance ~~were~~ are due.
- FG.** For each approved project, the Authority shall establish a date by which the commitment of the Authority to provide technical assistance expires. The Authority shall not provide technical assistance for an approved project if the applicant does not complete all agreements with the Authority on or before that date.
- H.** The Authority shall bypass a project within a technical assistance round and offer funding to the next highest ranking project if the project is not ready to proceed within the next 6-month period after the award date.
- GI.** An applicant whose project for technical assistance is disapproved may file a protest with the Board as follows:
1. The applicant shall submit its reasons for protesting the decision of the Board, in writing, within 20 days of the date of the Board's written determination, in a letter addressed to the Chairperson of the Board, with a copy to the Executive Director of the Authority.
 2. The Authority shall review the substance of the protest and respond, in writing, by mail, to the applicant, within 30 days. Staff shall distribute a copy of the response to the Board.
 3. Upon receipt of the Authority's written response, the applicant may request an opportunity to make a direct presentation to the Board. Staff shall schedule the presentation for the next regular Board meeting.
 4. Following the applicant's presentation, the Board shall decide whether to review the applicant's request for technical assistance. Within 30 days after the presentation, the Board shall, in writing, notify the applicant of its final decision regarding the applicant's request for technical assistance.

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Table A. Priority Criteria

Priority Criteria		Point Total
<u>1. Evidence of local support for the project based on the following:</u>		<u>35 points</u>
<u>The project is included in the General Plan, Capital Improvement Plan or other similar planning document of the applicant or has been discussed in meetings or study sessions of the applicant's governing board.</u>	<u>Up to 15 points</u>	
<u>The project has public/private partnerships that provide financial or in-kind services.</u>	<u>Up to 10 points</u>	
<u>The project has received a resolution of support from the governing board of the applicant.</u>	<u>5 points</u>	
<u>The project has received voter authorization.*</u>	<u>5 points</u>	
<u>2. Evidence of the project's impact on the community based on the following:</u>		<u>30 points</u>
<u>An economic overview prepared by the Department of Commerce.</u>	<u>Up to 10 points</u>	
<u>The economic impact summary as prepared and submitted by the applicant.</u>	<u>Up to 10 points</u>	
<u>The project addresses health, safety and welfare issues.</u>	<u>Up to 10 points</u>	
<u>3. Evidence of a permanent funding source for the project:</u>		<u>20 points</u>
<u>The project is a likely candidate for a GADA Financial Assistance loan.</u>	<u>Up to 10 points</u>	
<u>A revenue stream has been identified to pay for the project.</u>	<u>5 points</u>	
<u>A funding source has been identified for the project.</u>	<u>5 points</u>	
<u>4. Evidence of sufficient financial and managerial capacity to operate and maintain the project.</u>	<u>Up to 15 points</u>	<u>15 points</u>
<u>Maximum Point Total</u>		<u>95/100 points</u>

* State law does not require tribal governments to obtain voter authorization for infrastructure projects, therefore, technical applications received from tribal governments will be based on a 95-point scale as described in R20-8-104(B) and (C).