

225 CMR: DIVISION OF ENERGY RESOURCES

225 CMR 2.00: ENERGY AUDIT AND ENERGY CONSERVATION IMPROVEMENT PROGRAMS

Section

- 2.01: Statutory Authorization
- 2.02: Definitions
- 2.03: Application Requirements and Procedures
- 2.04: Application Review and Selection Procedure
- 2.05: Award of Grant and Allocation of Funds
- 2.06: Technical Assistance Analysts' Eligibility

2.01: Statutory Authorization

- (1) M.G.L. c. 25A, § 11 directs the Commissioner of DOER to establish:
 - (a) an energy audit program ("EAP") to determine the energy consumption levels of and appropriate energy conservation measures for buildings and facilities owned by:
 1. the Commonwealth,
 2. its political subdivisions, and
 3. public authorities and other public instrumentalities of the Commonwealth and of its political subdivisions including, but not limited to, housing authorities; and
 - (b) an energy conservation improvement program ("ECIP") to carry out and assist energy conservation projects including energy conservation measures, for such buildings and facilities.
- (2) M.G.L. c. 25A, § 11, as amended by St. 1983 c. 700, § 2 and St. 1987 c. 670, §§ 5 and 6, regarding the allocation of state bond funds for grant-funded energy conservation programs, requires the repayment to the General Fund of the Commonwealth, of an amount not less than 30% (50% if the Commissioner of DOER has not been provided with information relating to energy expenses incurred prior to the implementation of energy conservation projects or measures) of any funds awarded by DOER after January 1, 1984 to cities, towns, sewer districts, or regional school districts. The time period for such repayment shall not exceed ten years from the date(s) of the Grant Agreement(s). DOER shall indicate said repayment requirement in the applicable Program Opportunity Notice when state bond funds are used for an ECIP or EAP grant.

2.02: Definitions

Terms defined in M.G.L. c. 25A, § 3, which are also used in 225 CMR 2.00, shall have the same meaning as set forth in M.G.L. c. 25A, § 3, unless said term is otherwise defined in 225 CMR 2.02.

Building Energy Profile, a descriptive report of the energy consumption characteristics of a building or facility, which complies with the minimal information requirements established in ECIP and EAP.

DCPO, the Division of Capital Planning and Operations.

DHCD, the Department of Housing and Community Development.

DOER, the Division of Energy Resources.

EAP, Energy Audit Program.

ECIP, Energy Conservation Improvement Program.

Energy Auditor, a person approved by DOER to perform building energy profiles in accordance with requirements established by DOER.

Energy Conservation Manager, a person who has been designated by the agency responsible for a building or facility to be responsible for the use of energy in that building or facility.

2.02: continued

Energy Conservation Measures, the modification of maintenance and operating procedures in a building or facility, or the installation, replacement or modification of equipment, fixtures, or materials in a building or facility, which are primarily intended to reduce energy consumption.

Energy Conservation Projects, the design, acquisition, and installation of projects to promote energy savings, including but not limited to modifications to windows and doors; caulking and weatherstripping; insulation; automatic energy control systems; hot water systems; equipment required to operate steam, hydraulic, and ventilating systems; plant and distribution system modifications including replacement of burners, furnaces, or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; and cogeneration systems.

Payback Period, the time period in which energy savings resulting from an energy conservation measure pay for the measure, as calculated in accordance with EAP and ECIP guidelines issued from time to time by DOER.

PON, Program Opportunity Notice announcing the availability of grant funds and other services offered under a particular program.

Sector, certain categories of public entities or public buildings and facilities as may be designated by DOER.

Technical Assistance Analyst an engineer who meets the eligibility criteria identified in the guidelines

Technical Assistance Energy Audit, an energy conservation study performed by a technical assistance analyst which considers and analyzes the possible energy conservation measures applicable to a given building or facility, and estimates their cost and potential savings, in accordance with requirements established in EAP and ECIP guidelines.

2.03: Application Requirements and Procedures

(1) Eligibility.

(a) To be eligible to receive financial assistance or other DOER program services, the application must pertain to:

1. a building or facility owned by the Commonwealth or its political subdivisions, or public authorities or other public instrumentalities of the Commonwealth or of its political subdivisions, including but not limited to housing authorities; and
2. a building or facility for which the applicant has no current plans to close or dispose, and for which the projected future functional life is appropriate to the proposed study, project or measures, as defined by DOER in EAP and ECIP guidelines; and
3. a building or facility also meeting other application requirements which may be established from time to time by DOER, and
4. a DHCD public housing facility, a building or facility which has its fuel costs paid in full or in part by the Commonwealth, and has received approval for the proposed conservation project or measure from DHCD.

(b) DOER may require applicants to demonstrate that every effort has been made to participate in any other applicable federal, state, or other assistance program available at the time of application.

(c) Eligibility requirements, other than that specified in 225 CMR 2.03(1)(a)1., may be waived upon petition to DOER if the applicant demonstrates that such waiver would be in the interest of the EAP or the ECIP.

(d) Eligibility for funding for the implementation of energy conservation measures and projects under the ECIP requires:

1. a technical assistance energy audit (or update) performed by a Technical Assistance Analyst; or
2. other analysis deemed appropriate by DOER, as specified in the guidelines.

2.03: continued

(2) Issuance of Program Opportunity Notices (PONs); Application Submittal. DOER will issue PONs for the EAP and the ECIP at its discretion. Eligible participants may submit applications for funding or for DOER energy audit services, in accordance with all applicable requirements, within the time period specified in the PON. PON publication procedures and corresponding application requirements shall be established in the guidelines.

2.04: Application Review and Selection Procedure

(1) General Review Process. Applications for EAP and ECIP grants shall be evaluated for completeness and compliance with applicable requirements in the PON and the guidelines, and shall be approved or disapproved in accordance with the procedure outlined in 225 CMR 2.04(2). Award applicants shall provide to DOER, upon DOER's request, clarification, corrections, and additional information regarding an application.

(2) Application Approval Procedure. DOER shall notify the applicant of the final decision on an application within the time specified in the applicable PON. DOER may approve or disapprove all or any portion of an application. In the event of disapproval, a notice of disapproval shall be sent to the applicant with or without a statement of the reasons therefore.

In the case of an award of more than \$50,000.00, DOER may require the applicant to hire or appoint a professional consultant or grant manager at the applicant's expense.

(3) Special Requirements

(a) Capital Facility Projects Within the Jurisdiction of DCPO The application review and selection procedure set forth herein may be modified in a Memorandum of Understanding between DOER and DCPO in the case of state facility projects within the jurisdiction of DCPO.

2.05: Award of Grant and Allocation of Funds

(1) Awards.

(a) Upon approval of an application, the applicant shall be awarded an Energy Audit Award or an Energy Conservation Improvement Award. Awards shall be perfected in the form of an EAP or ECIP award agreement, according to the process and requirements outlined in the guidelines. For the Energy Audit Program, DOER may, at its sole discretion, offer:

1. grant funds with which the grant recipient shall contract for a technical assistance energy audit; or
2. other services provided by DOER, as specified in the applicable PON. For ECIP, DOER may, at its sole discretion, offer grant funds, as specified in the applicable PON.

(b) The amount and kind of any matching portion to be paid by the award recipient shall be set at the sole discretion of DOER, as specified in the applicable PON and further defined in the Grant Agreement, and shall be in addition to any repayment amount required by M.G.L. c.25A, § 11 and referenced in 225 CMR 2.01(2).

(c) If an agreement is not executed by the award recipient and DOER within a reasonable time of the award, the award may be cancelled at the sole discretion of DOER.

(2) Allocation and Use of Funds. The schedule for allocation of grant funds and for the filing of required reports under the EAP and the ECIP shall be determined by DOER and set forth in an award agreement. Grant funds may be used to pay only for technical assistance energy audits, energy conservation measures, conservation projects, and other activities or services deemed necessary by DOER to accomplish program objectives, which are undertaken after DOER has executed the award agreement. Obligations incurred prior to that time are ineligible for funding. Grant funds awarded under EAP may be used to conduct technical assistance energy audits performed only by firms or individuals meeting the Technical Assistance Analyst eligibility criteria established in the guidelines.

2.05: continued

(3) Management and Administration of Projects.

(a) During and after the course of the Projects, DOER may require financial, technical and other information it deems appropriate to monitor and evaluate funded activities. Upon DOER's request, award recipients shall provide such information. DOER shall determine, and set forth in the Grant Agreement, the specific content, format and timing for provision of this information.

(b) For awards to state-owned facilities, DCPO shall have primary responsibility for day-to-day monitoring and oversight of all state facilities projects and shall be responsible for complying with reporting requirements established by DOER.

(c) For awards to Housing Authorities, DHCD shall have primary responsibility for day-to-day monitoring and oversight of all housing authority projects and shall be responsible for complying with reporting requirements established by DOER.

(4) Designers and Construction Contractors. Award recipients shall comply with all statutes, regulations and other laws, including but not limited to the provisions of M.G.L. chs. 7, 30 and 149, regarding the designer selection process and competitive bidding in the awarding of contracts using grant funds.

(5) Disbursement of Grant Funds; Accounts. DOER's disbursement of grant funds and accounting requirements applicable to award recipients shall be as set forth in the guidelines.

(6) State Facility Projects. The provisions of 225 CMR 2.05, except those contained in 225 CMR 2.05(3)(b), may be waived in the case of awards for state facility projects.

2.06: Technical Assistance Analysts' Eligibility

DOER shall establish eligibility criteria for Technical Assistance Analysts in the guidelines. Grant recipients under EAP shall be responsible for ensuring that the individual or firm selected to conduct the technical assistance energy audit meets said eligibility criteria set forth in the guidelines. DOER may, in its sole discretion, question the eligibility of any firm or individual selected by an EAP grant recipient to conduct a technical assistance energy audit, and may further require the grant recipient, firm or individual to provide DOER with additional information concerning eligibility. The EAP grant recipient shall provide to DOER the name of the individual or firm selected to perform the technical assistance energy audit prior to the grant recipient entering into a contract for the technical assistance energy audit. DOER shall have the right to withhold grant payment if DOER determines, in its sole discretion, that the selected firm or individual does not meet eligibility criteria.

REGULATORY AUTHORITY

225 CMR 2.00: M.G.L. c. 25A, §§ 5, 6, 11 and 12; c. 30A; St. 1979, c. 796, §§ 4, 28, 31 and 32; St. 1983, c. 700, §§ 1 through 5; St. 1987, c. 670, §§ 1 through 6.