

CHAPTER 43-03-05 REVIEW AND AWARD PROCESS

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43-03-05-01. Application evaluation - Criteria.

All applications will be evaluated according to the criteria set forth in North Dakota Century Code chapter 54-17.5, and the criteria established by the commission as stated in this section.

1. **General criteria.** Priority areas of the program include, but are not limited to, marketing applications of lignite and lignite products; reclamation applications that will reduce unnecessary regulatory costs; demonstration or development activities for lignite projects and activities and for lignite products that have a high probability of commercialization; and base-line research that promotes additional lignite production or lignite products for the economic growth of North Dakota. The project must be applicable to research, development, or marketing of lignite or products derived from lignite or land reclamation research. The projects need not be unique to North Dakota's lignite resources but must be applicable to them. It is preferred that the project focus on the development and use of lignite rather than basic research.
2. **Specific criteria.**
 - a. Projects should conform to the following criteria:
 - (1) Preserve or enhance existing jobs and create the opportunity for additional jobs.
 - (2) Preserve or enhance existing lignite production.
 - (3) Provide the opportunity for development and demonstration of marketable lignite products and technologies.
 - (4) Provide for economic growth and benefit in coal-producing counties or those counties with recoverable coal reserves.
 - (5) Provide a high probability for commercialization of the process, activity, or technology in North Dakota by the year 2000 or before.
 - (6) Provide for specific marketing strategies and contributions to the effective marketing of lignite, its products, or lignite-based technologies by the year 2000 or before.
 - (7) Provide opportunity for reclamation research projects that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mine land to its original or better productivity as soon as possible.
 - b. The merits of the project will be weighed in relation to:

- (1) The potential value of the project's success including market potential, social value, environmental value, technical feasibility, competition in the marketplace, and timing of completion;
 - (2) The feasibility of the cost benefit ratio of the project;
 - (3) The risk involved in funding the project; and
 - (4) The economic condition of the applicant.
- c. The project's compatibility with the objectives of the program will be considered, in particular, the following will be evaluated:
- (1) The need for the project;
 - (2) The potential use by the lignite-related industry of the results to be achieved by the project;
 - (3) The timeliness of the project with regards to deadlines established by legislation;
 - (4) The impact on the lignite-related industry;
 - (5) The level of funding requested;
 - (6) The level of matching funds;
 - (7) The short-term and long-term benefits to the applicant, lignite industry, lignite producers, and the counties and state of North Dakota;
 - (8) The likelihood that the project will achieve its technical and market goals;
 - (9) The scientific soundness and innovation of any proposed technology;
 - (10) The financial feasibility of the proposed project; and
 - (11) The technical qualifications and expertise of the applicant, the investigators, and the sponsors.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-01, 54-17.5-03, 57-61-01.5

43-03-05-02. Application review - Initial review.

Upon receipt of an application, the commission will determine if the application meets eligibility requirements and is complete. The commission shall complete this review within thirty days of the application deadline date, though the commission may extend this time if needed to properly review an application. If the commission determines that the application meets eligibility requirements and is complete, the application will be referred to a technical review committee. The commission may also refer any question it has about completeness and eligibility to the technical review committee and such question may then be a consideration throughout the review process.

History: Effective February 1, 1988; amended effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

43-03-05-02.1. Application review - Technical review committee.

1. **Composition.** Members of a technical review committee are selected by the commission. Committee members should possess the expertise and experience necessary to adequately review the application.
2. **Conflict of interest.** No individual with a direct financial interest in a proposed project may be involved in any way in reviewing the application. If asked to review the application, the individual with the conflict of interest shall immediately inform the commission of the conflict. Failure to so notify the commission disqualifies the individual from serving on any technical review committee unless reinstated by the commission, and the commission may disqualify the application from being approved during the round of grants within which the conflict occurred.
3. **Review.** The technical review committee shall assess the technical and fiscal merits of the application. Upon completion of its review, the committee shall make its recommendation to the council. The committee shall submit its recommendation within sixty days, though the commission may extend this time if the committee needs more time to properly review the application.
4. **Notification to applicant.** The commission shall promptly notify the applicant of the recommendation made by the committee to the council.

History: Effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

43-03-05-02.2. Application review - Council recommendation and commission decision.

The council shall consider, but is not bound by, a recommendation of the technical review committee. The council shall make a recommendation on each application to the commission. The council shall make its recommendation to the commission within thirty days of its receipt of the technical review committee's recommendation, though the commission may extend this time if the council needs more time to properly review the application. The commission shall consider, but is not bound by, a recommendation of the council. Though the commission makes the decision to approve or reject all applications, the commission may only approve those applications that have received a favorable council recommendation.

History: Effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-02, 54-17.5-03, 54-17.5-04, 57-61-01.5

43-03-05-03. Contracts.

A grantee must enter into a contract with the commission and submit any supporting documentation required by the commission. The application will form an integral part of the contract. The commission shall provide a proposed contract to grantees within sixty days of commission approval of the project. The grantee will then have sixty days to execute a contract. If a contract is not executed by the grantee within the sixty days, the award will be canceled unless an extension of time is granted by the commission. Work carried out under a contract is the work of the grantee and not the commission.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5

43-03-05-04. Disbursement of funds.

Funds will be disbursed only after a contract has been executed. All disbursements will be made according to the schedule in the contract. Disbursements may be withheld if the commission deems the grantee has not complied with these rules or the contract.

History: Effective February 1, 1988; amended effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5

43-03-05-04.1. Project duration.

The project must be completed within the time specified in the contract. If the project cannot be completed within the time specified in the contract, the grantee may make a written request to the commission for an extension of up to one year. The request must set forth the specific additional time requested and the reasons why an extension is needed. Upon receipt of the request, the commission shall convey it to the council's executive committee. The executive committee may make use of a technical review committee to analyze the request. The executive committee shall review the request and make a recommendation to the commission. The commission, after reviewing the recommendation, shall decide whether or not to grant the request. Additional extensions may be sought under the same procedure described above, but may only be granted if the grantee proves that factors beyond the grantee's control are the cause of its inability to complete the project on time and that since receiving the first extension the grantee has been diligent in all respects in trying to complete the project on time.

History: Effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5

43-03-05-05. Allocations.

If the work under a contract extends beyond the state's fiscal biennium in which the contract is made, any further disbursements of the grant by the commission to the grantee cannot be guaranteed and will be made only if sufficient funds are appropriated in the new biennium to satisfy the contract.

History: Effective February 1, 1988; amended effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 54-61-01.5

43-03-05-06. Partially funded or delayed projects.

If the commission grant is less than the amount requested, the applicant may decline the award or proceed with the project as proposed, notwithstanding the reduced award. Failure of a grantee to proceed with the project in a timely manner or comply with contract terms or these rules entitles the commission to cancel the grant and contract and to receive from the grantee full reimbursement of all funds the commission disbursed under the contract.

History: Effective October 1, 1990; amended effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5

43-03-05-07. Contract modifications.

If at any time after entering a contract the grantee desires to change any term of the contract, the grantee shall make a written request to the commission. The request must set forth the specific change desired and the reasons why the change is needed. Upon receipt of the request, the commission shall convey it to the council's executive committee. If the executive committee decides that the requested

change is substantive, it shall refer the request to the council and the council shall review it and make a recommendation to the commission. The executive committee and council may use a technical review committee to analyze the request. If the executive committee decides that the requested change is not substantive, the executive committee shall review the request and make a recommendation to the commission. The commission, after receiving the recommendation of the council or of the executive committee, shall decide whether or not to grant the request.

History: Effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5

43-03-05-08. Reporting requirements.

A grantee has the following reporting obligations:

1. **Interim reports.** A grantee shall submit to the commission reports summarizing the project's accomplishments and expenditures to date. The timing of the reports will be specified in the contract.
2. **Special reports.** If substantial progress on a project occurs earlier than anticipated, the grantee shall immediately submit to the commission a report explaining the accomplishment.
3. **Final report.** A comprehensive final report must be submitted to the commission by all grantees within the time specified in the contract. This report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and the potential applications of the project. The rest of the report must explain these subjects in detail as well as the total costs of the project, a summary fiscal accounting of the entire project, any plans for developing or putting to commercial use the results of the project, and whether and in what manner the project met or failed to meet the standards referred to in subsection 7 of section 43-03-04-01.

History: Effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5