

SECRETARY’S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. BEAD-1
Public Service Commission, on)
its own motion, to implement) ORDER OPENING DOCKET AND
the Precision Agriculture) SEEKING COMMENT
Infrastructure Grant Act.)
) Entered: August 16, 2022

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

The Nebraska Public Service Commission (“Commission”) initiates this proceeding on its own motion to implement the Precision Agriculture Infrastructure Grant Act.

Statutory Requirements

On April 19, 2022, the Governor of Nebraska signed the Precision Agriculture Infrastructure Grant Act (“Act”) as part of the Legislature’s LB 1144, creating the Precision Agriculture Infrastructure Grant Program (“PRO-AG”).¹ The purposes of PRO-AG, as stated in the Act, are to propel Nebraska agricultural producers to lead the nation in precision agriculture connectivity, sustainability, traceability, and autonomy to accelerate rural economic development, and to provide high-speed Internet service to farm sites in unserved areas of the state. The Commission is tasked with administering PRO-AG and may utilize funds provided to Nebraska from the federal Broadband Equity, Access, and Deployment Program (“BEAD”) to fund PRO-AG.

Under the Act, the Commission must promulgate application forms for PRO-AG grants. The Commission may then award grants to a wireless network provider that provides adequate precision agriculture connectivity, or to an agricultural cooperative, agronomist, or agricultural producer. As set forth in the Act, PRO-AG grants may be used to provide the following:

¹ Neb. Rev. Stat. § 86-1401.

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- (a) Adequate precision agriculture connectivity to on-farm structures and devices, including, but not limited to, tractors, combines, irrigation systems, livestock facilities, and farm offices;
- (b) On-farm traceability solutions that satisfy food supply stakeholder demand, including blockchain;
- (c) Products that improve soil health, water management tools and sensors that facilitate judicious use of water resources, and products that promote the use of water efficiency seed technologies that lower agriculture's water, carbon, and nitrate footprint; and
- (d) Products that use autonomous solutions in agricultural machinery, including, but not limited to, grain carts, spreaders, precision drone scouting, and scouting robots.

The Act requires the commission to award up to one-half of the available grant fund for the purpose stated under (a) above, ensuring adequate precision agriculture connectivity to on-farm structures. The Act further requires the commission to award up to one-half of the available grant funds to the purposes stated under (b), (c), and (d) above.

Issues for Comment

Prior to implementation of the PRO-AG program, the Commission seeks input from stakeholders and interested parties. The Commission especially encourages persons or entities with experience in precision agriculture to submit comments.

1. Entities Eligible to Receive Grants

The Act allows the Commission to award grants to "[a] provider, an agricultural cooperative, an agronomist, or an agricultural producer."² The Commission seeks input on what the criteria and/or definitions for each category should be. What entities, or types of entities, should be eligible to apply? How should the Commission evaluate applicants? Are there any types or categories of applicant which would merit additional or different scrutiny, or that the Commission should not consider for funding?

² Neb. Rev. Stat. § 86-1404.

2. Funding Source

The Act states that the Commission may use BEAD funding for the purpose of carrying out the Program, not to exceed two million dollars per year. One-half of available grant funds should be used for grant funding for precision agriculture connectivity to on-farm structures and devices.³ The remaining one-half of funding is to be used for on-farm traceability solutions, products relating to soil health and water management, and products using autonomous solutions in agricultural machinery.⁴

The Notice of Funding Opportunity ("NOFO") released for the BEAD program lists eligible uses of funding. These eligible uses include, *inter alia*, the construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide broadband service; leases of broadband facilities; engineering and design work; personnel costs for implementation of the BEAD program; and training and workforce development.⁵

Given the information promulgated to date in the BEAD program, are all purposes of the PRO-AG Program allowable uses of BEAD funding? Which purposes, if any, are not allowable uses of BEAD funding? Are any alternative sources of funding available for PRO-AG? What steps should be taken to ensure both halves of the PRO-AG program can be fully funded?

3. Priority for Grant Distribution

The Act provides that the Commission may award funding for four different purposes. One-half of available funding each year is to be awarded for the purpose of "adequate precision agriculture connectivity to on-farm structures and devices, including, but not limited to, tractors, combines, irrigation systems, livestock facilities, and farm offices." How should the Commission evaluate and prioritize grant awards within this category? Should the

³ Neb. Rev. Stat. § 86-1404(3).

⁴ *Id.*

⁵ National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, *Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program*, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (May 13, 2022) ("BEAD NOFO"), at 39-40. The NOFO also lists ineligible costs on pages 82-83.

Commission adopt criteria previously set forth in the Commission's Nebraska Broadband Bridge Program ("NBBP")? Are there any issues or concerns unique to precision agriculture connectivity that the Commission should consider in determining grant awards in this category?

The remaining three allowable for PRO-AG grant funding are discrete categories.⁶ How should the Commission determine how funding should be awarded between each of these three categories? Should any funding categories be prioritized? How can the Commission fairly and objectively evaluate applications in these three categories? Are there any considerations for the long-term sustainability of these projects which the Commission should consider?

4. Match Percentage and Grant Amounts

The Act does not require that applicants provide matching funds for PRO-AG grants. Should the Commission require that applicants provide matching funds? If so, what match percentage would be appropriate for each type of grant request? Also, what match sources may be available for PRO-AG projects? Should the Commission allow applicants to provide in-kind contributions as a project match, including goods and labor costs, as it currently does in the NBBP program?

Additionally, the Act provides that the Commission may award up to two million dollars per year in the PRO-AG program. Should the Commission set a maximum amount which may be awarded for a single PRO-AG project?⁷ If so, what should that amount be? Should the maximum grant award differ between the four categories of PRO-AG projects?

⁶ See Neb. Rev. Stat. § 86-1404. As described above, these purposes include on-farm traceability solutions, products relating to soil health and water management, and products using autonomous solutions in agricultural machinery.

⁷ For example, the maximum grant amount in the Nebraska Broadband Bridge Program is \$5 million for any single project, with up to \$20 million awarded annually. Neb. Rev. Stat. § 86-1308(4).

5. Speed Testing and Broadband Affordability

The Act provides that applicants in the first category, adequate precision agriculture connectivity, must complete the project within twelve months after the date on which the grant is awarded.⁸ These applicants must further submit the connectivity to speed testing, and shall be allowed a "reasonable time" to correct any deficiencies found by the speed testing.⁹ The Commission seeks input as to how speed testing should be conducted, and what the criteria for completion in this category should be. What constitutes adequate connectivity for purposes of this category? How long should the Commission allow for awardees to correct any deficiencies found through speed testing? Furthermore, for how long following project completion should an applicant be required to maintain the speeds required by the Act?

The Commission also seeks input as to the affordability of any broadband projects funded by the Commission in this program. Should applicants for PRO-AG funding be required to demonstrate that their service offerings are affordable? If so, what benchmarks should applicants be required to meet? How long following project completion should an applicant be required to maintain the rates stated in their application?

6. Completion of Other Grant Projects

While the Act sets forth completion requirements for applicants in the connectivity category of PRO-AG grants, it does not specify any completion requirements for projects in the other three categories. When should a project in one of these categories be considered complete? Should the Commission impose any deadline upon the completion of the projects within this category? How long after the completion of these projects should they be required to continue to be in service? Are there any affordability or accessibility considerations for these projects which the Commission should consider?

⁸ One extension of up to six months is available. Neb. Rev. Stat. § 86-1405(1).

⁹ Neb. Rev. Stat. § 86-1405(2).

7. Program Schedule

The Act specifies that total funding for the PRO-AG program may not exceed \$2 million per year. Given that BEAD funding will not be available until final approval is granted by the National Telecommunications and Information Administration ("NTIA"), when should the Commission consider beginning a PRO-AG grant cycle? What should the procedural schedule for each cycle be? Finally, given the time constraints of BEAD funding, in how many years should the Commission plan to hold PRO-AG grant cycles?

8. Other Issues

The Commission seeks to make every effort to fulfill the purpose of the Act. The Commission therefore welcomes comments and suggestions regarding the implementation of the PRO-AG program. If there are other considerations which need to be addressed, stakeholders and interested parties are encouraged to bring them forward in comments and reply comments.

Comments and Reply Comments

The Commission requests that interested parties provide comments responsive to the issues raised above on or before **September 30, 2022 at 5:00 p.m. Central Time**. Reply comments may be filed on or before **October 28, 2022 at 5:00 p.m. Central Time**. Commenters should be filed electronically, with service to psc.broadband@nebraska.gov.

A hearing on these issues may be scheduled after the Commission receives comments and reply comments.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, opened.

IT IS FURTHER ORDERED that comments and reply comments may be filed on or before September 30, 2022 and October 28, 2022 as prescribed herein.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 16th day of August, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Swader
Mary Keddin
Tim Schram

David W. ...

Chair

ATTEST:

Thomas W. Golden
Executive Director