

Memo

To: VCBB Board
From: Stan Macel, General Counsel
Re: Letter of Intent for CUDs

At the last Board meeting, staff proposed the possibility of the VCBB providing a letter to each applicable CUD to indicate that the CUD had applied for a grant and the amount of money that the CUD was expected to receive from the grant. (The draft letter is attached). The concept is that the CUD could use letter to help secure goods and/or services from vendors before having obtained the grant funds.

Based on these discussions, including concerns by Board members that any letter be non-binding, we discussed the concept further internally and with the Vermont Agency of Administration and Guidehouse consultants. We continue to believe that providing letters to CUDs could be a valuable tool for them to use to obtain goods and services prior to receiving grant funds, but with the caveats that such letters be crafted carefully to minimize risks to the Board. As a result, we recommend that the Board approve staff's recommendation to issue letters with the following parameters:

1. The letters be crafted as letters of intent (rather than memoranda of understanding, or other legal documents) to ensure that they are not viewed as creating a legal obligation.
2. If the Board issues a letter of intent to a CUD, to protect it from the risk of legal proceedings, it should intend in good faith to issue the grant when the required conditions are met, and if it subsequently denies the grant, it must provide thorough justification for such denial (i.e., a material defect in the application or information supplied by the CUD). The letters should only be issued following the eligibility screening and an invitation for a full proposal.
3. The Board should limit the amount of funds noted in the letter of intent to an amount less than the amount allocated the CUD for the current year (e.g., 75 percent of the annual grant amount), to allow for variations in case the amount of the grant is subsequently changed. At any rate, the amount in the letter should not exceed the amount for the current year's grant to the CUD.

There is precedent in the State of Vermont for using letters of intent in connection with recent federal funding programs. That Department of the Treasury uses this letter of intent/commitment concept in connection with its Emergency Rental Assistance Program ("ERAP"). Under the ERAP program, the state of Vermont provides a letter of intent addressed to a tenant, stating that the applicant has been preliminarily approved for assistance.¹

We recommend that the Board approve the use of letters of intent using the parameters listed above.

¹ The letter states that the applicant has been preliminary approved for assistance. The letter details that the applicant is approved for a fair market rent amount, set number of bedrooms, and specific county in Vermont. The applicant has 90 days from the date of letter issuance to find a unit. The letter also includes links to eligibility requirements and to an explanation of fair market rents in Vermont, along with a phone number to call for further assistance. A copy of the letter can be found at: <https://home.treasury.gov/system/files/136/commitment-letter-VT-EN.pdf>

DRAFT LETTER OF INTENT

Date Issued:

Applicant ID:

Dear Applicant,

The Vermont Community Broadband Board (VCBB) is issuing this letter on your behalf as certification that you have met all eligibility requirements for funding from the Vermont Community Broadband Board (VCBB) to provide universal service of at least 100/100 Mbps for {Insert Universal Service Area}. Upon the successful submission of an application meeting the criteria established in Act 71 and the items detailed in the attached letter of certification as judged by the Vermont Community Broadband Board, the applicant will be awarded up to \${Insert amount available as determined by formula} to complete a universal service project.

Eligibility requirements can [be found at: \(Link to RFP\)](#).

This Letter of Intent is valid for 180 days from the date of issue.

If you have any questions, please contact Christine Hallquist, Executive Director of the Vermont Community Broadband Board at _____.

Sincerely,

Applicant Certification

Applicant hereby certifies it understands that all of the following conditions will apply to any project funded by the VCCB Construction Grant Program:

1. *Each person signing (the “Undersigned”) certifies that he or she is the person in the Applicant’s organization responsible for, or authorized to make, decisions as to the prices quoted and that he or she has not participated, and will not participate, in any action contrary to the non-collusion requirements of this RFP.*
2. *The Undersigned certifies that all information in the proposal is accurate to the best of his or her knowledge.*
3. *The Undersigned certifies that the Applicant organization has a Universal Service Plan for the entire town or Communications Union District in which the project will serve. Each person signing acknowledges that the Universal Service commitment is binding and that while plans may be revised, a failure to provide Access to Broadband to every Unserved Location and Underserved Location with electric utility service in a Town or Communications Union District may result in a forfeiture of assets built using funds received as a result of this Application.*
4. *The Undersigned certifies that the Applicant organization will comply with the Vermont Community Broadband Board Outside Plant Design (OSP) Requirements.*
5. *The Undersigned certifies that the project when completed will offer broadband service that complies with consumer protection and net neutrality standards as defined in 3 V.S.A. § 348.*
6. *The Undersigned certifies that the sale or transfer of any project funded by the Vermont Community Broadband Fund is prohibited without the prior written approval from the Board.*
7. *The Undersigned affirms that the final network will be reviewed by the VCBB before the project is deemed complete and final payment is made.*
8. *The Undersigned agrees to follow the applicable Treasury Guidance on the allowable uses and requirements for usage of American Rescue Plan State and Local Fiscal Recovery Funds, including affordability requirements. In cases of conflicting legal opinions, the opinion of the State Vermont Department of Finance and Management and the State’s consultants shall take precedence. Failure to follow the guidance may result in a suspension of the agreement or disallowing an expense.*
9. *Each person signing the proposal certifies they have reviewed the following documents: [Attachment C, STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT \(Construction\) for all Contracts and Purchases of Products and Services Connected with 2020 Pandemic, Applicability of Federal Requirements to Vermont State Fiscal Recovery Fund Projects, and State Fiscal Recovery Program Assurances v5.](#)*

Print Name of Organization and Title of Applicant

Print Name of Applicant

Date