
164-1-01 | Definitions.

- (A) "Administrator" means the administrator of the Ohio small government capital improvements commission appointed under section [164.05](#) of the Revised Code.
- (B) "Change order" is a modification of a construction agreement to provide material or services to the project that were not specifically delineated in the project agreement or the project application.
- (C) "Commission" means the Ohio public works commission.
- (D) "Construction activities" include, but are not limited to, activities necessary for the erection, demolition, or rehabilitation of the facilities constituting the project including but not limited to: material handling (including off-site prefabrication), excavation, land clearance, demolition, utility relocation, grading, footings, form work, backfill, pipe installation, facility construction, repair, demolition, and associated necessary personal services. The work performed may include new work, additions, alterations, and repairs.
- (E) "Construction costs" are the costs for construction activities.
- (F) "Director" means the director of the Ohio public works commission appointed under section [164.02](#) of the Revised Code.
- (G) "District" means a division of the state created under section [164.03](#) of the Revised Code.
- (H) "District committee" means a district public works integrating committee established under division (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), or (A)(6) of section [164.04](#) of the Revised Code.
- (I) "Engineering costs" are the costs for professional design and oversight of the project including related services necessary for completing the design and assisting the applicant with construction of the project.
- (J) "Executive committee" means an executive committee of a district public works integrating committee established under division (A)(7) of section [164.04](#) of the Revised Code.
- (K) "Expansion project cost" means the cost entailed in a project, or those elements of a project, that would replace existing infrastructure with infrastructure that has a designed service capacity substantially greater than the designed service capacity of the existing infrastructure, regardless of the relative physical dimensions of the existing or replacing infrastructure.

(L) "Infrastructure" means roads and bridges, waste water treatment systems, water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities, including real property, interests in real property, facilities, and equipment related or incidental to those facilities.

(M) "Local match" are the funds provided by the applicant to meet its required participation percentage which may not consist of public works funds, but may consist of applicant funds, funds received from other governmental agencies, private lenders, or consist of credits for project related expenses that the applicant paid or the value of work completed on the project by the applicant, also referred to as "local subdivision share of the cost of a capital improvement"

(N) "Mark-up costs" are costs above what was incurred by the supplier for personal property or services purchased from a third-party and invoiced to the subdivision.

(O) "New project cost" means the cost entailed in a project, or those elements of a project, that would add infrastructure to a subdivision's existing infrastructure.

(P) "Project" means the acquisition, construction, reconstruction, improvement, planning, and equipping of infrastructure pursuant to sections [164.01](#) to [164.16](#) of the Revised Code. In the case of funds allocated under division (B)(1) of section [164.08](#) of the Revised Code, "project" also includes resurfacing and improving of roads. For purposes of sections [164.20](#) to [164.27](#) of the Revised Code, this definition of project does not apply.

(Q) "Project agreement" is an agreement provided for in division (A) (1) of section 164.05 of Revised Code or division (B)(1) of section 164.051 of the Revised Code.

(R) "Project applicant" or "applicant" means the subdivision or group of subdivisions which submitted a request for financial assistance to a district that a district has subsequently formally submitted to the director of the Ohio public works commission or to the administrator of the Ohio small government capital improvements commission under section [164.06](#) of the Revised Code.

(S) "Project application" means a request for financial assistance formally submitted by a district to the director of the Ohio public works commission or to the administrator of the Ohio small government capital improvements commission pursuant to section [164.06](#) of the Revised Code.

(T) "Public works commission" or "PWC" means the Ohio public works commission created by section [164.02](#) of the Revised Code.

(U) "Reimbursable pre-pays" are project expenses paid by the applicant within one year of the date of the project agreement.

(V) "Repair project cost" means the cost entailed in a project, or those elements of a project, that would repair existing infrastructure without substantially increasing designed service capacity.

(W) "Replacement project cost" means the cost entailed in a project, or those elements of a project, that would replace existing infrastructure with infrastructure that has a designed service capacity substantially equivalent to the designed service capacity of the existing infrastructure, regardless of the relative physical dimensions of the existing or replacing infrastructure.

(X) "Scope change" is a substantive alteration of the proposed project.

(Y) "Small government commission" or "SGC" means the Ohio small government capital improvements commission created by section [164.02](#) of the Revised Code.

(Z) "Small government subcommittee" means a subcommittee of a district public works integrating committee appointed under division (D) of section [164.06](#) of the Revised Code to represent interests of villages and townships.

(AA) "State capital improvements fund" means the fund created by division (A) of section [164.08](#) of the Revised Code.

(BB) "Subdivision", relative to any project pursuant to sections [164.01](#) to [164.16](#) of the Revised Code, means a county, municipal corporation, township, sanitary district, or regional water and sewer district.

(CC) "Workwise portal" is the online access maintained by the commission for processing applications and all appurtenant information relating to the programs administered by the commission.

164-1-11 | Project selection criteria.

(A) In selecting projects for submission to the director or the administrator, district committees, executive committees, and small government subcommittees, shall comply

with all the requirements of divisions (B) and (D) of section 164.06 of the Revised Code. Any project application submitted for financial assistance by such a committee shall be accompanied with the committee's **final score for the application. The committee shall retain the detailed scoring analysis for the application which shall be made available to the director or the administrator upon request.**

(B) Each district committee, executive committee, or small government subcommittee shall only employ project selection criteria referenced in paragraph (A) of this rule, and shall not use any of the following unrelated criteria:

(1) A preproject application determination that certain subdivisions are entitled, because of their relative population sizes or for any other reason, to awards of financial assistance up to a fixed dollar value;

Formal or informal decisions to select projects for formal submission contingent upon an applicant's financial or other support for the operating expenses of the committees, staff, or agents of the district;

(2) A district-wide formula, whether formalized or not, allocating funding entitlement amongst subdivisions on a per capita basis or otherwise, except to the extent expressly authorized under division (G) of section 164.05 of the Revised Code.

(C) Any project application not submitted in compliance with paragraph (A) or (B) of this rule may be disproved by the director or the administrator..

164-1-15 | Applicant's share of project costs; ineligible project costs.

(A) In calculating the dollar value of a subdivision's contribution to a project for the purposes of divisions (D)(1) and (D)(4) of section [164.05](#) of the Revised Code:

(1) The reasonable value of labor, materials, and equipment shall include only labor, materials, and equipment that are integral to the construction activities involved in the project; and

(2) Engineering costs shall include only engineering services that are integral to the project and shall not include any of a subdivision's ongoing overhead expenses involved in carrying out its existing engineering services capacity.

(B) For the purposes of divisions (A)(2) and (D) of section [164.05](#) and division (B)(2) of section [164.051](#) of the Revised Code, "cost" or "costs" does not include any of the following:

(1) Expenditures or proposed expenditures for aesthetic treatments, ornamentations, or adornments to infrastructure;

(2) Expenditures or proposed expenditures for landscaping activities and improvements pertaining to infrastructure that go beyond basic requirements of post-construction repairing, stabilizing, and reseeded of land surfaces except for roundabouts for the purpose of serving as visual cues, and for green stormwater management options;

(3) The cost of planning or administrative services related to the review, listing, study, reporting, planning, recording, and prioritizing of capital improvement projects by a subdivision;

(4) Mark-up costs.

(5) Administrative costs incurred for assessment procedures.

(6) Existing debt **except as it applies to the loan assistance program.**

(7) Costs to provide temporary services to parties affected by the project.

(8) Administrative costs, including those incurred for grant management, and application and disbursement preparation.

(C) Subdivisions and districts shall ensure that all project applications submitted to the director or the administrator exclude all computations or calculations based upon any expenditures, projected expenditures, or costs referred to in paragraph (B) of this rule.

164-1-17 | Multi subdivision projects.

- (A) The director shall not approve, and the administrator shall not recommend, any project involving the participation of two or more subdivisions, unless the project applicant supplies a binding agreement, signed by an authorized agent or representative of each

such subdivision, that the subdivision will cooperate fully with the applicant, including the execution of all needed legal actions, to ensure completion of the project as planned.

164-1-18 | Funding time limitations; multi-year projects.

(A) All funding approved for projects under Chapter 164. of the Revised Code and this chapter of the Administrative Code is contingent upon the necessary state appropriations being enacted into law. No project approval or project agreement shall be construed as obligating the director or administrator to authorize payments under division (A)(2) of section 164.05 or division (B)(2) of section 164.051 of the Revised Code beyond fiscal appropriation pursuant to the biennial time limitations applicable to the state appropriation process.

(B) Subject to the limitations referred to in paragraph (A) of this rule, the director may approve, or the administrator may recommend, any multi-year phased project that an applicant can demonstrate, based upon sound engineering principles, to be an appropriate project for such phasing.

164-1-19 | Emergency projects.

- (A) The director will review a request for funding of an emergency project and may approve financial assistance on an emergency basis, depending on the availability of funds and the need, for any project adequately designed to rectify infrastructure conditions that pose an immediate threat to the health, safety, and welfare of the residents within the jurisdiction of the project applicant. With respect to such a project, the director may suspend any provision of Chapter 164-1 of the Administrative Code as necessary to deal with the emergency.
- (B) In determining if emergency assistance is necessary, the director shall consider the following factors:
- (1) The extent to which other existing infrastructure can meet the needs of the applicant's residents being served by the failing infrastructure;
 - (2) The ability of the applicant to meet the emergency through the use of its own financial resources or through financial assistance programs operated by other federal, state, or local agencies;
 - (3) The degree to which the applicant is responsible for having created the emergency itself through neglect, inadequate maintenance, or failure to plan adequately for the replacement of infrastructure.

164-1-21 | Project agreement.

- (A) The chief executive officer of the project applicant shall execute a project agreement with the director pursuant to division (A)(1) of section 164.05 of the Revised Code or with the administrator pursuant to division (B)(1) of section 164.051 of the Revised Code for the purpose of implementing any project application approved pursuant to this chapter of the Administrative Code and Chapter 164. of the Revised Code
- (B) The project agreement shall be based upon all representations made by the applicant in the project application as approved and shall contain, at a minimum, the following provisions:
- (1) A designation of a single office or official within the applicant's jurisdiction who shall serve as project manager;
 - (2) A designation of a single office or official within the applicant's jurisdiction who shall serve as chief fiscal officer of the applicant;
 - (3) A designation of a single office or official within the applicant's jurisdiction who shall serve as chief executive officer of the applicant for purposes of the project;
 - (4) A designation of the grant funding percentage or percentages applicable to the project or to various elements of the project, which may not exceed the percentages specified in division (D) of section 164.05 of the Revised Code for repair and replacement of existing infrastructure and for new or expanded infrastructure which the Commission shall pay for as a reimbursement to the applicant or direct payment to a vendor in amounts determined by the director up to the total grant funding provided;
 - (5) A designation of the timing, manner or mechanisms whereby the project applicant shall provide the local share of the estimated project cost in compliance with division (D) of section 164.05 of the Revised Code;
 - (6) An assurance that the applicant and all contractors and subcontractors involved with the project will, to the extent practicable, use Ohio products, materials, services, and labor in the implementation of the project;
 - (7) An assurance that the applicant and all contractors involved with the project will comply with the minority business enterprise requirements of rule 164-1-32 of the Administrative Code and division (A) of section 164.07 of the Revised Code;
 - (8) An assurance that the applicant and all contractors and subcontractors involved with the project will comply with the prevailing wage requirements of Chapter 4115. of the Revised Code and division (B) of section 164.07 of the Revised Code;

(9) Provisions setting forth the scope of work for the project.(10) Any other provision that the director considers necessary in order to ensure that the project's implementation will comply with the requirements of Chapter 164. of the Revised Code and Chapter 164-1 of the Administrative Code.

(C) A project agreement based upon an application for grants submitted under sections 164.01-164.19 of the Revised Code shall be signed and returned within 45 days of the date it was issued by the Commission, if the Project Agreement is not signed and returned to the Commission within 45 days the director may rescind the offer to fund the project. With respect to any project approved in connection with funds that the director allocates under division (B) of section 164.08 of the Revised Code for the second annual allocation, and for each annual allocation thereafter, the applicant shall formally certify the availability of funds regarding financing the full construction of the project with submission of the project application. If the project agreement relates to the provision of supplemental financial assistance pursuant to paragraph (B) of rule 164-1-23 of the Administrative Code, the director or the administrator may waive the provisions of this paragraph.

(D) If a Project Agreement provides for grant funding and loan funding, the Commission, has discretion with regard to the order of payment of funds from either the grant or the loan, but will generally pay out grant funds first, unless the combination exceeds statutory limits for grants (i.e. 90% for repair/replacement and 50% for new/expansion). If a combination of grant/loan funding exceeds grant statutory limits, then with each disbursement request the Commission may draw on the loan for that portion exceeding the statutory grant limit to ensure that the local match is met.

164-1-24 | Project audit requirements.

(A) All funds paid out pursuant to division (A)(2) of section [164.05](#) and division (B)(2) of section [164.051](#) of the Revised Code shall be subject to all audit requirements applicable to state funds. All audits performed in respect to funds so paid out by the director or the administrator shall be performed in a manner, and at a frequency, consistent with policies and procedures established by the auditor of state.

(B) A project applicant shall ensure that a copy of any audit report with adverse findings prepared regarding the expenditures of an approved project, regardless of whether the report was prepared during the pendency of the project or following its completion, is provided to the director or the administrator within ten days of the issuance of the report. The project applicant simultaneously shall provide the director or the administrator with its detailed responses to each and every negative or adverse finding pertaining to the project and contained in the report. Such responses shall indicate what steps will be taken by the applicant in remedying or otherwise satisfactorily resolving each problem identified by any such finding.

(C) If a project applicant fails to comply with the requirements of this rule or fails to institute steps designed to remedy or otherwise satisfactorily resolve problems identified by negative audit findings, the director or the administrator may bar the applicant from receiving further financial assistance under Chapter 164. of the Revised Code until the applicant so complies or until it satisfactorily resolves such findings.

164-1-33 | District administrative costs.

(A) The allowable expenses for each public works district that may be paid from State Capital Improvements Fund and the Local Transportation Improvement Program Fund pursuant to the

District Administrative Costs Program shall be the total of the District Administrative Costs in an amount as provided for by an act of the General Assembly.

(B) Definitions:

(1) “District administrative costs”: are the necessary direct staff and support costs, including the costs of the integrating committee contractor or the integrating committee support agency, of the district integrating committees to perform their statutory responsibilities under [sections 164.06 and 164.14 of the Revised Code](#).

Allowable costs include those costs directly incurred as a result of the need for labor, materials, supplies, equipment, travel and support services to perform the statutory requirements of the district integrating committee as established by [sections 164.06 and 164.14 of the Revised Code](#). Including:

- (a) The cost necessary for the evaluation, ranking and selection of applications submitted by subdivisions.
- (b) The cost necessary for the district committee to assist its subdivisions in the preparation and coordination of project plans.
- (c) The cost necessary for the district to comply with reporting requirements of the Ohio public works commission.
- (d) Reimbursement at the state mileage rate and the cost of any parking fees, no other travel fees will be reimbursed.
- (e) The actual cost of photocopies and postage.

Allowable costs are limited to the direct costs of district administration associated with staff support and reimbursable expenses of an integrating committee supporting agency or integrating committee contractor as approved by the director. Such costs shall be set forth in the district administrative cost budget submitted to the director along with the work plan which shall delineate those services to be provided by any proposed integrating committee contractor or integrating committee supporting agency in performing the required activities of the work plan. Costs must be submitted within 18 months of the project agreement date.

Non-allowable costs are those costs associated with the general administration of local subdivisions and their preparation of applications, inventories, reports or plans necessary to

meet the eligibility requirements of the Ohio public works commission. Including:

- (a) Elected officials' salaries and benefits.
- (b) Applicant costs associated with the administration of any project considered or approved for funding by the commission.
- (c) Costs incurred by the applicant in conducting the normal business of the applicant, including proportional costs attributable to normal business activities, such as the cost of facilities, equipment, and salaries of supervisory staff.

(2) "Work plan": is the annual summary of functions and tasks to be performed on behalf of each district committee by the integrating committee contractor or the integrating committee supporting agency to meet their statutory responsibilities under [sections 164.06](#) and [164.14 of the Revised Code](#).

(3) "District administrative costs budget": the estimated annual expenses to carry out the work plan of the district detailing direct costs for labor, materials, supplies, equipment, travel and support or contracted services, which are reviewed and approved by the district public works committee pursuant to section 164.04 of the Revised Code.

(4) "Integrating committee contractor": the entity nominated by the district integrating committee for approval by the director to provide administrative support to carry out its work plan and with whom the director enters into a professional services contract, or inter-governmental service agreement on behalf of the district.

(5) "Integrating committee supporting agency": a local subdivision nominated by the district integrating committee for approval by the director to provide administrative support to carry out its work plan and with whom the director approves and authorizes reimbursement of allowable costs.

