
**GLENN HEGAR
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS**



Notice of Funds Availability

**Request for Applications (RFA No. BDO-NOFA-001)
for**

**BRINGING ONLINE OPPORTUNITIES TO TEXAS (BOOT)
PROGRAM**

for the

Texas Broadband Development Office (BDO)

Application Open Period: 3/6/2013 – 5/5/2023

Available Funding: \$120,000,000.00

1.0 BRINGING ONLINE OPPORTUNITIES TO TEXAS (BOOT) PROGRAM GRANT

The Texas Legislature created the Broadband Development Office (“BDO”) as an office within the Texas Comptroller of Public Accounts (“CPA”) to award grant funds for the purpose of expanding access to and the adoption of broadband services in designated areas throughout the State of Texas that the office has determined are eligible to receive funding under the broadband development program. Through the BDO, the State of Texas has been allocated \$363.8 Million through the American Rescue Plan Act (“ARPA”) Capital Projects Fund (“CPF”). This program is administered by the U.S. Department of the Treasury (“U.S. Treasury” or “Treasury”) to carry out critical Capital Projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19). The funds allocated to Texas shall be distributed by the BDO through a multi-round competitive grant process. This NOFA covers the release of the first round of funds totaling \$120,000,000.00.

BDO has established the Bringing Online Opportunities to Texas Program (“BOOT” or “BOOT program”). The BOOT program is a competitive grant program to build last-mile broadband connections that increase high-speed broadband service to Texans. Funding awarded under BOOT program using federal funds allocated under CPF is intended to eligible projects that directly enable work, education, and health monitoring, including remote options, in Unserved and Underserved areas throughout the state to address critical needs exacerbated by the COVID-19 pandemic.

The purpose of this Notice of Funding Availability (NOFA) is to solicit applications for broadband infrastructure projects located in eligible areas that are designed to deliver, upon completion, service that reliably meets or exceeds symmetrical speeds of 100Mbps to directly enable work, education, and health monitoring, including remote options.

2.0 Available Funding

Funding for BOOT grants is provided by Treasury through the American Rescue Plan Act’s Capital Projects Fund established by Section 604 of the Social Security Act as added by Section 9901 of the American Rescue Plan Act of 2021. Section 604 authorizes Capital Projects Fund Recipients to use Capital Projects Fund grant funds for critical capital projects that directly enable work, education, and health monitoring in response to the COVID-19 public health emergency.

Funding made available for the first round of the BOOT program covered by this NOFA is approximately **\$120,000,000.00**. Actual funds awarded may be lower than the amount available depending on the volume of applications received, the level of need of the proposed projects for grant support, and the requirements of the U.S. Treasury. BDO reserves the right to cancel or modify the amount available in this NOFA.

The total amount of funding allocated to the State by the U.S. Treasury for this purpose is \$363.8 million. The remaining funds will be made available at the discretion of BDO at a later date.

3.0 Eligible Applicants

BDO encourages all eligible participants to apply for funding of eligible broadband infrastructure projects. Eligible Participants include: political subdivisions of the State; commercial broadband service providers; non-commercial broadband service providers; and partnerships between political subdivisions, commercial broadband service providers, noncommercial broadband service providers or any combination thereof that are also not otherwise considered disqualified from participation in the program.

3.1 Participant Disqualifications

An applicant is not eligible to participate in the program if any of the following apply:

3.1.1 General Disqualifications

Applicant is a person or entity who:

- Is not registered to do business with the State of Texas (if applicable);
- Is on the [Comptroller of Public Accounts Debarred Vendors List](#);
- Is on any of the [Comptroller of Public Accounts Divestment Statute Lists](#);
- Owes a debt to the State or is under warrant or vendor hold;
- Has not complied with statutory reporting requirements [Transparency reporting requirements](#);
- Has a grade below C with the Texas Smart Buy [Vendor Performance Tracking System](#); or
- Is “Excluded” on the [System of Award Management](#) website.

3.1.2 *FCC Reporting Compliance*

Applicant is an entity that has failed to comply with the Federal Communications Commission’s (FCC) rules and regulations, including timely filing of FCC Form 477 and Broadband Deployment Accuracy and Technological Availability (DATA) Act submissions, as required during the most recent reporting period, is not eligible to participate in the program.

3.1.3 *BDO Reporting Compliance*

Applicant is an entity that has not provided information requested by the office under Government Code, §490I.0105, is not eligible to participate in the program.

3.1.4 *BDO Board of Advisors*

In accordance with Texas Government Code §490I.0110, applicant is a person or entity who is professionally affiliated with a person serving as a member of the BDO Board of Advisors.¹ By submitting its application, an Applicant attests that they are not professionally affiliated with a sitting member of the BDO Board of Advisors.

4.0 Application Information

4.1 *Application Process*

Applicants must access the BDO’s Grant Portal to register and apply for funding. Applicants should be prepared to submit fully developed and detailed project proposals and grant budgets at the time of application. For more information regarding the application process, please see BDO’s public website for instructions and additional guidance as it becomes available.

4.2 *Confidentiality*

All information received by CPA or BDO related to grant program applications and/or grant compliance and monitoring becomes the property of the State of Texas and, as such, is subject to public disclosure under the Texas Public Information Act (PIA), Texas Government Code, Chapter 552.

4.3 *Disposition of Applications/Public Records*

All Applications and the contents associated therewith shall become the property of CPA. CPA is subject to provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under the statute. Applicants or other persons or parties submitting information to CPA are encouraged to familiarize themselves with these provisions before submitting Applications or other information to CPA.

5.0 Schedule of Events

BDO reserves the right, in its sole discretion, to modify this schedule of events.

¹ For list of current members of BDO Board of Advisors: <https://comptroller.texas.gov/programs/broadband/about/who/board.php>

3/6/2023	NOFA Issued
3/6/2023	First day to submit questions regarding NOFA/Application
3/17/2023	Deadline for submitting questions regarding NOFA/Application
3/31/2023	Publication of clarification responses
4/3/2023	First day to register/submit applications
5/5/2023	Last day to submit applications
5/10/2023*	Start of Application Challenge Period BDO to provide notice to applicants with overlapping project areas
5/24/2023*	Deadline for applicants with overlapping project areas to inform BDO of intent to resolve overlapping areas**
6/9/2023*	End of Application Challenge Period Deadline for submission of proposed overlap resolutions/amended applications**
7/9/2023*	Anticipated date for BDO decision on application challenges
8/9/2023*	Deadline for receiving amended application from applicants affected by BDO decision on application challenge
Late Summer/Early Fall 2023	Anticipated issuance of notice of awards

* Dates subject to change based on date BDO publishes information regarding applications received.

** Limited to applicants who provided timely notice to office of intent to resolve overlapping areas.

6.0 NOFA Administration

6.1 *Amendments and Program Modifications*

CPA reserves the right to amend this NOFA through written amendment(s). Applicants are advised to check the *Texas.gov eGrants*, *TXSmartBuy* and the BDO public websites for possible amendments to this NOFA. In the event this NOFA is amended after the closing of the application window, BDO will contact each Applicant's primary contact, as designated in each respective Application.

6.2 *Requests for Clarification*

Applicants may submit written questions regarding this NOFA via e-mail to bdo.nofa@cpa.texas.gov no later than 2:00 p.m. by the deadline set forth in the Schedule of Events. On or about the date set forth in the Schedule of Events, the BDO expects to electronically post answers to the written questions on its public website. BDO will not respond to inquiries regarding the evaluation status of an application submission or the pendency of grant awards beyond publicly disclosed information.

6.3 *Capitalized Terms*

Capitalized terms in this NOFA have the meanings defined under the Definitions section of this NOFA, the Rules or applicable Federal Rules and Regulations.

6.4 *Open Competition*

The issuance of this NOFA in no way constitutes a commitment by CPA or BDO to issue any grant award or enter into a Grant Agreement with any Applicant or other interested person or party.

7.0 Grant Period

The expected grant term shall run from the effective date of the grant to the completion date of the proposed project. Proposed projects must be completed no later than 12/31/2026.

8.0 Funding Levels

Minimum: \$200,000

Maximum: \$4,999,999

Match Requirement: None. However, preferential consideration will be given to applications based on contributions from other sources of funding, including in-kind contributions, as a percent of the total project costs.

9.0 Standards

Applicants and grant recipients will be required to comply with all applicable state and federal rules and laws, including, but not limited to:

9.1 *Applicable State Statute and Rules*

Applicants and grant recipients are expected to comply with all any applicable requirements of state law including Government Code, Chapter 490I, and the rules adopted by the Comptroller located at 34 TAC § 16.30 et seq.

9.2 *U.S. Treasury Coronavirus Capital Projects Fund*

The BOOT program employs funds made available through the CPF program administered by the U.S. Treasury. Grant recipients who are awarded funds through this NOFA are expected to comply with all requirements set by the U.S. Treasury for CPF. Details and published information on the CPF program, including allowable expenditures, are available on the U.S. Treasury website. The U.S. Treasury may provide further guidance after the publication of this NOFA.²

9.3 *Uniform Guidance*

Grantees shall comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as set forth at 2 CFR part 200 (Uniform Guidance).

9.4 *Other Applicable Federal Laws and Regulations*

Grantees must comply with the following all applicable federal laws and regulations, including, but not limited to: The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq); The Coastal Zone Management Act (CZMA) and implementing regulations 15 C.F.R. Part 930; The Endangered Species Act (ESA); The Magnuson-Stevens Fishery Conservation and Management Act (MSA); The Marine Mammal Protection Act (MMPA); The Clean Water Act (CWA); The Clean Air Act (CAA), 42 U.S.C §§ 7409, 7410, 7502-7514, 7571-7574; The National Historic Preservation Act (NHPA); The Coastal Barrier Resources Act (CBRA) of 1982 (16 U.S.C. 3501 et seq); The Rivers and Harbors Act of 1899; The Resource Conservation and Recovery Act (RCRA); The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund); The Wild and Scenic Rivers Act; The Safe Drinking Water Act (SDWA); and The Farmland Protection Policy Act (FPPA). Grant recipients will also be expected to comply with the 2019 National Defense Authorization Act (NDAA), and specifically NDAA requirements contained within 2 C.F.R. Part 200 - 2 C.F.R. 200.216 and 2 C.F.R. 200.471, as well as the FCC's rules and regulations, including timely filing of FCC Form 477 and Broadband DATA Act submissions as required during the most recent reporting period.

² Coronavirus Capital Projects Fund webpage on the U.S. Treasury website <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>

10. Project Eligibility

10.1 Proposed Projects

Projects eligible for funding under this Notice of Funds Availability are limited to broadband infrastructure projects that are designed to deliver, upon completion, service that reliably meets or exceeds symmetrical speeds of 100Mbps to directly enable work, education, and health monitoring, including remote options. If it would be impracticable, because of geography, topography, or excessive cost, for a Broadband Infrastructure Project to be designed to deliver services at such a speed, the Project must be designed so that it reliably meets or exceeds 100 Mbps download speeds and between 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

10.2 Project Area Eligibility

Applicants may determine the boundaries of their proposed project area. However, a proposed project area must consist of the entirety of one or more contiguous designated areas that are eligible to receive funding as of the date this Notice of Funds Availability is issued as determined by the Texas Broadband Development Map. Applicants will be required to provide broadband service to all Unserved and Underserved locations within the selected designated areas. A proposed project may not contain a designated area that is ineligible to receive funding. Applications for proposed projects that bring connectivity to one or more locations within an ineligible area will be disqualified from eligibility.

In accordance with Texas Government Code §490I.0106(b)(2), the BDO will prioritize applications that will expand access to, and adoption of, broadband service in Eligible Areas in which the lowest percentage of addresses have access to broadband service.

10.3 Existing Federal Commitments

A Designated Area is considered “Ineligible” if at any point the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses within the Designated Area. Designated Areas that have received or have been designated to receive federal funding for the purposes stated above are considered Ineligible.

10.4 Project Timeline and Service Delivery

Proposed projects must have a feasible start date for construction in order to reach substantial completion within three (3) years of the effective date of the Grant Agreement. Notwithstanding anything to the contrary, all proposed projects must be completed no later than December 31, 2026. All executed agreements under the BOOT program are required to have a five-year service agreement.

10.5 Last Mile Connectivity

Proposed projects must be designed to provide last-mile broadband service to end users. If a proposed project includes middle-mile components, BDO has sole discretion to determine whether a proposed project includes sufficient last-mile connectivity and/or the middle-mile components are necessary for the implementation of the proposed last-mile connections to justify an award under the program.

10.6 Minimum Network Requirements

All broadband serviceable locations identified for the proposed project must, as of the date of issuance of this notice of funds availability, lack access to broadband service with speeds at or greater than 100 megabits per second (Mbps) download and 20 Mbps upload (100/20 Mbps) and should not be scheduled to receive broadband service prior to the start of the proposed project.

The proposed project must be designed to deliver minimum network requirements capable of providing broadband service speeds of at least 100 Mbps for downloads and 100 Mbps for uploads (100/100 Mbps) to all broadband

serviceable locations within the proposed project area that lack access to broadband service at speeds at or greater than 100/20 Mbps.

10.7 *Exemption from Standard Minimum Network Requirements*

If the proposed project cannot practically deliver service speeds of at least 100/100 Mbps, the applicant must submit a signed engineering certification on letterhead requesting an exemption from minimum network requirements. Applicant must submit the request with the application form and will not be permitted to request an exemption under any circumstances after notice of award. Failure to provide a certification with sufficient justification to support divergence from the 100/100 standard will result in immediate ineligibility for funding.

10.8 *Access to Other Providers*

In accordance with Federal Guidance related to use of CPF funds, applicants receiving funds must offer non-discriminatory access to, and use of, its proposed network on a wholesale basis, at just and reasonable wholesale rates for the useful life of the subsidized network assets, to other providers seeking to provide broadband service to end-user locations.

10.9 *Affordable Connectivity Program (ACP) Participation*

Applicant receiving funds under this program must participate in the FCC's Affordable Connectivity Program (ACP) or its successor program(s) for as long as the BOOT program-funded broadband infrastructure is in use.

10.10 *Low-Cost Option*

Applicant must propose and offer an unbundled, universally available, low-cost option with a minimum of 100/20 Mbps with no data caps for as long as the BOOT program-funded broadband infrastructure is in use.

11.0 Grant Application Review Procedures

11.1 Preliminary Application Review

BDO will screen all applications to ensure that they meet the requirements included in the Notice of Funds Availability and the application requirements. The preliminary review will include assessments for application completeness, elimination of applications that are not eligible due to participant eligibility and/or project eligibility requirements, and identification of applications with overlapping project areas. BDO will publish information regarding each accepted application on its public website.

11.2 Overlapping Area Review

11.2.1 Notification of Overlapping Areas

If BDO identifies applications with proposed project areas that overlap with the project areas contained in one or more other applications, BDO shall inform the impacted applicants of the project area overlap to provide applicants with an opportunity to resolve the overlapping Unserved or Underserved area(s). BDO shall provide the required notice via electronic mail. Service of the required notice is complete on the date the notice is sent via electronic mail if sent before 5 p.m. or the day after the notice is sent if sent after 5 p.m.

11.2.2 Overlap Resolution Notice Period

Applicants whose proposed project areas overlap with proposed project areas contained in other applications may provide notice to the office of their intent to resolve the overlapping areas. Applicants choosing to do so must jointly notify BDO of such efforts no later than the 10th business day after the applicant received notice from the office of the overlapping area. Applicants who have timely submitted notice of their intent to resolve an overlapping area may submit a proposed resolution for the overlapping area and an amended application no later than the last day of the application challenge period.

11.2.3 Unresolved Overlapping Areas

In the event an overlapping project area is not resolved by the applicants by the deadline for doing so, BDO will evaluate the applications sharing overlapping areas independently. BDO will score each impacted application. The application that receives the highest score will proceed to grant funding consideration with its project area boundary intact and BDO shall remove the overlapping area from lower scored application(s).

11.2.4 Overlapping Area Removal and Notification

BDO will provide notice to each applicant of the removal of overlapping areas from the application. If removal of the overlapping area results in retaining less than 50 percent of the original project area, BDO may, at its sole discretion, remove the application from grant funding consideration.

If BDO removes an overlapping project area from an application, an applicant may amend and resubmit an application without the overlapping area if:

(1) The remaining project area is greater than 50 percent of the original project area; or

(2) The remaining project area is less than 50 percent of the original project area and the office does not remove the application from grant funding consideration.

An amended application without the overlapping areas must be received by the office by the 10th business day after receiving notice that the overlapping area has been removed.

11.2.5 Overlapping Areas of Commercial and Noncommercial Applicants

In accordance with Government Code §490I.0106(d)(3) and 34 TAC §16.38, if a commercial and noncommercial applicant submit an eligible application to provide broadband service access to the same project area, or a portion thereof, the noncommercial provider shall be required to submit an amended application eliminating the areas of overlap for which the commercial provider proposes to provide expanded broadband service access. If the noncommercial provider does not submit an amended application to BDO within 30 days after receiving notice of the overlapping areas, BDO may remove the application from consideration.

11.3 Application Challenges

11.3.1 Submission of Application Challenges

During the application challenge period, BDO shall accept written challenges from any interested party relating to whether the applicant or project is eligible for an award or should not receive an award based on the application using criteria prescribed by BDO and described below. Challenges must be submitted electronically through BDO's website in the form specified by the BDO and must be accompanied by all requested supporting documentation. More detailed information on the application challenge process may be forthcoming and available on the BDO website.

For the purposes of this section "interested party" means a person, including an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity, that resides, is located, or conducts business in the designated area subject to an application challenge and also includes a broadband service provider that is not located in the designated area but who proposes to provide broadband service in the designated area.

11.3.2 Applicant Eligibility Challenge

A protesting party may challenge a submitted application based on applicant eligibility if the protesting party believes the applicant is ineligible for award. For a challenge made on this basis, a protesting party must, at a minimum, submit (i) a notarized statement verifying that the protest and attached information are true and submitted in good faith; and (ii) documentation demonstrating that the applicant is ineligible or otherwise disqualified from

award based on the criteria prescribed by the office. A protesting party has the burden of proof to establish that an applicant is ineligible to receive an award.

11.3.3 Area Eligibility Challenge

A protesting party may challenge a submitted application based on area eligibility if the protesting party believes the project is ineligible because the project area contains areas that are ineligible for award. A protesting party must substantiate the challenge by demonstrating that one or more designated areas within the project area are not eligible to receive funding by reference to the state broadband map or, if the state broadband map is not available, using the FCC's national fabric map.

For a challenge made on this basis, a protesting party must, at a minimum, submit (i) a notarized statement verifying that the protest and attached information are true and submitted in good faith; (ii) data from the broadband development map; and (iii) a detailed map, using the project area map(s) submitted by the applicant, delineating the general challenged areas and indicating where the protested serviceable locations are within the proposed project area the following documentation to substantiate their challenge:

A protesting party bears the burden of proof to establish that a proposed area is ineligible for an award or should not receive an award based on the criteria prescribed by BDO.

11.3.4 Upheld Challenges

If BDO upholds a protest on the grounds that one or more designated areas in a proposed project area have access to broadband service or have been awarded federal funding for the purposes of broadband service provision, the impacted applicant may submit an amended application without the challenged locations no later than 30 days after the date that the BDO notifies the applicant of the upheld protest. An amended application may not include additional areas or locations not already included in the original application. An amended application that removes challenged locations is not subject to further protest.

11.4 Application Evaluation

11.4.1 Scoring

At the conclusion of the application challenge period, BDO will score and rank applications based on the evaluation criteria. Each application will be will independently assessed by members of an Evaluation Committee using the evaluation criteria and weights published in Subsection 11.4.2. Scores awarded under each category will be added and the resulting sum shall constitute the total score for the applicant.

11.4.2 Evaluation Criteria & Weighting

Applications that meet all project eligibility requirements will be evaluated and scored based on the following criteria:

INTENTIONALLY LEFT BLANK

Evaluation Category	Criteria	Weight
Expansion of Broadband Service	<ul style="list-style-type: none"> • Speed Improvements in the Proposed Area: <i>Extent to which the proposed project results in the greatest broadband speed improvements over existing service, or lack thereof, for the most locations</i> • Priority of Eligible Designated Project Areas: <i>Extent to which the proposed expansion of broadband service benefits designated areas with the highest percentage of Unserved and Underserved addresses.</i> • Number of Schools Served: <i>Scored based on the number of Unserved and Underserved public and/or private primary and/or secondary schools; and/or institutions of higher education to be provided improved broadband speed.</i> • Understanding of the geographic area and customer segments to be served: <i>Comprehensiveness of applicant efforts to identify existing providers and geographic areas in greatest need of broadband service expansion</i> 	25%
Project Plan Feasibility	<ul style="list-style-type: none"> • Technical Approach, Design, and Feasibility: <i>Level of detail provided to validate the feasibility of deploying the selected technology, with appropriate consideration of topological factors, access constraints, or other technical challenges specific to the proposed project</i> • Network Capacity and Scalability: <i>Capabilities of the proposed network capacity to support the services being proposed and future upgrades to the network. (Note: this subcriterion also applies to proposed projects that are seeking a justifiable exemption of 100/20 Mbps from minimum network requirements of 100/100 Mbps)</i> • Project Timeline: <i>Shovel-readiness, efficiency of the project timeline and service delivery schedule relative to the scale and complexity of the proposed project; extent to which proposed milestones can be used as a basis for structuring the reimbursement schedule in a subgrant agreement</i> • Project Budget: <i>Sufficient detail on key pricing assumptions, comprehensive itemization of costs, justifiable and reasonable overall project cost.</i> • Project Sustainability and Resiliency: <i>Ability to provide service in a financially sustainable manner for at least the first five years post-completion, with proper consideration of financial, market, climate and environmental risks that may impact the proposed project in both the long and short term</i> 	25%

Evaluation Category	Criteria	Weight
Project Plan Feasibility cont.	<ul style="list-style-type: none"> • <i>Cost Effectiveness and Overall Impact: Extent to which the proposed project will utilize proven and/or innovative strategies to reduce build costs without impacting project quality; the project cost per prospective broadband service recipient, the total number of prospective broadband serviceable locations to be served by the proposed project, and the associated impact and/or improvement the proposed project will have on the percentage of locations that are Unserved within the project area.</i> • <i>Geographic location of the proposed project, including whether the proposed project will deliver broadband services to designated areas located in rural or other designated areas that are characterized by disproportionately high capital and operational costs, amongst other things.</i> • <i>Commitment of non-BOOT Funding Contributions: Level of non-BOOT funds contributed to the proposed project</i> 	
Applicant Qualifications	<ul style="list-style-type: none"> • <i>Organizational Capability: Level of experience undertaking projects of comparable size and complexity; prior experience with broadband infrastructure projects funded by Federal or State grants</i> • <i>Managerial Capability: Qualifications of key personnel assigned to the project, comprehensiveness of the proposed resourcing and staffing available to manage the project</i> • <i>Financial Capacity: Robustness of the applicant's financial strength, assessed based on financial information submitted</i> 	15%
Community Support & Involvement	<ul style="list-style-type: none"> • <i>Public Outreach and Support: Extent to which community outreach has gathered input from a broad array of stakeholders, including historically underrepresented groups</i> • <i>Level of Coordination with Stakeholders: Breadth of community involvement and political support for the proposed project, as evidenced by partnership agreements with impacted political subdivisions and/or local non-profit organizations, or letters of support from non-profit organizations, elected officials, local governments, and/or other entities; level of coordination with the local broadband planning committee (if applicable);</i> • <i>Integration of Community Feedback: Extent to which stakeholder feedback has been integrated into the scope of the proposed project</i> 	15%

Evaluation Category	Criteria	Weight
Community Need & Social Impact	<ul style="list-style-type: none"> • Level of Need: <i>Applicant’s demonstrated level of understanding of the broadband challenges faced by community members in the proposed service areas</i> • Affordability of Service Provided and Pricing Transparency: <i>Extent to which applicant is committed to offering low-cost service options and engages in transparent pricing strategies</i> • Digital Literacy: <i>Extent to which the applicant demonstrates it has digital literacy programs tailored to the specific needs of disadvantaged community members in the proposed service area</i> • Local Workforce Development: <i>Level of community impact that the project is likely to have through its proposed hiring, training, and apprenticeship opportunities as well as the applicant’s utilization of small businesses and historically underutilized businesses; extent to which applicant identifies potential partnerships with Community Anchor Institutions located in or affiliated with the proposed service areas as part of its workforce development strategy</i> 	20%

11.4.3 Tie Breaker

BDO may consider how applicants utilize proven and/or innovative strategies to lower the build cost of proposed projects to break ties between applications with the same scores.

11.5 Award

All award decisions shall be made at the sole discretion of the office and are not appealable or subject to protest or challenge.

In accordance with Texas Government Code §490I.0106(b)(2), the BDO will prioritize applications that will expand access to, and adoption of, broadband service in Eligible Areas in which the lowest percentage of addresses have access to broadband service.

Projects may be selected for award based on rank-order of score, but BDO reserves the right to deviate from the list of ranked applications in making award decisions taking into account factors including, but not limited to, the total amount of funding available for award and whether BDO has received requests for funding that exceed the amount of funding available; the number of projects that can be successfully awarded funds; total project cost and the amount requested for a project; and, geographic distribution of available funding. BDO reserves the right to not make an award to an otherwise eligible application for any reason. BDO is not required to expend all BOOT program funds set aside for each funding award cycle and reserves the right to deny funding to otherwise eligible applications even if adequate funds remain for a given funding round.

11.6 Notice of Award

Following the selection process, BDO will issue notices of award to selected applicants. Applicants who have been awarded funds under the BOOT program must finalize and execute the Grant Agreement within 30 days after the date of award. The office may extend the deadline to fully execute the grant agreement upon the written request of

a grant recipient for good cause shown. If the Grant Agreement is not signed by the grant recipient and received by the office by the later of the 30th day after the award or the extended deadline date, the office may, but is not required to, rescind the award.

11.7 Letter of Credit

Applicants selected for award will be required to provide an irrevocable, stand-by letter of credit from a qualified bank covering at least the first year of support for all winning bids before an award may be finalized.

12.0 GRANT AGREEMENT AND COMPLIANCE

12.1 Grant Agreement

Successful applicants will be required to enter into a Grant Agreement with CPA in a form that is substantially similar to the sample Grant Agreement as set forth in Appendix A. CPA reserves the right to amend the terms in the required Grant Agreement without amending this Notice of Funds Availability. By entering into a Grant Agreement, the Grantee agrees to complete the Project in compliance with all terms and conditions identified in the Grant Agreement, this NOFA (including subsequent amendments), and all applicable federal, state, and local laws, rules, regulations, codes, ordinances, policies, orders or any other legal requirements or limitations, including U.S. Treasury requirements.

12.2 Required Completion

If project costs exceed the budget included with the application, grantees will be required to finish the original scope of the proposed project without an increase in the amount of the grant award.

12.3 Reduction in Project Scope

Upon execution of the Grant Agreement, no reduction in Project scope resulting in the removal of addresses or a reduced service area will be allowed without a decrease in the amount of the grant award. Any such reduction requires approval of CPA and execution of a written amendment to the Agreement.

12.4 Allowable Expenditures

BOOT Grant Program funds may only be used for Allowable Expenditures, as dictated by U.S. Treasury guidance and any further requirements made by CPA. Project costs are subject to the requirements of the cost principles provided in 2 C.F.R. 200 subpart E and any other restrictions imposed by this Agreement. Below is a non-exhaustive list of Allowable Expenditures:

- Costs associated with completing the Grant;
- Pre-project development costs and uses, including data-gathering, feasibility studies, community engagement and public feedback processes, digital equity assessments and planning, and needs assessments; permitting, planning, architectural design, engineering design, and work related to environmental, historical, and cultural reviews;
- Costs of repair, rehabilitation, construction, improvement, and acquisition of real property, equipment (e.g., devices and office equipment), and facilities (e.g., telecommunications equipment, including infrastructure for backhaul, middle, and last mile networks);
- Cost of long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including infeasible right-of-use (IRU) agreements and capital leases;
- Personnel costs including salaries and fringe benefits for staff and consultants required for carrying out the Project (such as project managers, program directors, subject matter experts, digital equity consultants, grant administrators, financial analysts, accountants, and attorneys);

- Ancillary costs necessary to operationalize and put the capital assets to full use, including costs to increase broadband adoption and improve digital literacy;
- Costs associated with monitoring of and reporting on Projects in compliance with Treasury requirements, including award closeout costs; and
- Costs associated with collecting and measuring performance data and conducting activities needed to establish and maintain a performance management and evaluation regime related to Projects funded by the Grant.

12.5 Ineligible Expenses

Unless otherwise approved in writing by U.S. Treasury and CPA, grant funds may not be used for the following purposes:

- Acquisition of spectrum licenses;
- Operating expenses and overhead;
- Short-term operating leases;
- Payment of interest or principal on outstanding debt instruments, or other debt service costs incurred prior to March 15, 2021;
- Fees or issuance costs associated with the issuance of new debt;
- Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or
- To support or oppose collective bargaining. This does not affect the ability to use funds to comply with 41 C.F.R. 60-1.4.

12.6 Reimbursement Requests

Grantees will receive funds from CPA on a reimbursement basis. Reimbursement requests may be submitted monthly and must include sufficient documentation as required by CPA to demonstrate the costs were supported and incurred consistent with the program requirements. Grantees will include associated budget categories within the reimbursement request. Payment date shall be dependent upon when BDO receives all required documentation related to the reimbursement request. Grantees will receive an 80% reimbursement for the eligible costs submitted each month; the remaining 20% reimbursement will be available upon completion of the final inspection and Project Closeout Report.

12.7 Reporting Requirements

12.7.1 Reporting Requirements Generally

Grantees must submit timely Status Reports, and a Project Closeout Report to CPA on a quarterly, and one-time basis, respectively. CPA reserves the right to amend reporting intervals as deemed necessary by CPA. The Grantee shall submit reports containing all required information using forms provided by CPA. Further details of such reporting requirements are set forth in the Appendix A, “Sample Grant Agreement”, in the U.S. Treasury’s Capital Projects Fund user guides³, and in any subsequent documentation to be released by CPA.

12.7.2 Status Reports

Quarterly Status Reports are to be submitted to BDO by the Grantee, and generally should include:

³ CPF updates, further info, and guides are available at (<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund>) with further information to be provided in the near future.

- A narrative update on the status of the project, including notification of any delays, project activities and accomplishments for the reporting period
- Key performance indicators including speeds and adoption rates
- Financial reporting including current expenditures and invoice documentation
- Any information requested by BDO related to the current status of the project

12.7.3 Project Closeout Report

A Project Closeout Report is to be submitted to BDO by the Grantee within 60 days of project completion, and generally should include:

- Financial reports, including an expense and revenue summary of the project;
- Validation of broadband infrastructure project
- Number of locations served;
- Max available speed by location supported by industry standard speed test reports;
- Problems encountered in completing the project;
- Any completed studies, surveys, reports, or other work projects; and
- Any additional information and/or data deemed relevant by BDO.

12.8 Site Visits

BDO staff and/or any third party acting on BDO behalf may conduct one or more site visits during project construction and/or after project completion. Grantees must provide site access to the BDO and/or a delegated third party in any such case.

13.0 Definitions

As used in this Notice of Funds Availability the below terms have the following meaning:

“Applicant”—A person that has submitted an (eligible) application for an award under this subchapter.

“Application challenge period”—A period of at least thirty days beginning on the first day after an application is posted on the office’s website as required under 34 TAC §16.36(d).

“ARPA”—The American Rescue Plan Act of 2021.

“BDO” or “Office” —The Broadband Development Office created under Texas Government Code, §490I.0102.

“BDO Grants Portal” — The online portal to be used to apply to the BOOT program, report on any funds received, and/or sign documents as dictated by BDO.

“BOOT”, “BOOT program”, or “BOOT Grant Program” —The Bringing Online Opportunities to Texans Grant Program administered by the BDO.

“Broadband service” —Internet service that delivers transmission speeds capable of providing a minimum download or upload threshold speed that are the greater of:

- (a) a download speed of 25 Mbps or faster; and an upload speed of three Mbps or faster as established under Texas Government Code, §490I.0101; or
- (b) the upload or download threshold speeds for advanced telecommunications capability under 47 U.S.C. §1302 as adopted by the Federal Communications Commission and as published on the comptroller’s website under Texas Government Code, §490I.0101.

“Broadband development map”; or “Texas Broadband Development Map”—The Texas broadband map created under Texas Government Code, §490I.0105.

“Census block”—The smallest geographic area for which the U.S. Bureau of the Census collects and tabulates decennial census data as shown on the most recent on Census Bureau maps.

“Census tract”—A cluster of census blocks consisting of small, relatively permanent statistical subdivisions of a county or statistically equivalent entity that can be updated by local participants prior to each decennial census as part of the U.S. Census Bureau's Participant Statistical Areas Program.

“Commercial broadband service provider”—A broadband service provider engaged in business intended for profit, a telephone cooperative, an electric cooperative, or an electric utility that offers broadband service or middle-mile broadband service for a fare, fee, rate, charge, or other consideration.

“CPA” – The Texas Comptroller of Public Accounts.

“CPF”—Capital Project Fund of the American Rescue Plan Act; Source of funds for the BOOT program.

“Designated area” —A census block that has been designated as an eligible or ineligible area on the Broadband Development Map.

“Grant funds” —Grants, low-interest loans, and other financial incentives awarded to applicants by the office for the purpose of expanding access to and adoption of broadband service in designated areas.

“Grantee” or “Grant recipient” —An applicant who has been awarded grant funds under this NOFA and has subsequently entered into a grant agreement with the office.

“Mbps” —Megabits per second.

“Middle mile broadband service”— the provision of excess fiber capacity on an electric utility's electric delivery system or other facilities to an Internet service provider to provide broadband service. The term does not include provision of Internet service to end-use customers on a retail basis.

“Minimum Network Requirements” – a broadband network designed to deliver minimum network requirements capable of providing broadband service speeds of at least 100 Mbps for downloads and 100 Mbps for uploads (100/100 Mbps) to all broadband serviceable locations within the proposed project area that lack access to broadband service at speeds at or greater than 100/20 Mbps.

“Non-commercial broadband service provider”—A broadband service provider that is not a commercial broadband service provider.

“Project area” —The area identified by an applicant in which the applicant proposes to deploy broadband service and consisting of the entirety of one or more contiguous designated areas that are eligible to receive funding as determined by the Texas Broadband Development Map.

“Rules” – the rules adopted by the Comptroller found at 34 TAC 16.

“State” —The State of Texas.

“Unserved area” —A designated area or location within a designated area that does not have access to broadband service.

“Underserved area” — A designated area or location within a designated area that has access to broadband service but lacks access to internet service offered with a download speed of at least 100 Mbps and an upload speed of at least 20 Mbps.

Appendix A: Sample Grant Agreement (subject to change)

Appendix B: Sample Application Questions (subject to change)