

Kentucky Brownfield Revolving Loan Fund
Brownfield Cleanup Subgrant Request for Proposals

1. Statement of Purpose

The purpose of this Request for Proposals (RFP) is provide funding to local governments and non-profits for the purpose of addressing environmental contamination at abandoned or underutilized properties in order to put them into beneficial reuse.

2. Background Information

EPA's Brownfields Program empowers states, communities, and other stakeholders to work together to prevent, assess, safely clean up, and sustainably reuse brownfields. A brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. In 2002, the Small Business Liability Relief and Brownfields Revitalization Act was passed to help states and communities around the country cleanup and revitalize brownfields sites. Under this law, EPA provides financial assistance to eligible applicants through four competitive grant programs: assessment grants, revolving loan fund grants, cleanup grants, and job training grants. Additionally, funding support is provided to state and tribal response programs through a separate mechanism.

EPA has selected the Kentucky Department for Environmental Protection for a brownfields revolving loan fund grant. The grant is being used to capitalize a revolving loan fund from which the Kentucky Department for Environmental Protection is providing loans and subgrants to support cleanup activities for sites contaminated with hazardous substances and petroleum. Grant funds are also being used to market and oversee the revolving loan fund program. The grant includes a total of \$650,000 for hazardous substances cleanups and \$200,000 for petroleum cleanups.

This RFP seeks brownfield cleanup proposals from local governments and non-profits. We anticipating offering one subgrant, up to \$75,000, for a petroleum cleanup.

3. Eligibility

For an application to be eligible for funding, the applicant, the property and the proposed cleanup activities must all be eligible.

Applicant Eligibility

- The applicant must be a local government or quasigovernmental entity or a 501(c) (3) nonprofit. Private entities with interest in developing a brownfield are encouraged to partner with an eligible local government or nonprofit..
- The applicant must not be a potential responsible party under CERCLA 107. Potential responsible parties include:
 - Past owners or operators during release of contamination,

- Parties who caused or contributed to contamination,
- Generators or transporters of contamination, and
- Parties who voluntarily acquired the property acquisition without valid All Appropriate Inquiry. (Note that this does not include local governments which “acquired ownership or control involuntarily [emphasis added] through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign.” See Section 101(20)(D) of CERCLA.)
- The applicant can not be suspended or debarred.

Property Eligibility

- The property must be located within Kentucky.
- The applicant must own the property at time of application and throughout the subgrant.
- The property must meet the federal definition of brownfield. With certain legal exclusions and additions, the term "brownfield site" means “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.” The complete definition is given in Appendix A.
- For this RFP, the contamination must be predominantly petroleum.
- Environmental conditions at the site must not pose an environmental emergency.¹
- Petroleum sites must meet the following special criteria:
 - They must be “relatively low risk” compared to other petroleum or petroleum product-only contaminated sites in the state²,
 - They must have no viable responsible party,
 - The applicant can not be a responsible party.
 - There must be no RCRA order on the property. (See Appendix A.)

Ineligible properties – Properties are ineligible if they meet any of the following criteria:

- Listed sites or sites proposed for listing on the National Priorities List (NPL);
- Sites subject to CERCLA orders or consent decrees; or,
- Federal properties (except land held in trust for an Indian tribe)

Properties needing a property-specific determination – The following properties require a property-specific designation:

- Facilities subject to planned or ongoing CERCLA removal actions.
- Facilities that are subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree or to which a permit has been issued by the

¹ "Environmental emergency" means any release or threatened release of materials into the environment in such quantities or concentrations as cause or threaten to cause an imminent and substantial danger to human health or the environment; the term includes, but is not limited to, discharges of oil and hazardous substances prohibited by Section 311(b)(3) of the Federal Clean Water Act - (Public Law 92-500), as amended.

² The following types of petroleum-contaminated sites are high-risk sites and are not of “relatively low risk:”

1. “High risk” sites currently being cleaned up using LUST trust fund monies.
2. Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

United States or an authorized state under the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), the Federal Water Pollution Control Act (FWPCA), the Toxic Substances Control Act (TSCA), or the Safe Drinking Water Act (SDWA).

- Facilities subject to corrective action orders under RCRA (sections 3004(u) or 3008(h)) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures.
 - Facilities that are land disposal units that have filed a closure notification under subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit.
 - Facilities where there has been a release of polychlorinated biphenyls (PCBs) and are subject to remediation under TSCA.
 - Portions of facilities for which funding for remediation has been obtained from the Leaking Underground Storage Tank (LUST) Trust Fund.
- (See Appendix A for conditions under which these properties may be eligible.)

Eligible Activities – The following activities are eligible for funding under this subgrant:

- Installation of fences, warning signs, or other security or site control precautions,
- Preparing an Analysis of Brownfields Cleanup Alternatives (ABCA),
- Ensuring public participation requirements are met including Community Relations Plan,
- Establishing an administrative record for each site,
- Developing a Corrective Action Plan and/or Property Management Plan,
- Removal of drums, barrels, tanks etc. that contain/may contain hazardous substance or petroleum,
- Sampling as related to design/implementation of selected cleanup plan (Confirmatory sampling),
- Developing a Quality Assurance Project Plan (QAPP),
- Ensuring adequacy of cleanup and overseeing activities to ensure compliance with Federal & State requirements,
- Purchasing environmental insurance,
- Other eligible programmatic costs, and
- Progress reporting.

Ineligible Activities - The following activities are ineligible for funding under this subgrant:

- Pre-cleanup assessment activities (Phase I & II, lead and asbestos assessments),

- Monitoring and data collection for permits under federal or state laws unless required by cleanup,
- Non-cleanup related construction, demolition, development and addressing, deteriorated drinking water supplies,
- Job training unrelated to site cleanup,
- Paying a penalty or fine,
- Meeting a federal cost share requirement unless allowed by statutory authority,
- Paying a response cost at a site where the recipient of a loan or subgrant is liable under CERCLA 107,
- Paying a cost of compliance with any federal law not applicable to the cleanup, and
- Administrative costs and all indirect costs under OMB Circulars
- Ineligible administrative costs are salaries, benefits, contractual costs, supplies and data processing charges incurred to comply with Uniform Administrative Requirements for Grants in 40 CFR Part 30 or Part 31 and direct costs for grant and subgrant administration not identified in eligible costs

4. Payments, Incentives, and Penalties

No funds shall be disbursed until a final contract has been signed by both the selected applicant and DEP representative.

Funds for construction or onsite remedial eligible activities under the subgrant shall not be disbursed until a Corrective Action Plan has been approved by Division of Waste Management. Preparatory eligible activities are allowed for disbursement without an approved Corrective Action Plan (i.e. development of ABCA and/or property management plan, sampling related to design of a of a cleanup plan with an approved QAPP, or development of a corrective action plan).

The funds shall be payable to the subgrantee as reimbursement for allowable expenses incurred based upon the progress of the work and in accordance with the approved Project Budget and the approved Corrective Action Plan.

No reimbursement shall be made to the subgrantee unless substantial progress on subgrant and match activities have occurred within six (6) months of the date of the DEP's signature of this Agreement. If the Department determines that the subgrantee has not made sufficient progress within this time frame, the Department may terminate this agreement.

Payment requests will be submitted to the Brownfield Coordinator. The subgrantee may request a maximum of one reimbursement payment per month. Such requests shall include documentation of (1) work completed; (2) eligible costs, and (3) match incurred by the subgrantee.

If there are any issues with the receipt, the review the Coordinator will contact the applicant for additional, clarifying information or to request changes to the request.

DEP may withhold ten percent of the total subgrant amount stated in this contract for final payment. The final payment request shall be made via a Department approved method or form.

5. Contractual Terms and Conditions

The subgrant recipient will be subject to the conditions laid out in the contract template (Appendix B) and the 2012 US EPA Revolving Loan Fund Terms and Conditions (Appendix C).

6. Requirements for Proposal Preparation

The instructions of preparing the proposal are detailed in the Subgrant Application (Appendix D).

7. Evaluation and Award Process

The Brownfield Coordinator will review each application for completeness and eligibility. Causes for rejection include:

- Failure to submit the application by the stated deadline,
- Failure to include all required information or sufficient information to determine where all RFP eligibility requirements have been satisfied. (Omissions of ranking criteria information will not generally be a reason for rejection of an application, but may affect the scoring.),
- Failure to follow the application instructions or
- Providing misleading or inaccurate information.

Eligible applications will be distributed to members of the RLF Committee, which will consist of a group of staff members from the Department for Environmental Protection. Committee members will individually score the applications based on the following criteria:

| | |
|--|-------------------------|
| <p><u>Remediation Plan</u></p> <ul style="list-style-type: none"> • Has the applicant demonstrated that the property has been adequately assessed and characterized to develop a clean-up or management plan? • Has the applicant provided a clean-up or management plan that is consistent with the proposed end use of the property and is protective of human health and the environment? • Has the applicant included adequate provisions to protect neighboring residents from exposure to contaminants during the remediation activities? • Is the proposed budget adequate for the proposed clean-up or management plan? | <p>20 points</p> |
| <p><u>Project Description and Feasibility of Success</u></p> <ul style="list-style-type: none"> • Is there an end-use for the property? • Has an end-user been lined up? • Is the redevelopment plan economically viable? • Has the applicant secured sufficient funding for the project? • Does the applicant include the required 20% match? • Can the applicant demonstrate successful completion of any previous projects that were similar in nature or scale? | <p>20 points</p> |

| | |
|--|------------------|
| <ul style="list-style-type: none"> • Can the project be used as a model for other communities? | |
| <p><u>Documented economic, health and/or environmental needs in the community, especially in the neighborhood of the project</u></p> <ul style="list-style-type: none"> • Does the site contamination have a significant impact on the community? • Are minorities, low-income or sensitive populations particularly affected by the contamination? • Do the demographics of the community (population, unemployment rate, poverty, or other factors) affect the ability of the community to fund cleanup and redevelopment of the property? • Has the community been impacted by any recent natural disasters, plant closures or other significant economic disruptions? | 20 points |
| <p><u>Community Engagement and Partnership</u></p> <ul style="list-style-type: none"> • What level of community involvement in and support for the project been to date? • Is the project consistent with any overall community plans, if any? • Does the applicant have a plan to keep the community informed and engaged in the project, especially traditionally disenfranchised populations (low-income, disabled, minority, and illiterate)? | 20 points |
| <p><u>Project Benefits</u></p> <ul style="list-style-type: none"> • Does the project affect the economic and/or quality of life of the community, through <ul style="list-style-type: none"> • Projected short-term and long-term jobs, tax generation or other economic benefits • Removing the effect of blight on rest of community and/or overall enhancement of the community, • Promotion of tourism and/or recreation, • Cultural and/or historical preservation, or • Other factors benefiting the community? • Does the project affect the welfare of the community or provide greenspace, through <ul style="list-style-type: none"> • Reducing or eliminating threats to water quality and public health, • Creating green space, parks, or gardens, or • Providing affordable housing? • Does the project include any sustainability features, such as: <ul style="list-style-type: none"> • Revitalization of historic structures, reuse of buildings or building materials, • LEED Certification or similar designation, • Energy and water conservation, • Green infrastructure, • Effective use of existing infrastructure, • Walkability / bikeability, or • Access by public transportation? | 20 points |
| Total | 100 |

The Brownfield Coordinator will convene a meeting of the Committee to add the scores each of the individual members has developed. The subgrant will be awarded to the application

with the highest score. The Brownfield Coordinator, in consultation with the Committee, reserves the right to reject, in whole or in part, any or all applications, to advertise for new applications, or to cancel this RFP if it is in the best interest of the Department.

8. Process Schedule

The following is the schedule for major events associated with this RFP. While there is no guaranteed date for the award of a contract, the anticipated date is given. The Department for Environmental Protection reserves the right at its sole discretion to change the schedule of events.

| | |
|---------------------------------------|---------------|
| Deadline for submissions of proposals | May 31, 2017 |
| Anticipated date of award | June 15, 2017 |
| Contract start date | July 1, 2017 |

9. Responses

Proposals submitted in response to this Request for Proposals must be received in electronic form (CD, flash drive or file sharing service, such as Dropbox) no later than 4:00 p.m. Eastern Daylight Time on May 31, 2017. Proposals which arrive after this date and time shall not be considered for an award of contract, unless: a) no bids are received other than the late bid; and b) the need of the agency is determined to preclude the re-solicitation of bids; and c) the offer is evaluated and found to be in the best interest of the Commonwealth.

The proposal shall be submitted to:

Herb Petitjean
Brownfield Coordinator
Kentucky Division of Compliance Assistance
300 Sower Blvd., First Floor
Frankfort, Ky. 40601
herb.petitjean@ky.gov

10. Points of Contact

For questions regarding this RFP contact:

Herb Petitjean
Brownfield Coordinator
Kentucky Division of Compliance Assistance
300 Sower Blvd., First Floor
Frankfort, Ky. 40601
(502) 782-6432
herb.petitjean@ky.gov

or

Amanda LeFevre
Assistant Director
Kentucky Division of Compliance Assistance
300 Sower Blvd., First Floor

Frankfort, KY 40601
502-782-6398
amanda.lefevre@ky.gov