

PART VIII
LEGAL AND COMPLIANCE

CHAPTER 187
CONTRACTING

[Prior to 7/4/07, see 261—Ch 168, div VI]

261—187.1(15) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).

261—187.2(15) Contract required.

187.2(1) Notice of award. Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

187.2(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; the jobs to be created or retained; length of the project period and maintenance period; conditions to disbursement; a requirement for annual reporting to the department; and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions (“clawback provisions”) to be established on a project-by-project basis.

187.2(3) Contract-signing deadline. Successful applicants will be required to execute an agreement with the department within 120 days of the department’s or board’s approval of an award. Failure to do so may result in action by the entity that approved the award (the department or the board) to rescind the award. The 120-day time limit may be extended by the final decision maker that approved the award (the department or the board) for good cause shown.

261—187.3(15) Project completion date and maintenance date.

187.3(1) Projects shall be completed by the project completion date and maintained through the end of the maintenance date. The contract will establish the duration of the project period and maintenance period.

187.3(2) Projects receiving funding from programs or funding sources that have statutory project completion and maintenance periods shall comply with the requirements for that program or funding source.

187.3(3) Projects receiving assistance from programs without statutory project completion and maintenance periods shall conform to the time periods established by this rule, unless a different time period is negotiated and approved by the board or director.

187.3(4) By the project completion date, a recipient shall have completed the project as required by the contract. The jobs and project shall be maintained through the end of the maintenance date. The project completion date is calculated by the department from the end of the month during which an award is made. For example, if a CEBA award is made on June 13, 2007, the three-year project completion period will be calculated from June 30, 2007. The project completion date for this award would be June 30, 2010. The maintenance date would be June 30, 2012.

187.3(5) The following table describes, by program, the length of the project completion period and maintenance period:

Program	Project Completion Date	Maintenance Date	Total Contract Length
CEBA	3 years	2 more years	5 years
*PIAP	3 years	2 more years	5 years
*EVA	3 years	Until repayment obligation is fulfilled	Variable
*VAAPFAP	3 years	2 more years	5 years
EDSA	3 years		3 years
*If the project is funded with IVF(FES) or program funds (“old money”), these time periods do not apply.			
EZ	3 years	10 more years	13 years
HQJC 3-15 jobs	3 years	2 more years	5 years

HQJC 16 or more jobs	5 years	2 more years	7 years
Other Contracts in IDED Project Portfolio (beginning 7/1/03)			
CEBA awards prior to approximately 9/1/05	3 years	Ranging from 13 more weeks to 3 more mos.; as stated in the contract	Variable
IVF(FES) direct project awards from 7/1/03 to 6/16/04	Up to 4 years or longer	Up to 6 years; as stated in the contract	Up to 10 years
NCIP	3 years	2 more years	5 years
NJIP	5 years	5 more years	10 years

261—187.4(15) Contract amendments and other situations requiring board, due diligence committee (DDC) or director approval.

187.4(1) General rule. Generally, the final decision maker that approved the initial award shall approve any amendments or changes to that award.

187.4(2) Board delegation to the due diligence committee. The due diligence committee shall have the authority to act on behalf of the board and take final action on the requests described in 187.4(3). The committee may decide to take final action or to refer the matter to the full board for action.

187.4(3) Amendments and other items requiring board, due diligence committee or director approval. The table below identifies the situations that require action by the board, the due diligence committee or the director. It is not an all-inclusive list.

AMENDMENTS AND OTHER ITEMS REQUIRING BOARD, DDC OR DIRECTOR APPROVAL			
SUBJECT	DDC	BOARD	DIRECTOR
120-day contract-signing extensions - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and \$10M) awards originally approved by the board	Recommendation	Final decision	
120-day contract-signing extensions - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and \$10M)			Final decision
2-year CEBA disbursement obligation (Iowa Code § 15.317(4))	Recommendation	Final decision	
Contract time extensions - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and \$10M) awards originally approved by the board	Final decision		
Contract time extensions - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and \$10M)			Final decision
Other contract amendments - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and \$10M) awards originally approved by the board	Final decision		
Other contract amendments - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and \$10M)			Final decision
Discontinuance or suspension of collection efforts - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and \$10M) awards originally approved by the board	Final decision		
Discontinuance or suspension of collection efforts - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and \$10M)			Final decision
Negotiated settlements - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and \$10M) awards originally approved by the board	Final decision		

Negotiated settlements - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and \$10M)			Final decision
Rescission of awards - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and \$10M) awards originally approved by the board	Recommendation	Final decision	
Rescission of awards - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and \$10M)			Final decision

187.4(4) *Amendments and other requests the department is authorized to implement.* The department is authorized by the board to take action on nonsubstantive changes, including but not limited to the following:

- a. Recipient name, address and similar changes.
- b. Collateral changes that are the same or better security than originally approved by the board or director (e.g., securing a letter of credit to replace a UCC blanket filing) or collateral changes that do not materially and substantially impact the department's security.
- c. Line item budget changes that do not reduce overall total project costs.
- d. Loan repayment amounts or due dates that do not extend the final due date of a loan.

261—187.5(15) Default.

187.5(1) *Events of default.* The department may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the department may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

- a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.
- b. A material change in the business ownership or structure that occurs without prior written disclosure and the permission of the department.
- c. A relocation or abandonment of the business or jobs created or retained through the project.
- d. Expenditure of funds for purposes not described in the application or authorized in the agreement.
- e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.
- f. Failure of the recipient to fulfill its job obligations.
- g. Failure of the recipient to comply with wage or benefit packages.
- h. Failure of the recipient to perform or comply with the terms and conditions of the contract.
- i. Failure of the recipient to comply with any applicable state rules or regulations.
- j. Failure of the recipient to file the required annual report.

187.5(2) *Layoffs or closures.* If a recipient experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after executing a contract to receive the incentives and assistance, the department may consider this an event of default and the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

187.5(3) *Department actions upon default—direct financial assistance programs.*

- a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.
- b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the department deems necessary.
- c. Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the department may extend the term of the loan to ensure payback, stability, and survival of the recipient. In

certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, review and approval by the board, committee or director, as applicable, are necessary before the department may finalize the repayment plan.

d. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the board, committee or director, as applicable.

e. If the department refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding scope of counsel's authorization to accept settlements shall apply. No additional approvals by the board, committee or director shall be required.

187.5(4) Department actions upon default—tax credit programs. Collection efforts for tax credit programs are handled by the local community that approved the local tax incentive and the Iowa department of revenue, the state agency responsible for the state tax incentives.

a. Repayment. If an eligible business or eligible housing business has received incentives or assistance under the EZ program or the HQJC program and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

b. Calculation of repayment due for a business. If the department, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the tax credit program, the business is subject to repayment of all or a portion of the amount of incentives received.

(1) Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

4. If the business has not met the minimum job creation requirements for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

(2) Wages and benefits. If a business fails to comply with the wage or benefit requirements for the tax credit program, the business shall not receive incentives or assistance for each year during which the business is not in compliance.

(3) Capital investment. If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to invest.

2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to invest.

3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to invest.

4. If the business has not met the minimum investment requirement for the tax credit program, the business shall repay all of the incentives and assistance that it has received.

c. Department of revenue; county/city recovery. Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes

or incentives provided under Iowa Code section 15E.193A or 15E.196. The value of state incentives provided under Iowa Code section 15E.193A or 15E.196 includes applicable interest and penalties.

d. Layoffs or closures. If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

e. Extensions. If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the department, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

These rules are intended to implement Iowa Code chapters 15, 15E and 15G.

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