

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 authority 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 completion period and maintenance project completion period; the project completion date and maintenance period completion date; conditions to disbursement; a requirement for annual reporting to the authority; 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 authority within 120 days of the authority’s or board’s approval of an award. Failure to do so may result in action by the entity that approved the award (the authority 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 authority or the board) for good cause shown.

[ARC 7970B, IAB 7/15/09, effective 7/1/09; ARC 8145B, IAB 9/23/09, effective 10/28/09; ARC 0442C, IAB 11/14/12, effective 12/19/12]

261—187.3(15) Project completion date and maintenance period completion 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. Requests to change the project completion date and the maintenance period completion date shall follow the process for an amended award or contract as described in rule 261—187.4(15).

187.3(2) Projects receiving assistance from programs covered by this chapter shall conform to the time periods established by this rule.

187.3(3) 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 period completion date. The project completion date is calculated by the authority from the end of the month during which an award is made. For example, if an award is made on June 13, 2007, the three-year project completion date will be calculated from June 30, 2007. The project completion date for this award would be June 30, 2010. The maintenance period completion date would be June 30, 2012.

187.3(4) The following table describes, by program, the length of the project completion period and the maintenance period:

Program	Project Completion Period	Maintenance Period	Total Contract Length
Grow Iowa Values Financial Assistance Program (all components)	3 years	2 more years	5 years
High Quality Jobs Program	3 years	2 more years	5 years
Enterprise Zone Program	3 years	2 more years	5 years

187.3(5) Notwithstanding the standard project completion period and maintenance period lengths described in subrule 187.3(4), the authority may vary the length of the periods provided that the project

completion period will not be less than three years and the total contract length will not be less than five years.

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261—187.4(15) Contract and award amendment approval procedures.

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) Contract amendments.

a. General. In general, the amendment process for both awards and contracts mirrors the application process. That is, the same entity that recommended the initial application will also recommend the amendment, and the same entity that had final approval of the initial application will have final approval of the amendment. As with awards, contract amendments must comply with the statutory requirements for each individual program or funding source and the applicable administrative rules. In general, the amendment process begins with review of an amendment request by authority staff. After review by staff, the amendment may be sent to a committee for further recommendation followed by final action on the amendment by the board or by the director, as the case may be. The director may take action on any amendment that is not specifically identified as requiring board action. The authority's various programs and the amendment procedures are described in paragraph 187.4(2) "c," which contains the applicable recommending and approving entities by funding source and program.

b. Key to table. ACE – The accelerated career education program job credits authorized under Iowa Code chapter 260G.

ASSISTIVE – The assistive device tax credits authorized in Iowa Code section 422.33.

BRN – The brownfield redevelopment advisory council established in Iowa Code section 15.294.

BROWN – Redevelopment tax credits for brownfield and grayfield sites and the brownfield redevelopment fund as established in Iowa Code chapter 15.

CDBG – Federal community development block grant funded programs.

DDC – Due diligence committee organized by the board pursuant to 261—Chapter 1.

EDSA – The economic development set aside component of the CDBG program established in 261—Chapter 23.

ETAP – The export trade assistance program established in 261—Chapter 72.

EZ – Enterprise zone program as established in Iowa Code chapter 15E, including both the business and housing development tax credits.

FILM – The film and video project promotion program tax credits available under the now repealed Iowa Code section 15.393.

GIVF – The grow Iowa values fund and financial assistance program established pursuant to the now repealed Iowa Code chapter 15G, including all prior versions and funding sources of the program.

HQJP – High quality jobs program, as established in Iowa Code chapter 15, including both tax incentives and project completion assistance.

INNOVATION – Programs related to innovation, commercialization, and targeted industries development, including the programs described in Iowa Code section 15.411 and the program rules in 261—Part V.

LCG – Loan and credit guarantee program as established in the now repealed Iowa Code chapter 15E, division XX.

NSP – Neighborhood stabilization program as established in 261—Chapter 27.

TCC – Technology commercialization committee organized by the board pursuant to 261—Chapter 1.

TJWTC – Targeted jobs withholding tax credit program for pilot project cities established in Iowa Code section 403.19A.

TSB – Targeted small business advisory council established in Iowa Code section 15.247(8).

TSB LOAN – The targeted small business financial assistance program established in Iowa Code section 15.247.

c. Recommendation and approval entities for state and federal programs. The contract amendment process for tax incentives, project completion assistance, other financial assistance, or other benefits under the authority's various programs is as follows:

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director
HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State		Director

d. Exception. Notwithstanding paragraph 187.4(2)“c,” the director may approve contract amendments for the targeted industries internship program consistent with Iowa Code section 15.106C without board approval.

187.4(3) Amendments and other requests the authority is authorized to implement. The authority 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 authority'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.

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261—187.5(15) Default.

187.5(1) Events of default. The authority may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the authority 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 authority.
- 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 authority 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 authority 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) Authority actions upon default—direct financial assistance programs.

a. The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the authority determines that the recipient is in default, the authority 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 board deems necessary.

c. Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the authority will notify the recipient of the amount to be repaid to the authority. If the enforcement of such penalties would endanger the viability of the recipient, the board 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 authority may finalize the repayment plan with the recipient.

d. The authority 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, and described in paragraph 187.5(3) “*f.*”

e. If the authority or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the authority 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.

f. The table below describes the approval procedures that shall be followed for all negotiated settlements, write-offs or discontinuance of collection efforts for state direct financial assistance programs, federal programs, and other programs administered by the authority.

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director

HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State	DDC	Board

187.5(4) Authority 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 HQJP 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 authority, 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 authority 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 authority, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

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These rules are intended to implement Iowa Code chapters 15 and 15E and 2011 Iowa Code Supplement chapter 15G, subchapter I.

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