



Rules of
Department of Natural Resources
Division 60—Safe Drinking Water Commission
Chapter 13—Grants and Loans

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**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 60—Safe Drinking Water
Commission
Chapter 13—Grants and Loans**

**10 CSR 60-13.010 Grants for Public Water
Supply Districts and Small Municipal
Water Supply Systems**

PURPOSE: This rule establishes the department's grant eligibility and application procedures requirements and for construction of projects at public water supply districts and rural community water system pursuant to sections 640.600, 640.605, 640.615 and 640.620, RSMo.

(1) Application Requirements.

(A) The recipient must first apply with the agency or other financial source which is to furnish the primary financial assistance, and after the amount of that assistance has been determined, an application for a grant under this rule may be made to and processed by the department. An application shall be submitted on forms provided by the department. The application shall be supported by the necessary documents and forms from other state and federal grant or lending agencies or private lending agencies to enable the department to establish eligibility and need for grant funds.

(B) The project for which the grant application is submitted shall comply with appropriate state and local laws, rules and ordinances and is limited to public water supply districts or municipal water supply systems of less than ten thousand (10,000) population.

(C) The ratio of contracted users to potential users shall not be less than seventy-five percent (75%).

(D) These grants are to be considered secondary sources of funding and, as such, shall in no case exceed the per connection amount as specified in section 640.620, RSMo, fifty percent (50%) of the total eligible project cost, or five hundred thousand dollars (\$500,000), whichever is less.

(E) Grant funds may be used for the following costs:

1. Construction costs for new construction, rehabilitation or upgrade of publicly owned treatment systems including upgrades made to comply with additional safe drinking water requirements.

2. Engineering services and other services incurred in preparing the design drawings and specifications for the project. Such services must have been procured in accordance with state law to be eligible costs.

(F) The grant application packet shall con-

tain the following information:

1. A preliminary engineering cost study for the proposed project including, but not limited to, the following items: development and administration costs; land, structures, right-of-way costs; legal costs; engineering costs; interest costs; equipment costs; contingencies; other costs; and total project costs;

2. An engineering report for the proposed project which is in accordance with 10 CSR 60-3.010 and 10 CSR 60-10.010;

3. The information required to determine the cost per contracted connection;

4. The median annual household income of the residents in the district or community;

5. Information required to determine the ratio of the contracted users to the potential users;

6. An evaluation of the recipient's technical, managerial, and financial (TMF) capacity on forms provided by the department. A recipient that does not meet the TMF capacity requirements established in 10 CSR 60-3.030 shall submit a plan outlining the steps the recipient will take to meet the requirements. The plan shall show the recipient will meet TMF requirements before the project is complete or within one (1) year of the award of the grant unless the department determines that a longer period of time is necessary;

7. The ratio of contracted users to potential users; and

8. The number of acres being protected for any source water protection project.

(2) Grant Priorities.

(A) Priorities for grants for public water supply districts and rural community water systems shall be established by the department.

(B) Determination of relative need will be coordinated with appropriate federal grant and lending agencies and with appropriate state agencies. Preference may be given to projects needing a grant in order to obtain state or federal drinking water loan assistance. It is the intent of the department to maximize the effective use of state and federal grant and loan funds.

(C) Additional priority will be awarded to projects whose projected financial need is based on potential compliance with additional safe drinking water requirements.

(D) Priority will be given to recipients who consider regionalization or for projects that include regionalization.

(3) Approval and Payment of Grant Funds.

(A) The grant award shall be made upon receipt and approval of bid documents, executed contract documents, and demonstration

by the recipient that the funding for the total project costs has been secured. The department, based on the status of state funding, may elect to pay out the full grant amount at the time of grant award or to make payments to the grantee.

(B) If the department elects to make full payment of the grant amount for the construction project, payment shall be made at the time of the department's receipt of the executed grant document. The following provisions shall apply:

1. The grantee shall establish a separate escrow account with a bank as defined in Chapter 409, section 409-1.102;

2. The full grant award amount, less any payments processed prior to the date of this rule, will be paid to the grantee for deposit into the grantee's established escrow account;

3. Grant funds in the escrow account may be used to pay up to fifty percent (50%) of the eligible costs shown in subsection (1)(D) of this rule except that one hundred percent (100%) of the reasonable costs associated with a grant anticipation loan will be eligible when this financing is pre-approved by the department.

4. The grantee shall submit the bank statement of the escrow account monthly, within thirty (30) days of the end of the month. If the monthly statement indicates that funds were withdrawn, the grantee shall submit copies of the invoices to document the costs.

5. The bank account may earn interest; however, all withdrawals from the account must be documented with eligible invoices. If the project costs are inadequate to withdraw all the funds in the account, the balance must be refunded to the department.

(C) The department will provide a payment request form for the grantee to use. The payment request must be supported by invoices that document the costs incurred.

(D) The grant amount will be reduced, if necessary, to reflect actual project costs as determined by the invoices submitted by the grantee.

(E) An audit to verify expenditure of grant funds may be made by the department after the completion of each approved project. Any funds found not expended for the purposes listed in subsection (1)(D) of this regulation will be recovered.

(F) Any funds remaining in the escrow account two (2) years after the date of the initial grant payment will be recovered by the department. On grants that are paid incrementally by the department, no payments will be made after two (2) years from the initial grant award acceptance unless an extension is granted by the department.



(G) An audit to verify expenditure of grant funds may be made by the department. Any funds found not expended for the purposes listed in subsection (1)(D) of this regulation will be recovered.

(4) If at any time during the first twenty (20)-years of the design life of the facility(ies) funded under this rule the facility is sold, leased or otherwise transferred, either outright or on a contract for deed or lease-purchase agreement, to other than a political subdivision of the state, the state shall require reimbursement of the grant funds. The total amount of the grant funds to be reimbursed shall be based on a twenty (20)-year straight-line depreciation. Grant funds to be reimbursed, shall become due and payable upon transfer of ownership of the facility(ies).

AUTHORITY: sections 640.600, 640.605, and 640.615, RSMo 2016, and section 640.620, RSMo Supp. 2018.* This rule was previously filed as 10 CSR 60-2.020 Sept. 21, 1973, effective Oct. 1, 1973. Amended: Filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Rescinded and readopted: Filed Feb. 2, 1983, effective July 1, 1983. Emergency amendment filed July 3, 1989, effective July 27, 1989, expired Nov. 23, 1989. Amended: Filed July 3, 1989, effective Nov. 23, 1989. Amended: Filed Jan. 19, 2001, effective Sept. 30, 2001. Emergency amendment filed Feb. 1, 2007, effective March 4, 2007, expired Aug. 30, 2007. Amended: Filed March 14, 2007, effective Oct. 30, 2007. Amended: Filed June 13, 2018, effective Feb. 28, 2019.

*Original authority: 640.600, RSMo 1989; 640.605, RSMo 1989, amended 1999; 640.615, RSMo 1989, amended 1999; and 640.620, RSMo 1989, amended 1995, 1999, 2018.

10 CSR 60-13.020 Drinking Water State Revolving Fund Program

PURPOSE: This rule sets forth eligibility and program requirements for financial assistance from the Drinking Water State Revolving Fund program authorized pursuant to section 1452 of the federal Safe Drinking Water Act, as amended, and in section 640.107, RSMo.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no

more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Application and Eligibility Requirements. This section applies to recipients of financial assistance from the Drinking Water State Revolving Fund (DWSRF) program. Recipients of assistance are subject to the requirements of this regulation, unless otherwise specified. The *Code of Federal Regulations* referenced in the regulation are incorporated as published July 1, 2017. The regulations are incorporated by reference without any later amendments or modifications. To obtain a copy, contact the U.S. Government Printing Office at 732 North Capitol Street NW, Washington, D.C., 20401, toll free at (866) 512-1800 or by visiting <https://bookstore.gpo.gov>. To obtain the decennial median household income visit the U.S. Census Bureau American Fact Finder webpage https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml, contact the U.S. Census Bureau, 4600 Silver Hill Road Suitland, MD 20746, or toll free at (800) 923-8282.

(A) Definitions.

1. The terms and definitions in section 640.107, RSMo, 10 CSR 60-2.015, and 40 CFR 35.3505, apply to the rules in this chapter.

2. Initiation of operation—The date when the first constructed component is capable of being used for its intended purpose.

3. PSC—Missouri Public Service Commission.

4. EIERA—State Environmental Improvement and Energy Resources Authority.

5. Loan—Unless stated otherwise, loan generally refers to the agreement to lend money to an eligible recipient. The type of agreement could be a loan agreement, bond purchase agreement, or other debt instrument.

6. Recipient—The recipient of financial assistance from programs supported or secured by the Water and Wastewater Loan Fund, the Water and Wastewater Loan Revolving Fund, DWSRF bonds issued by EIERA, or state bond funds.

(B) Eligible Projects and Project-Related Costs. This subsection incorporates the federal requirements in 40 CFR 35.3520.

(C) Application Procedures.

1. Application deadline.

A. Applications must be postmarked or received by the Water Protection Program by the calendar date established in the annual application package as the application deadline. The deadline will be no sooner than

sixty (60) days after the application package is made available. The department may extend this deadline if insufficient applications are received to use all of the funds expected to be available. Applications are valid for two (2) intended use plan cycles. Applications received after the deadline may be placed on a priority list as determined by the commission based on availability of funds.

B. Recipients that have an outstanding loan balance with the department must be in compliance with the terms and conditions of their loan agreements to be eligible for additional funding.

2. Recipients shall provide:

A. A completed application form provided by the department;

B. Documentation that they have a chief operator certified at the appropriate level, or expect to have prior to loan award;

C. Documentation that they have an emergency operating plan, or expect to have prior to loan award;

D. Any additional information requested by the department for priority point award or project evaluation;

E. Any additional information request by the department to determine the recipient's compliance history and technical, managerial, and financial capacity as required under the federal Safe Drinking Water Act (SDWA); and

F. Any additional information for determination of financial capability of the recipient. This may include, but is not limited to: changes in economic growth, changes in population growth, depreciation, existing debt, revenues, project costs, and effects of the project on user charge rates.

3. Unsuccessful recipients requesting funds during a given fiscal year who have completed the requirements in this section (1) shall be considered for funding the next fiscal year and need not reapply.

4. By submission of its application, the recipient certifies and warrants that he/she has not, nor will through the DWSRF loan amortization period, violate any of his/her debt covenants.

(D) Intended Use Plan. The department will prepare an annual intended use plan in accordance with 40 CFR 35.3555 and section 640.107, RSMo. The annual intended use plan is approved by the commission after public notice and public comment.

(2) Requirements for Assistance Recipients. This section applies to recipients of the DWSRF program.

(A) Fees.

1. Loan Fees. The department may charge annual loan fees not to exceed one-half



percent (0.5%) of the outstanding loan balance of each loan, except as provided under paragraph (2)(A)2.

2. Additional administrative fees. Additional administrative fees may be assessed by the department, at the time the administration fee is calculated for failure by a recipient to pay debt service on the loan or submit approved documents to the department (for example, operation and maintenance manuals, enacted user charge and water use ordinances, executed contract documents) in accordance with the time frames provided under the program agreement entered into by the recipient. The additional fee will be an additional one-tenth percent (0.1%) per month that the document remains delinquent. The additional fee for delinquent documents will be collected only during the year in which the document is not submitted.

(B) Engineering Report and Design. Engineering report and design of projects for eligible water systems shall conform with 10 CSR 60-3.010 and 10 CSR 60-10.010.

(C) Additional Preclosing Requirements. All documents necessary to provide assistance must be submitted to the department in sufficient time to allow adequate time for review and approval prior to the loan closing date established by the department. The department may extend deadlines if justified.

1. Final document submittal. The following documents must be submitted to and approved by the department:

A. Resolution identifying the authorized representative by name. Recipients for assistance under the DWSRF program shall provide a resolution by the governing body designating a representative authorized to file the application for assistance, reimbursement requests, and act on behalf of the recipient in all matters related to the project;

B. Proposed project schedule. The following represents the minimum requirements for the project schedule;

(I) Construction start defined as date of issuance of notice to proceed;

(II) Construction completion;

(III) Initiation of operation; and

(IV) Project completion;

C. Engineering contract as described in subsection (2)(G) of this rule and the appropriate procurement documentation as described in subsection (2)(H) or subsection (2)(N);

D. Engineering report and plans and specifications certified by a registered professional engineer licensed in Missouri;

E. Certification of easements and real property acquisition. Recipients of assistance under the DWSRF program shall have obtained title or option to the property or

easements for the project prior to loan closing;

F. Draft user charge and water use ordinances as described in paragraphs (2)(C)3. and 4. of this rule; and

G. Other information or documentation deemed necessary by the recipient or the department to ensure the proper expenditure of DWSRF funds.

2. Projects serving multiple water systems. Prior to closing, if the project serves two (2) or more public water systems, the recipient shall submit executed agreements or contracts between the public water systems for the financing, construction, and operation of the proposed facilities.

3. User charge (water rate) ordinance.

A. For non-PSC-regulated utilities:

(I) Recipients are required to maintain, for the useful life of the project, user charge ordinances approved by the department. User charge ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed project;

(II) The user charge system shall be designed to produce adequate revenues required for the operation and maintenance, including a reserve for equipment replacement. A one hundred ten percent (110%) debt service reserve may be required. Each user charge system shall—

(a) Be based upon actual use;

(b) Include an adequate financial management system that will accurately account for revenues generated by the system, debt service and loan fee costs, and expenditures for operation and maintenance, including replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy, and administration; and

(c) Provide for an annual review of charges; and

(III) The recipient shall submit to the department, for review and approval, the methodology used for determining user rates.

B. PSC-regulated utilities shall comply with the requirements of the PSC in developing and implementing their user charge ordinances but shall ensure that sufficient rates and charges are in effect to satisfy bond covenants throughout the term of the loan.

4. Water use ordinance. Recipients dependent on user fees for debt payment or operation and maintenance expenses shall have in place an enforceable water use ordinance prior to loan closure. The water use ordinance shall address water system responsibilities and customer responsibility relating

to installation and maintenance of water meters and water lines; easements; alternative sources of water; and provisions for breach of contract and liquidated damages. The water use ordinance is intended to be an effective business tool for the efficient management of the water system.

5. Additional requirements for privately-owned public water systems. Privately-owned public water systems must provide documentation from the Missouri Department of Economic Development showing an allocation under Missouri's private activity bond cap and must obtain any necessary approvals from the PSC.

6. Environmental review. All applicable environmental review requirements in 10 CSR 60-13.030 must be completed before the department enters into a binding commitment with the recipient.

7. Cross-cutters. Recipients shall comply with Federal cross-cutting authorities unless an exemption is provided through department policy, as outlined in accordance with 40 CFR 35.3575.

(D) Operation and Maintenance.

1. Operation and maintenance manual. The recipient must make provision satisfactory to the department for assuring effective operation and maintenance of the constructed project throughout its design life. If required by the department, recipients of assistance for construction of mechanical facilities must make provision satisfactory to the department to develop, for approval, an operation and maintenance manual. The operation and maintenance manual, if required, must be submitted by final construction completion.

2. Start-up training. At construction completion, a start-up training proposal (if required) and proposed follow-up services contract must be submitted by final construction completion.

3. Certified operator. The recipient must make provision satisfactory to the department for assuring that certified operator(s) and maintenance personnel are hired in accordance with an approved schedule.

4. System certification. If required by the department, one (1) year after initiation of operation of the constructed public water system, the recipient shall certify to the department whether or not the public water system meets the project performance standards. Any statement of noncompliance must be accompanied by a corrective action report containing an analysis of the cause of the project's inability to meet performance standards, actions necessary to bring it into compliance, and reasonably scheduled date for positive certification of the project. Timely corrective action shall be executed by the



recipient.

(E) Accounting and Audits. Recipients are required to have a dedicated source for repayment of any loans and an adequate financial management system and audit procedure for the project which provides efficient and effective accountability and control of all property, funds, and assets related to the project. The recipient's financial system is subject to state or federal audits to assure fiscal integrity of public funds.

1. Each recipient is expected to have an adequate accounting system for the project which provides efficient and effective accountability and control of all property, funds, and assets.

A. The recipient is responsible for maintaining a financial management system which will adequately provide for an accurate, current, and complete disclosure of the financial results of each DWSRF project. The proprietary fund (business-related fund) accounting will be in accordance with generally accepted government accounting principles and practices, regardless of the source of funds.

B. An acceptable accounting system includes books and records showing all financial transactions related to the construction project. The system must document all receipt and disbursement transactions and group them by type of account (for example, asset, revenue, expense, etc.) and by individual expense account (for example, personnel salaries and wages, subcontract costs, etc.) The recipient shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the amount, receipt, and disposition by the recipient for all assistance received for the project and the total costs of the project of whatever nature incurred for the performance of the project for which the assistance was awarded.

2. Annual Audited Financial Statements.

A. The recipient shall cause an audit of the recipient's annual financial report for the preceding fiscal year to be made by a certified public accountant or firm of certified public accountants employed for that purpose.

(I) The annual audit will cover in reasonable detail the operation of the proprietary system during the fiscal year.

(II) Within one hundred eighty (180) days after the end of the recipient's fiscal year, a copy of the annual financial report will be submitted to the department as long as the recipient is in loan repayment status. A recipient who cannot meet this deadline will notify the department in writing of the delay with the expected date of completion.

B. As required by federal law, a recipient must comply with the provisions of 2 CFR part 200 subpart F governing the audit of state and local governments. When applicable, a copy of the recipient's annual audit, including all written comments and recommendations of the accountant, will be furnished to the department within the time period as provided in 2 CFR part 200 subpart F.

(F) Record Retention Requirements. The recipient must retain all records according to the retention schedules established by chapter 109, RSMo. A longer retention period may be required under the loan documentation.

(G) Minimum Requirements for Architectural or Engineering Contracts.

1. General requirements must—

A. Be necessary for and directly related to the accomplishment of the project;

B. Be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement;

C. Be for monetary consideration;

D. Not be in the nature of a grant or gift;

E. State a time frame for performance;

F. State a cost which cannot be exceeded except by amendment; and

G. State provisions for payment.

2. The nature, scope, and extent of work to be performed during construction should include, but not be limited to, the following:

A. Preparing an operation and maintenance manual if required by the department that meets the requirements of paragraph (2)(D)1. of this rule;

B. Assisting the recipient in letting bids;

C. Assisting the recipient in reviewing and analyzing construction bids and making recommendations for award;

D. Inspecting during construction to ensure conformance with the construction contract documents unless waived by the department; and

E. Assisting with facility operation for purposes of certifying that the facility is operating properly one (1) year after start-up to meet the requirements of paragraph (2)(D)4. of this rule.

3. Executed engineering contract submittal. The final approved executed engineering contract must be submitted prior to the first reimbursement request.

(H) Procurement of Engineering Services. The procurement of engineering services shall be in accordance with sections 8.285 through 8.291, RSMo or section 67.5060, RSMo.

(I) Specifications. The construction specifications must contain the following:

1. Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description, in competitive procurement, shall not contain features which unduly restrict competition unless the features are necessary to test or demonstrate a specific thing or to provide for interchangeability of parts and equipment. The description shall include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;

2. The recipient shall avoid the use of detailed product specifications if at all possible;

3. When, in the judgment of the recipient, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a brand name as a means to define the performance or other salient requirements of an item to be procured. The recipient need not establish the existence of any source other than the named brand. Recipients must state clearly in the specification the salient requirements of the named brand which must be met by offerers and that other brands may be accepted;

4. Sole source restriction. A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless the department determines that the recipient's engineer has adequately justified in writing to the department that the proposed use meets the particular project's minimum needs;

5. Experience clause restriction. The general use of experience clauses is restricted to special cases.

A. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee replacement in the event of failure is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Where this justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

B. The general use of experience clauses requiring contractors to have a record of satisfactory experience for a specified period of time or the completion of a specified



number of similar projects is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Such justification shall not unduly restrict competition or result in excessive bonding requirements. Where this justification has been made, submission of a bond or deposit shall be permitted instead of the specified experience. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

6. Domestic products procurement law requirements in accordance with sections 34.350–34.359, RSMo;

7. Bonding. On construction contracts exceeding fifty thousand dollars (\$50,000), the bid documents shall require each bidder to furnish a bid guarantee equivalent to five percent (5%) of the bid price. In addition, the bid documents must require the successful bidder to furnish performance and payment bonds, each of which shall be in an amount not less than one hundred percent (100%) of the contract price;

8. State wage determination in accordance with sections 290.210 to 290.340, RSMo and 8 CFR 30 chapter 3;

9. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms requirements in accordance with 2 CFR 200.321 and 40 CFR part 33;

10. Debarment/suspension requirements in accordance with 2 CFR part 180 subpart C;

11. Right of entry to the project site shall be provided for representatives of the department, EIERA, the Missouri State Auditor, and U.S. Environmental Protection Agency so they may have access to the work wherever it is in preparation or progress;

12. The following statement: "The owner shall make payment to the contractor in accordance with section 34.057, RSMo";

13. Contractors must comply with the Davis-Bacon requirements in accordance with 29 CFR 5.5. The current Davis-Bacon wage rate from the United States Department of Labor must be incorporated in the bid documents; and

14. American Iron and Steel. Specifications shall adhere to requirements to utilize American Iron and Steel for projects involving the construction, alteration, maintenance, or repair of a public water system, when applicable. The department will publish the American Iron and Steel requirements in the annual intended use plan.

(J) Construction Equipment and Supplies Procurement. This section describes the minimum procurement requirements which the recipient must use under the DWSRF pro-

gram.

1. Small purchases. A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one (1) transaction does not exceed one hundred fifty thousand dollars (\$150,000). The small purchase limitation of one hundred fifty thousand dollars (\$150,000) applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one (1) transaction, all items which should properly be grouped together must be included. Department concurrence and a minimum of three (3) quotes must be obtained prior to purchase.

2. Bidding requirements. This paragraph applies to procurement of construction equipment, supplies, and construction services in excess of one hundred fifty thousand dollars (\$150,000) awarded by the recipient for any project. No contract shall be awarded until the department has approved the formal advertising and bidding.

A. Formal advertising.

(I) Adequate public notice. The recipient will cause adequate notice to be given of the solicitation by publication in newspapers of general circulation beyond the recipient's locality (preferable statewide), construction trade journals, or plan rooms, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

(II) Adequate time for preparing bids. A minimum of thirty (30) days shall be allowed between the date when public notice, publication, insertion, or document availability in a plan room is first published and the date by which bids must be submitted. Bidding documents shall be available to prospective bidders from the date when the notice is first published or provided. Recipients are encouraged to directly solicit bids from prospective bidders.

B. Bid document requirements and procedure.

(I) The recipient shall prepare a reasonable number of bidding documents (Invitations for Bids) and shall furnish them upon request on a first-come, first-served basis. The recipient shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include, at a minimum:

(a) A completed statement of the work to be performed or equipment to be supplied and the required completion schedule;

(b) The terms and conditions of

the contract to be awarded;

(c) A clear explanation of the method of bidding and the method of evaluation of bid prices and the basis and method for award of the contract or rejection of all bids;

(d) Responsibility requirements and criteria which will be employed in evaluating bidders;

(e) The recipient shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening;

(f) If a recipient desires to amend any part of the bidding documents during the period when bids are being prepared, addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time. All addenda must be approved by the department prior to award of the contract;

(g) A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening;

(h) The recipient shall provide for a public opening of bids at the place, date, and time announced in the bidding documents. Bids received after the announced opening time shall be returned unopened;

(i) Award shall be to the lowest, responsive, responsible bidder. After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents. The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract. A responsible contractor is one that has financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the contract or a demonstrated ability to obtain these. The recipient may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the lowest responsive, responsible bidder. The recipient shall have established protest provisions in the specifications. These provisions shall not include the department as a participant in the protest procedures. If the recipient intends to make the award to a firm which did not submit the lowest bid, the recipient shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsive or non-responsive and shall retain the statements in its files. The recipient shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment unless the recipient has clearly stated in the solicitation documents that the



failure to list shall render a bid nonresponsive and shall cause rejection of a bid;

(j) The recipient is encouraged though not required to use the model specification clauses developed by the department; and

(k) Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department in writing of each proposed construction contract which has an aggregate value over one hundred fifty thousand dollars (\$150,000). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction subagreement. The notice shall include:

- I. Proof of advertising;
- II. Tabulation of bids;
- III. The bid proposal from the bidder that the recipient wishes to accept, including justification if the recommended successful bidder is not also the lowest bidder;

IV. Recommendation of award;

V. Any addenda not submitted previously and bidder acknowledgment of all addenda;

- VI. Copy of the bid bond;
- VII. One (1) set of as-bid specifications;

VIII. Suspension/Debarment Certification;

IX. Revised financial capability worksheet and certification if bids exceed prebid estimates by more than fifteen percent (15%);

- X. MBE/WBE Worksheet;
- XI. Recipient's statement that proposed contractor(s) positive efforts, MBE/WBE utilization, or both, have been reviewed and meet regulatory requirements;

XII. Site certification, if not previously submitted; and

XIII. Certification of Nonsegregated Facilities.

(K) Conflict of Interest.

1. No employee, officer, or agent of the recipient shall participate in the selection, award, or administration of a subagreement supported by state or federal funds if a conflict of interest, real or apparent, would be involved. This conflict would arise when—

A. Any employee, officer, or agent of the recipient, any member of their immediate families, or their partners have a financial or other interest in the firm selected for a contract; or

B. An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person listed in subparagraph (2)(K)1.A. of this rule.

2. The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of substantial monetary value from contractors, potential contractors, or other parties to subagreements.

(L) Changes in Contract Price or Time. The contract price or time may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the methods set forth in the following:

1. Unit prices.

A. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed fifteen percent (15%) of the original bid quantity and the total dollar change of that bid item is greater than twenty-five thousand dollars (\$25,000), the recipient shall review the unit price to determine if a new unit price should be negotiated.

B. Unit prices of new items shall be negotiated;

2. A lump sum to be negotiated; and

3. Cost reimbursement. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work plus an amount to cover the cost of general overhead and profit.

(M) Progress Payments to Contractors.

1. Recipients should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, supplies, and equipment costs in accordance with section 34.057, RSMo.

2. Retention from progress payments. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

(N) Procurement of Design-build Services. The procurement of design-build services shall be in accordance with section 67.5060, RSMo. Recipients that are exempt from section 67.5060, RSMo. may also utilize design-build services if local ordinances or policies allow design-build and the procurement of the design-build team considers both the qualifications of the team. Recipients seeking funds for a project utilizing design-build services must notify the department with the recipient's application. Recipients that utilize design-build services shall coordinate procurement activities with the department to ensure compliance. The department may restrict the amount of funding available for projects using design-build services, if needed to comply with federal law and regulations.

(3) DWSRF Direct Loans.

(A) General.

1. This section describes the process and requirements for direct loans awarded under this rule. All other requirements also apply, including administrative fees in subsection (2)(A) of this rule.

2. This rule sets out the general format for the direct loan program. The commission, the department, and EIERA shall have the authority to make specific refinements, variations, or additional requirements as may be necessary or desirable in connection with the efficient operation of the direct loan program.

3. The department may make direct loans by purchasing the general obligation bonds, revenue bonds, short-term notes, or other acceptable obligation of any qualified recipient for the planning, design, and/or construction of an eligible project. These loans shall not exceed the total eligible project costs described in subsection (1)(B) of this rule less any amounts finalized by any means other than through the direct loan program.

(B) Reimbursement Terms.

1. The maximum reimbursement will be no more than the sum of all eligible costs incurred to date. Each payment request shall include the following information:

A. Completed reimbursement request form;

B. Construction pay estimates signed by the construction contractor, the recipient, and the consulting engineer, if applicable;

C. Invoices for other eligible services, equipment, and supplies for the project; and

D. Any other information deemed necessary by the department to ensure proper project management and expenditure of public funds.

2. If the department is satisfied that the payment request accurately reflects the eligible cost incurred to date on the project, the department will request that state payment be issued to the recipient.

(C) Trustee or Paying Agent. The department may require the recipient to contract with a trustee or paying agent to provide the services below, along with other such services as detailed in the recipient's escrow agreement:

1. Maintain separate trust funds and accounts for recipients;

2. Disburse funds to recipients;

3. Collect principal and interest quarterly payments from recipients; and

4. Provide monthly financial reports to recipients.

(D) Amortization Schedules. The following guidelines shall be used to establish amortization schedules under this rule:



1. The bonds, notes, or other debt obligations shall be fully amortized as outlined in 40 CFR 35.3525;

2. Principal payment frequency shall be no less than annual and interest payments at least semi-annual;

3. The amortization schedule may either be straight line or declining schedules for the term of the debt obligation. The department may approve an alternative amortization method if deemed appropriate; and

4. Repayment of principal shall begin not later than one (1) year after initiation of operation.

(E) Target Interest Rate (TIR). The TIR shall be established by the commission in consultation with the department and the EIARA based upon current economic factors, projected fund utilization, deposits in the fund, and actual or anticipated federal capitalization grants and published in the annual intended use plan. The department reserves the right to refinance, assign, pledge, or leverage any loans originated under this rule.

(F) If at any time during the loan period the facility(ies) financed under this rule is sold, either outright or on contract for deed, the loan becomes due and payable upon transfer unless otherwise approved by the department.

(G) If at any time the public water system or any part thereof, funded with a DWSRF grant is sold, either outright or on contract for deed, to other than a political subdivision of the state, the department shall receive reimbursement of the grant funds. The total amount of grant funds to be reimbursed shall be based on a straight-line depreciation based on the original costs of the facilities being sold, the original loan repayment period or a twenty- (20-) year straight-line depreciation schedule in the event of grant only funds, and adjusted for the percentage of grant funds originally disbursed to fund such facilities. Grant funds to be reimbursed shall become due and payable upon transfer of ownership.

(4) Additional subsidization (such as principal forgiveness, negative interest loans, grants, or the like) may be provided as federal law requires or allows.

(5) Disadvantaged Communities. A disadvantaged community is defined as a recipient that—

(A) Serves a population of three thousand three hundred (3,300) or less;

(B) Has a median household income at or below seventy-five percent (75%) of the state average median household income as determined by the most recent decennial census or by an income survey overseen by a state or

federal agency; and

(C) Has an average water user charge for five thousand (5,000) gallons that is at least two percent (2%) of the median household income of the recipient, determined by the decennial census or income survey listed in (5)(B).

*AUTHORITY: sections 640.100 and 640.107, RSMo 2016. * Emergency rule filed July 15, 1998, effective July 25, 1998, expired Feb. 25, 1999. Original rule filed Aug. 17, 1998, effective April 30, 1999. Amended: Filed Jan. 19, 2001, effective Sept. 30, 2001. Emergency amendment filed May 20, 2009, effective May 30, 2009, expired Feb. 25, 2010. Amended: Filed June 24, 2009, effective Jan. 30, 2010. Amended: Filed June 13, 2018, effective Feb. 28, 2019.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998, 1999, 2002, 2006, 2012, 2014 and 640.107, RSMo 1998, amended 2009.*

10 CSR 60-13.025 State Loan Program

PURPOSE: This rule establishes requirements for loans from state funding for financing construction improvements at public water systems.

(1) General Requirements.

(A) The department may make direct loans to public water systems by purchasing the general obligation bonds, revenue bonds, short-term notes, or other acceptable obligation of any qualified recipient for the planning, design or construction, or any combination of these, of an eligible project.

(B) In addition to the requirements of this rule, the department may require the recipient to include those assurances and clauses in the loan agreements and bond resolutions as deemed necessary to protect the interest of the state and comply with applicable state and federal requirements.

(C) If at any time during the term of the loan a recipient desires to sell, lease, mortgage, or otherwise dispose of the infrastructure financed under this rule, the loan becomes due and payable upon transfer unless otherwise approved by the department.

(D) This rule sets out the general format for loans from state funds. The department shall have the authority to make specific refinements, variations, or additional requirements as may be necessary or desirable in connection with the efficient operation of the loan process.

(2) Eligible Projects and Project-Related Costs.

(A) This subsection incorporates the requirements in 40 CFR 35.3520 as set forth in 40 CFR part 35 subpart L, published July 1, 2017. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the U.S. Government Printing Office at 732 North Capital Street NW, Washington D.C., 20401, toll free at (866)512-1800 or by visiting <https://bookstore.gpo.gov>. In addition to eligible project costs set forth in 40 CFR 35.3520, costs of issuance and debt service reserve deposits are eligible project costs.

(3) Application Procedures.

(A) Recipients must submit a preliminary project proposal.

(B) Applications are accepted year-round. Recipients shall provide—

1. A completed application form provided by the department;

2. Documentation that they have a chief operator certified at the appropriate level, or expect to have prior to loan award;

3. Documentation that they have an emergency operating plan, or expect to have prior to loan award; and

4. Any additional information request by the department to determine the recipient's compliance history and technical, managerial, and financial capacity.

(C) By submission of its application, the recipient certifies and warrants that the recipient has not, nor will through the loan amortization period, violate any of its bond covenants.

(4) Evaluation.

(A) Funds are available on a first-come, first-served basis. If available funds are not sufficient to finance all applications, the funds will be distributed based on immediacy of need. Preference is given to those recipients receiving funding through other funding programs administered by the Department of Natural Resources.

(5) Fees.

(A) The department may charge annual loan fees not to exceed one-half percent (0.5%) of the outstanding loan balance of each loan, except as provided under subsection (5)(B).

(B) Additional administrative fees. Additional administrative fees may be assessed by the department at the time the administration fee is calculated for failure by a recipient to pay debt service on a loan or submit approved documents to the department (for example, operation and maintenance manuals, enacted user charge and



water-use ordinances, and executed contract documents, etc.) in accordance with the time frames provided under the agreement entered into by the recipient. The additional fee will be an additional one-tenth percent (0.1%) per month that the document remains delinquent. The additional fee for delinquent documents will be collected only during the year in which the document is not submitted.

(6) Interest Rates. The department will use the target interest rate (TIR) as outlined in 10 CSR 60-13.020(3)(E).

(7) Amortization Schedules. The following guidelines shall be used to establish amortization schedules under this rule:

(A) The bonds, notes, or other obligations shall be fully amortized for a period not longer than twenty (20) years after initiation of operation;

(B) The principal payment frequency shall be no less than annual and interest payments at least semiannual;

(C) The amortization schedule may either be straightline or declining schedules for the term of the debt obligation. The department may approve an alternative amortization method if deemed appropriate; and

(D) Repayment of principal shall begin not later than one (1) year after initiation of operation.

(8) Requirements for Loan Recipients.

(A) Engineering Report and Project Design. Engineering report and design of eligible projects for community water systems shall conform with 10 CSR 60-3.010 and 10 CSR 60-10.010.

(B) Loan Closing. All documents and information must be submitted to the department in sufficient time to allow adequate time for review and must be approved sixty (60) days prior to the loan closing date established by the department. The department may extend deadlines if justified.

1. Final document submittal. The following documents must be submitted to and approved by the department:

A. Resolution identifying the authorized representative by name. Recipients for assistance shall provide a resolution by the governing body designating a representative authorized to file the application for assistance, reimbursement requests, and act on behalf of the recipient in all matters related to the project;

B. Proposed project schedule. The following represents the minimum requirements for the project schedule:

(I) Construction start defined as date of issuance of notice to proceed;

(II) Construction Completion;

(III) Initiation of operation; and

(IV) Project completion;

C. Executed engineering contract as described in this rule and the appropriate procurement documentation as described in paragraph (8)(G)1.;

D. Engineering report and plans and specifications certified by a registered professional engineer licensed in Missouri;

E. Certification of easements and real property acquisition. Recipients of assistance shall have obtained title or option to the property or easements for the project prior to loan closing;

F. Draft user charge and water use ordinances as described in this rule; and

G. Other information or documentation deemed necessary by the recipient or the department to ensure the proper expenditure of loan funds.

2. Projects serving multiple water systems. Prior to closing, if the project serves two (2) or more public water systems, the recipient shall submit executed agreements or contracts between the public water systems for the financing, construction, and operation of the proposed facilities.

3. User charge (water rate) ordinance.

A. Loan recipients are required to maintain, for the useful life of the project, user charge ordinances approved by the department. User charge ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed project.

B. The user charge system shall be designed to produce adequate revenues required for the operation and maintenance, including a reserve for equipment replacement. It shall be proportional and based upon actual use. A one hundred ten percent (110%) debt service reserve may be required. Each user charge system shall include an adequate financial management system that will accurately account for revenues generated by the system, debt service, and loan fee costs and expenditures for operation and maintenance, including replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy, and administration. The user charge system shall provide that the costs of operation and maintenance not directly attributable to users be distributed equally among the users. The system shall provide for an annual review of charges.

4. Additional requirements for privately-owned public water systems. Privately-owned public water systems must provide documentation from the Missouri Department of

Economic Development showing an allocation under Missouri's private activity bond cap and must obtain any necessary approvals from the Public Service Commission.

(C) Operation and Maintenance.

1. Operation and maintenance manual.

The recipient must make provision satisfactory to the department for assuring operational efficiency be achieved as quickly as possible and effective operation and maintenance of the constructed project throughout its design life. If required by the department, recipients will develop an operation and maintenance manual in accordance with departmental guidelines. A draft operation and maintenance manual must be submitted by construction completion.

2. Start-up training. At construction completion, a start-up training proposal (if required) and proposed follow-up services contract must be submitted.

3. Personnel. The recipient must make provision satisfactory to the department for assuring that operator(s) and maintenance personnel are hired in accordance with an approved schedule.

4. System certification. If required by the department, one (1) year after initiation of operation of the constructed public water system, the recipient shall certify to the department whether or not the public water system meets the project performance standards. Any statement of noncompliance must be accompanied by a corrective action report containing an analysis of the cause of the project's inability to meet performance standards, actions necessary to bring it into compliance, and reasonably scheduled date for positive certification of the project. Timely corrective action shall be executed by the recipient.

(D) Accounting and Audits. Recipients are required to have a dedicated source for repayment of any loans and an adequate financial management system and audit procedure for the project which provides efficient and effective accountability and control of all property, funds, and assets related to the project. The recipient's financial system is subject to state or federal audits to assure fiscal integrity of public funds.

1. Each recipient is expected to have an adequate accounting system for the project which provides efficient and effective accountability and control of all property, funds, and assets.



2. The recipient is responsible for maintaining a financial management system which will adequately provide for an accurate, current, and complete disclosure of the financial results of each loan project. Accounting for project funds will be in accordance with generally accepted government accounting principles and practices, consistently applied, regardless of the source of funds.

3. An acceptable accounting system includes books and records showing all financial transactions related to the construction project. The system must document all receipt and disbursement transactions and group them by type of account (for example, asset, revenue, expense, etc.) and by individual expense account (for example, personnel salaries and wages, subcontract costs, etc.). The recipient shall maintain books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly the amount, receipt, and disposition by the recipient for all assistance received for the project and the total costs of the project of whatever nature incurred for the performance of the project for which the assistance was awarded.

(E) Record Retention Requirements. The recipient must retain all records according to the retention schedules established by Chapter 109, RSMo. A longer retention period may be required under the loan documentation.

(F) Minimum Requirements for Architectural or Engineering Contracts.

1. The agreement must—

A. Be necessary for and directly related to the accomplishment of the eligible project;

B. Be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement;

C. Be for monetary consideration;

D. Not be in the nature of a grant or gift;

E. State a time frame for performance;

F. State a cost which cannot be exceeded except by amendment; and

G. State provisions for payment.

2. The nature, scope, and extent of work to be performed during construction should include, but not be limited to, the following:

A. Preparing an operation and maintenance manual if required by the department that meets the requirements of this rule;

B. Assisting the recipient in letting bids;

C. Assisting the recipient in reviewing and analyzing construction bids and making recommendations for award;

D. Inspecting during construction to

ensure conformance with the construction contract documents unless waived by the department; and

E. If required by the department, assisting with facility operation for purposes of certifying that the facility is operating properly one (1) year after start-up.

3. The final approved executed engineering contract must be submitted prior to the first reimbursement request.

(G) Procurement of Engineering Services.

1. Procurement of engineering services shall be in accordance with sections 8.285 through 8.291, RSMo or subsection (8)(J) of this rule.

(H) Specifications. The construction specifications must contain the following:

1. Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description, in competitive procurement, shall not contain features which unduly restrict competition unless the features are necessary to test or demonstrate a specific thing or to provide for interchangeability of parts and equipment. The description shall include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use;

2. The recipient shall avoid the use of detailed product specifications if at all possible;

3. When in the judgment of the recipient it is impractical or uneconomical to make a clear and accurate description of the technical requirements, recipients may use a brand name or equal description as a means to define the performance or other salient requirements of a procurement. The recipient need not establish the existence of any source other than the named brand. Recipients must state clearly in the specification the salient requirements of the named brand which must be met by offerers;

4. Sole source restriction. A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless the department determines that the recipient's engineer has adequately justified in writing to the department that the proposed use meets the particular project's minimum needs;

5. Experience clause restriction. The general use of experience clauses requiring equipment manufacturers to have a record of satisfactory operation for a specified period of time or of bonds or deposits to guarantee

replacement in the event of failure is restricted to special cases where the recipient's engineer adequately justifies any such requirement in writing. Where this justification has been made, submission of a bond or deposit shall be permitted instead of a specified experience period. The period of time for which the bond or deposit is required shall not exceed the experience period specified;

6. Domestic products procurement law requirements in accordance with sections 34.350–34.359, RSMo;

7. Bonding on construction contracts exceeding fifty thousand dollars (\$50,000), the bid documents shall require each bidder to furnish a bid guarantee equivalent to five percent (5%) of the bid price. In addition, the bid documents must require the successful bidder to furnish performance and payment bonds, each of which shall be in an amount not less than one hundred percent (100%) of the contract price;

8. State wage determination in accordance with sections 290.210–290.340, RSMo and 8 CSR 30 Chapter 3;

9. Right of entry to the project site shall be provided for representatives of the department, the Environmental Improvement and Energy Resources Authority, and the Missouri State Auditor so they may have access to the work wherever it is in preparation or progress; and

10. The following statement: "The owner shall make payment to the contractor in accordance with section 34.057, RSMo."

(I) Construction Equipment and Supplies Procurement. This section describes the minimum procurement requirements which the recipient must use unless the recipient elects to use the design/build option described in subsection (8)(J) of this rule.

1. Small purchases. A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one (1) transaction does not exceed one hundred fifty thousand dollars (\$150,000). The small purchase limitation of one hundred fifty thousand dollars (\$150,000) applies to the aggregate total of an order, including all estimated handling and freight charges, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one (1) transaction, all items which should properly be grouped together must be included. Department concurrence and a minimum of three (3) quotes must be obtained prior to purchase.

2. Bidding requirements. This paragraph applies to procurement of construction equipment, supplies, and construction services in excess of one hundred fifty thousand dollars



(\$150,000) awarded by the recipient. No contract shall be awarded until the department has approved the formal advertising and bidding.

A. Formal advertising.

(I) Adequate public notice. The recipient will cause adequate notice to be given of the solicitation by publication in newspapers of general circulation beyond the recipient's locality (preferable statewide), construction trade journals or plan rooms, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

(II) Adequate time for preparing bids. A minimum of thirty (30) days shall be allowed between the date when public notice, publication, insertion, or document availability in a plan room is first published and the date by which bids must be submitted. Bidding documents shall be available to prospective bidders from the date when the notice is first published or provided.

B. Bid document requirements and procedure.

(I) The recipient shall prepare a reasonable number of bidding documents (Invitations for Bids) and shall furnish them upon request on a first-come, first-served basis. The recipient shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include, at a minimum:

(a) A completed statement of the work to be performed or equipment to be supplied and the required completion schedule;

(b) The terms and conditions of the contract to be awarded;

(c) A clear explanation of the method of bidding and the method of evaluation of bid prices and the basis and method for award of the contract or rejection of all bids;

(d) Responsibility requirements and criteria which will be employed in evaluating bidders;

(e) The recipient shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening;

(f) If a recipient desires to amend any part of the bidding documents during the period when bids are being prepared, addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time. All addenda must be approved by the department prior to award of the contract;

(g) A firm which has submitted a

bid shall be allowed to modify or withdraw its bid before the time of bid opening;

(h) The recipient shall provide for a public opening of bids at the place, date, and time announced in the bidding documents. Bids received after the announced opening time shall be returned unopened;

(i) Award shall be to the lowest, responsive, responsible bidder. After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents. The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract. A responsible contractor is one that has financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the contract or a demonstrated ability to obtain these. The recipient may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the lowest, responsive, responsible bidder. The recipient shall have established protest provisions in the specifications. These provisions shall not include the department as a participant in the protest procedures. If the recipient intends to make the award to a firm which did not submit the lowest bid, the recipient shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsive or non-responsive and shall retain the statements in its files. The recipient shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment unless the recipient has clearly stated in the solicitation documents that the failure to list shall render a bid nonresponsive and shall cause rejection of a bid; and

(j) Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department, in writing, of each proposed construction contract which has an aggregate value over one hundred fifty thousand dollars (\$150,000). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction subagreement. The notice shall include:

I. Proof of advertising;

II. Tabulation of bids;

III. The bid proposal from the bidder that the recipient wishes to accept, including justification if the recommended successful bidder is not also the lowest bidder;

IV. Recommendation of award;

V. Any addenda not submitted previously and bidder acknowledgment of all

addenda;

VI. Copy of the bid bond;

VII. One (1) set of as-bid specifications;

VIII. Revised financial capability worksheet and certification if bids exceed prebid estimates by more than fifteen percent (15%); and

IX. Site certification, if not previously submitted.

(J) Procurement of Design-build Services. The procurement of design-build services shall be in accordance with section 67.5060, RSMo. Recipients that are exempt from section 67.5060, RSMo may also utilize design-build services if local ordinances or policies allow design-build and the procurement of the design-build team considers both the qualifications of the team. Recipients seeking funds for a project utilizing design-build services must notify the department with the recipient's application. Recipients that utilize design-build services shall coordinate procurement activities with the department to ensure compliance.

(K) Conflict of Interest.

1. No employee, officer, or agent of the recipient shall participate in the selection, award, or administration of a subagreement supported by state or federal funds if a conflict of interest, real or apparent, would be involved. This conflict would arise when—

A. Any employee, officer or agent of the recipient, any member of their immediate families, or their partners have a financial or other interest in the firm selected for a contract; or

B. An organization which may receive or has been awarded a subagreement employs, or is about to employ, any employee, officer or agent of the recipient, any member of their immediate families, or their partners.

2. The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of substantial monetary value from contractors, potential contractors, or other parties to subagreements.

(L) Changes in Contract Price or Time. The contract price or time may be changed only by a change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by the methods set forth in the following:

1. Unit prices.

A. Unit prices previously approved are acceptable for pricing changes of original bid items. However, when changes in quantities exceed fifteen percent (15%) of the original bid quantity and the total dollar change of that bid item is greater than twenty-five



thousand dollars (\$25,000), the recipient shall review the unit price to determine if a new unit price should be negotiated.

B. Unit prices of new items shall be negotiated;

2. A lump sum to be negotiated; and

3. Cost reimbursement. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work plus an amount to cover the cost of general overhead and profit.

(M) Progress Payments to Contractors.

1. Recipients should make prompt progress payments to prime contractors and prime contractors should make prompt progress payments to subcontractors and suppliers for eligible construction, supplies, and equipment costs in accordance with section 34.057, RSMo.

2. Retention from progress payments. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

(N) Trustee or Paying Agent. The department may require the recipient to contract with a trustee or paying agent to provide the services listed below, along with other such services as detailed in the participant's escrow agreement:

1. Maintain separate trust funds and accounts for recipients;

2. Disburse funds to recipients;

3. Collect principal and interest quarterly payments from recipients; and

4. Provide monthly financial reports to recipients.

(9) Reimbursement Terms.

(A) The maximum reimbursement will be no more than the sum of all eligible costs incurred to date. Each payment shall include the information listed here and any other information deemed necessary by the department to ensure proper project management and expenditure of public funds:

1. Completed reimbursement request form;

2. Construction pay estimates signed by the construction contractor, the recipient, and the consulting engineer, if applicable; and

3. Invoices for other eligible services, equipment, and supplies for the project.

(B) If the department is satisfied that the payment request accurately reflects the eligible cost incurred to date on the project, the department will request that state payment be issued to the recipient.

AUTHORITY: sections 640.100 and 640.140, RSMo 2016. Original rule filed Jan. 19, 2001, effective Sept. 30, 2001. Amended: Filed June 13, 2018, effective Feb. 28, 2019.*

**Original authority: 640.100, RSMo 1939, amended 1978, 1981, 1982, 1988, 1989, 1992, 1993, 1995, 1996, 1998, 1999, 2002, 2006, 2012, 2014 and 640.140, RSMo 1978.*

10 CSR 60-13.030 Environmental Review

PURPOSE: This rule establishes procedures and requirements for environmental reviews for assistance from the Drinking Water State Revolving Fund program.

(1) General. The purpose of the environmental review is to ensure that the project will comply with applicable local, state, and federal laws and rules relating to the protection and enhancement of the environment. Based upon the staff's review, the director will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of the provision of financial assistance for construction. No financial assistance will be provided until a final environmental determination has been made. Nothing in this rule shall prohibit any public, private, or governmental party from seeking administrative or legal relief from the determinations of the director.

(2) Basic Environmental Determinations. There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the fund.

(A) Categorical exclusion (CE). The CE determination applies to categories of projects that have been shown over time not to entail significant impacts on the quality of the human environment.

1. Projects which meet the following criteria may be categorically excluded from formal environmental review requirements:

A. The project is directed solely toward minor rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of water treatment or the capacity of the public water system. Examples include rehabilitation of existing equipment and structures, and the construction of small structures on existing sites; or

B. New underground water lines or structures if located entirely in existing rights-of-way that have been previously disturbed and supported by appropriate documentation to verify the rights-of-way location(s) and type(s) of previous disturbance.

2. CEs will not be granted for projects that entail—

A. The construction of new water

mains located outside existing rights-of-ways;

B. A new water supply source or relocation of an existing water supply source;

C. An increase of more than thirty percent (30%) in the capacity of the water system;

D. Provision of a capacity for a population thirty percent (30%) or greater than the existing population;

E. Known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

F. The construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

(B) Finding of no significant impact/environmental assessment (FNSI/EA). The FNSI/EA will be based upon an environmental review by the staff supported by an environmental information document (EID) prepared by the recipient in conformance with guidance developed by the department. If a FNSI/EA is not appropriate, a public notice noting the preparation of an environmental impact statement (EIS) will be required. The director's issuance of a FNSI/EA will be based upon documentation that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) Record of Decision (ROD). The ROD may only be based upon an EIS in conformance with the format and guidelines described in subsection (5)(C). An EIS will be required when the director determines any of the following:

1. The project will significantly affect the pattern and type of land use or growth and distribution of the population;

2. The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local or state land use plans or policies;

3. The project may have significant adverse impacts upon—

A. Wetlands;

B. Floodplains;

C. Threatened and endangered species or their habitats;

D. Cultural resources including parklands, preserves, other public lands, or recognized scenic, recreational, prime farmlands, archeological, or historic value; and

E. Prime farmland;

4. The project will displace populations or significantly alter the characteristics of existing residential areas; and

5. The project directly or indirectly (for example, through induced development) may have significant adverse effect upon local



ambient air quality, local noise levels, surface and groundwater quantity or quality, fish, shellfish, wildlife, or their natural habitats.

(3) When five (5) or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the director will reevaluate the project, environmental conditions, and public views and, prior to approval of the application, proceed in accordance with section (6) of this rule.

(4) Construction Prior to Environmental Review.

(A) A recipient may request advance authority to construct part of the proposed drinking water project prior to completion of the necessary environmental review when that part of the project will—

1. Remedy a severe public health problem immediately;

2. Not preclude any reasonable alternatives identified for the complete system;

3. Not cause significant direct or indirect environmental impacts, including those which cannot be acceptably mitigated without completing the entire project; and

4. Not be highly controversial.

(B) Based upon the review of the information required by section (5) of this rule, the director will issue a FNSI/EA so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(5) Information Required for Environmental Review.

(A) Recipients seeking a CE shall provide the director with sufficient documentation to demonstrate compliance with the criteria of subsection (2)(A). At a minimum, this shall consist of a—

1. Brief, complete description of the proposed project and its costs;

2. Statement indicating that the project is cost-effective, and that the recipient is financially capable of constructing, operating, and maintaining the facilities; and

3. Plan map(s) of the proposed project showing—

A. The location of all construction areas;

B. The planning area boundaries; and

C. Any known environmentally sensitive areas.

(B) An EID shall be submitted by those recipients whose proposed projects do not meet the criteria for a CE and for which the director has made a preliminary determina-

tion that an EIS will not be required. The director will provide guidance on both the format and contents of the EID to potential recipients prior to initiation of facilities planning.

1. At a minimum, the contents of an EID shall include:

A. The purpose and need for the project;

B. Information describing the current environmental setting of the project and the future environmental setting without the project;

C. The alternatives to the project as proposed;

D. A description of the proposed project;

E. The proposed impact of the project and alternatives on the user rates;

F. The potential environmental impacts of the project as proposed including those which cannot be avoided;

G. The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity;

H. Any irreversible and irretrievable commitments of resources to the proposed project;

I. Proposed mitigation measures to minimize the environmental impacts of the project;

J. A description of public participation activities conducted, issues raised, and changes to the project which may be made as a result of the public participation process; and

K. Documentation of coordination with appropriate governmental agencies.

2. The recipient shall hold a public meeting or hearing on the proposed project and the EID, and provide the director with a complete record of the meeting or hearing. The meeting or hearing will be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Included with the meeting record will be a list of all attendees with addresses, any written testimony, and the recipient's responses to the issues raised.

(C) The format of an EIS shall encourage sound analyses and clear presentation of alternatives, including the no-action alternative and the selected alternative and their environmental, economic, and social impacts. The following format shall be followed by the recipient unless the director determines there are compelling reasons to do otherwise:

1. A cover sheet identifying the recipient, the project(s), the program through which financial assistance is requested, and

the date of publication;

2. An executive summary consisting of a five to fifteen (5-15) page summary of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:

A. A description of the existing problem;

B. A description of each alternative;

C. A listing of each alternative's potential environmental impacts, mitigative measures, and any areas of controversy; and

D. Any major conclusions;

3. The body of the EIS which shall contain the following information:

A. A complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives;

B. A balanced description of each alternative considered by the recipient. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements, and construction schedules. The alternative of no action will be discussed and the recipient's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;

C. A description of the alternatives available to the department including:

(I) Providing financial assistance to the proposed project;

(II) Requiring that the proposed project be modified prior to providing financial assistance to reduce adverse environmental impacts or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) Not providing financial assistance;

D. A description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance, or otherwise affect or have an interest in any of the alternatives;

E. A description of the affected environment and environmental consequences of each alternative including secondary and cumulative impacts. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomics, land use, and cultural resources of the facilities planning area. The department will provide guidance, as necessary, to the recipient regarding the evaluation of the affected environment. The discussion will present the total impacts of each



alternative in a manner that will facilitate comparison. The effects of the no-action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no-action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts;

4. The draft EIS will be provided to all local, state, and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commenters will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The department will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than forty-five (45) days;

5. Material incorporated into an EIS by reference will be organized into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in paragraph (5)(C)4. and subparagraph (5)(C)7.C.;

6. When an EIS is prepared by contractors, either in the service of the recipient or the department, the department will independently evaluate the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS; and

7. The public participation required for an EIS is extensive but, depending upon the nature and scope of the proposed project, should be supplemented by the recipient. The following requirements represent the minimum allowable:

A. Upon making the determination that an EIS is required of a proposed project, the department will distribute a notice of intent to prepare an EIS;

B. As soon as possible after the notice

of intent has been issued, the director will convene a meeting of the affected federal, state, and local agencies, the recipient and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the notice of intent or prepared as in paragraph (5)(B)2. of this rule, except that in no case will the notification period be less than forty-five (45) days. As part of the scoping meeting the director will, at a minimum—

(I) Determine the significance of issues and analyze in depth the scope of those significant issues in the EIS;

(II) Identify the preliminary range of alternatives to be considered;

(III) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(IV) Discuss the method for EIS preparation and the public participation strategy;

(V) Identify consultation requirement of other laws and regulations; and

(VI) Determine the relationship between the preparation of the EIS and the completion of the engineering report and any necessary arrangements for coordination of the preparation of both documents; and

C. Following the scoping process, the director will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this, including a list of the significant issues identified, will be provided to the recipient and other interested parties. Preparation of the EIS will be done at the discretion of the department: directly, by the staff; by consultants to the department; or by a consultant contracted by the recipient subject to approval by the department. In the latter two (2) cases, the consultant will be required to execute a disclosure statement prepared by the department signifying they have no financial or other conflicting interest in the outcome of the project. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of paragraph (5)(B)2. of this rule except that the advertisement and comment period for the public participation will be no less than forty-five (45) days. The department will publish in a newspaper of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least forty-five (45) days prior to making any environmental determination.

(6) Environmental Determination.

(A) When the director has determined that a recipient's proposed project may be excluded from a formal environmental review, the director will prepare a determination to categorically exclude the project. The director will distribute the determination to interested federal agencies, state and local governments, and entities that have expressed an interest in the proposed project, and a copy will be available to the public upon request.

(B) An environmental review of the proposed project, supported by the recipient's EID, will be conducted by the director to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the director may require the recipient to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the director will prepare a FNSI/EA describing—

1. The purpose and need for the proposed project;

2. The proposed project including its costs;

3. The alternatives considered and the reasons for their rejection or acceptance;

4. The existing environment;

5. Any potential adverse impacts and mitigative measures; and

6. Any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions.

(C) When the director has determined that a FNSI/EA will be issued, the director will prepare a FNSI/EA. The FNSI/EA will be distributed to the interested federal agencies, state and local governments, entities that have expressed an interest in the proposed project and a copy will be available to the public upon request. No action regarding approval of the engineering report or the provision of financial assistance will be taken by the director for at least thirty (30) days after the issuance of the FNSI/EA.

(D) Public participation requirements for an EIS are detailed in paragraph (5)(B)2. except the ROD and final EIS shall have a forty-five- (45-) day period of notice.

(7) Project Modification. Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the director will provide that, prior to approval, the plans and specifications, loan application and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the director may revoke a



CE and require the preparation of an FNSI/EA or an EIS, or require the preparation of amendments to a FNSI/EA or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the director will—

(A) Reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

(B) Issue a FNSI for a project for which a CE has been revoked or issue a public notice that the preparation of an EIS will be required;

(C) Issue an amendment to a FNSI/EA or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or

(D) Issue a supplement to a ROD or revoke a ROD and issue a public notice that financial assistance will not be provided.

(8) The director may, on a case-by-case basis, accept the environmental determinations, consistent with the National Environmental Policy Act completed by other state and federal agencies. Environmental determinations completed by other state and federal agencies must be less than five (5) years old unless reaffirmed.

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