

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Agency

Department of Environmental Protection

Subject

**Grants to Municipalities and Lake Associations to Improve the Water Quality of
Recreational Lakes**

Inclusive Sections

§§ 22a-339d-1—22a-339d-4

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Grants to Municipalities and Lake Associations to Improve the Water Quality of Recreational Lakes

Sec. 22a-339d-1. Definitions, practice and procedures

(a) Definitions

“Applicant” means municipality or lake association.

“Agreement” means a written contract between the Department of Environmental Protection and an applicant for a diagnostic feasibility study or eutrophication abatement project.

“Baseline study” means the acquisition of data and information about lake quality and characteristics necessary to assign a priority rating.

“Commissioner” means the Commissioner of Environmental Protection.

“Construction” means building, erecting, or installing structural components of lake management or watershed management programs and any lake sediment removal program.

“DEP Trophic Classification Inventory” means Department of Environmental Protection Bulletin No. 3, A Trophic Classification Inventory of Seventy Connecticut Lakes, 1980, as may be amended.

“Diagnostic feasibility study” means a study to characterize lake water quality conditions, identify watershed sources of nutrients and sediments, and evaluate lake management activities and watershed management activities to abate eutrophication.

“Eutrophication” means nutrient enrichment or sedimentation causing excessive phytoplankton, macrophyton, or dissolved oxygen depletion which impairs recreation.

“Eutrophication abatement” means the implementation of lake management activities and watershed management activities to prevent, reduce, or correct eutrophication.

“Federal Act” means the Federal Clean Water Act (33 U.S.C. 1251 et. seq., as amended).

“Implementation” means the process of accomplishing lake management activities and watershed management activities recommended by a diagnostic feasibility study.

“Lake” means all natural and artificial impounded bodies of water listed by the Secretary of the State as lakes, ponds, and reservoirs pursuant to section 3-100 of the General Statutes.

“Lake association” means a lake association as defined by section 1 of Public Act 87-492.

“Lake management activities” means procedures and processes implemented within a lake to achieve eutrophication abatement.

“Municipality” means municipality as defined in section 22a-423 of the General Statutes or a lake authority established pursuant to section 7-151a of the General Statutes.

“Public recreation” means the right of ingress by the general public for water based recreation through some form of access without charge or at a fee determined to be reasonable by the Commissioner.

“Project” means project as defined in section 1 of Public Act 87-492. “Regional population” means the sum of the populations of all towns with a boundary line within ten miles of the shoreline of the lake.

“Subagreement” means a written agreement between a grant recipient and another party

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for services, supplies, equipment, or construction necessary to conduct a diagnostic feasibility study or implement a eutrophication abatement project.

“Watershed” means that land area from which water drains into a lake.

“Watershed management activities” means procedures and processes implemented within a lake watershed to achieve eutrophication abatement through control of nutrients and sediments.

(b) **Eligibility.** The Commissioner may make grants to municipalities and lake associations which have completed baseline studies and qualify for funding of the costs of diagnostic feasibility studies and eutrophication abatement programs for lakes used for public recreation, according to the criteria of the state priority rating system.

(c) **State Priority System.** Each project application shall be given points as applicable for each of the following rating criteria, the sum of which shall determine its priority number. These criteria are consistent with the rating system used by the Commissioner to establish priorities for federal lakes management grants under section 314 of the Federal Act.

Priority Rating Point System

I. Lake Water Quality (35 points maximum)

A. Trophic Classification, as determined by methods and procedures in the DEP Trophic Classification Inventory.

- 1. Oligotrophic — 30 points
- 2. Mesotrophic — 5 points
- 3. Eutrophic — 20 points
- 4. Highly Eutrophic — 35 points

B. Aquatic Macrophytes, as determined by methods and procedures in the DEP Trophic Classification Inventory.

- 1. Mesotrophic or eutrophic lakes with macrophyte beds occupying more than 30% of total lake surface area — an additional 10 points

II. Recreation Opportunities (70 points maximum)

A. Regional Population (25 points maximum)

- 1. Greater than 500,000 — 25 points
- 2. 100,000 to 500,000 — 15 points
- 3. Less than 100,000 — 5 points

B. State Owned Or Leased Access (20 points maximum)

- 1. Boat Launch — 15 points
- 2. Park — 5 points

C. Town and Lake Association Owned Or Leased Access (15 points maximum)

- 1. Town Beach, each — 5 points

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- 2. Association Beach, each — 5 points
- D. Recreational Fisheries (10 points maximum)
 - 1. Fisheries Impaired By Eutrophication (As determined by DEP Fisheries Bureau) — 10 points
- III. Lake Size (45 points maximum)
 - A. Surface Area
 - 1. Greater than 325 acres — 25 points
 - 2. Between 175 and 325 acres — 20 points
 - 3. Between 90 and 174 acres — 15 points
 - 4. Between 50 and 89 acres — 10 points
 - 5. Between 10 and 49 acres — 5 point
 - 6. Less than 10 acres — 0 points
 - B. Maximum Depth
 - 1. Greater than 50 feet — 20 points
 - 2. Between 20 and 50 feet — 15 points
 - 3. Between 12 and 19 feet — 10 points
 - 4. Less than 12 feet — 15 points
- IV. Project Status (30 points maximum)
 - A. Diagnostic Feasibility Grants
 - 1. Diagnostic feasibility study not initiated — 15 points
 - 2. Diagnostic feasibility study not initiated, to include innovative research with statewide applications — 25 points
 - 3. Diagnostic feasibility study initiated but incomplete — 30 points
 - 4. Eutrophication abatement initiated, additional diagnostic feasibility study needed — 5 points
 - 5. Eutrophication abatement initiated, additional diagnostic feasibility study needed, to include innovative research with statewide applications — 15 points
 - B. Eutrophication Abatement Grants
 - 1. Diagnostic feasibility study complete, eutrophication abatement not initiated — 20 points
 - 2. Eutrophication abatement initiated, incomplete — 30 points
- V. Natural Trophic Tendency (20 points maximum)

The natural trophic tendency of a lake is determined by procedures described in “A

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Connecticut Lakes Management Program Effort,” Proceedings: Lake Management Conference, University of Connecticut, Institute of Water Resources, Report No. 30, March 1979.

- A. Oligotrophic Tendency — 20 points
- B. Mesotrophic Tendency — 15 points
- C. Eutrophic Tendency — 5 points

(d) State Project Priority List

(1) Priority List.

The Commissioner may prepare a listing of projects ranked according to their priority ratings, for which state grant assistance shall be made available for the period effective October 1 to the following September 30, the program funding year, corresponding to the federal fiscal year. The priority list shall contain two parts, a fundable part and a planning part. The fundable part shall consist of those highest priority projects ready to proceed and anticipated to be funded within the current fiscal year. The planning part shall consist of those projects that may be funded from future funding authorizations.

(2) Annual Public Hearing.

The allocation of funds to projects on the priority list shall be determined annually by the Commissioner based upon available funding and applications received prior to October 1, 1988 and prior to August 1 of each succeeding year. The draft priority list will indicate which specific projects are proposed to receive funding for the upcoming program funding year and shall be made public at least 30 days prior to a specified date for a public hearing. The Commissioner will consider all written and oral testimony presented at the hearing and may elect to modify the draft priority list on the basis of such testimony. The Commissioner shall also indicate his or her reasons for accepting or rejecting any suggested revisions as part of the hearing record. Following notice of any changes to the priority list which may result from the hearing, the priority list shall be deemed final except for minor revisions allowable under subdivision (3) of this subsection.

(3) Revisions to the Priority List.

The Commissioner may remove a project from the fundable part to the planning part of the priority list if he or she determines that the bypassed project will not be ready to proceed within the first six months of the funding year. The Commissioner shall advise, in writing, each applicant which he or she intends to bypass and the reasons therefor. Projects bypassed will be replaced by the next highest ranking project ready to proceed. Projects will be removed from the priority list the following year after they receive a grant, except for segmented projects described in subdivision (4) of this subsection.

(4) Segmented Projects.

Eutrophication abatement projects which require more than one year to implement, such as sediment removal projects, may be funded annually for costs anticipated for the subsequent year. After a segmented project receives the initial grant award, the project will remain on the top of the fundable portion of the priority lists in subsequent years until the

project is completed.

(Effective July 27, 1988)

Sec. 22a-339d-2. Requirements for grant applications

(a) Level of State Assistance.

(1) The grant to an applicant for a diagnostic feasibility study shall be seventy five percent of the allowable costs. If federal funds are available under the Federal Act in the amount of seventy per cent of the costs, the state grant shall be twenty per cent of the costs. The combined federal and state grant shall not exceed ninety percent of the costs.

(2) The grant to an applicant for a eutrophication abatement program shall be fifty per cent of the costs. If federal funds are available under the Federal Act in the amount of fifty percent of the costs, the state grant shall be twenty five percent of the costs. The combined federal and state grant shall not exceed seventy five percent of the costs.

(3) At least thirty percent of the available funds shall be allocated to diagnostic feasibility studies, unless a sufficient number of applications is not received to utilize this allocation.

(b) Grant Applications. An applicant applying for state funding assistance must file properly executed forms and applications prescribed by the Commissioner. In addition, the following supporting documentation shall be submitted as appropriate:

(1) an application for diagnostic feasibility study funding assistance shall include:

(A) an identification of the lake and a geographic map of the lake watershed;

(B) a baseline study;

(C) copies of all pertinent previous diagnostic feasibility studies;

(D) a statement of the applicant's interest in seeking funding under the Federal Act and the steps taken to obtain such funding;

(E) a plan of study including:

(i) the nature and preliminary scope of the study, including a preliminary schedule for the completion of specific tasks;

(ii) a proposed public participation program including at least one public meeting during the diagnostic portion of the study and one public meeting to present the recommended eutrophication abatement program;

(F) a resolution adopted by the applicant's governing body authorizing a specific person to file the application and execute the agreement for the grant. The resolution must be certified and sealed by the town clerk, lake authority secretary or lake association district clerk;

(G) documented evidence that the applicant's share of funding is in place.

(2) An application for eutrophication abatement funding assistance shall include:

(A) a diagnostic feasibility study meeting all the requirements set forth in subsection (a) of section 22a-xxx-3 of the Regulations of Connecticut State Agencies;

(B) if the applicant is seeking funding under the Federal Act, all other information necessary to comply with 40 CFR Part 35 Subpart H;

(C) a statement demonstrating to the Commissioner's satisfaction that the local

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authorities who will be implementing the eutrophication program have the necessary legal, financial, institutional, and managerial resources to insure proper design, construction, installation, operation, maintenance, and monitoring of the proposed projects;

(D) proposed subagreements, or an explanation of the intended method of awarding subagreements, for performance of any substantial portion of the project;

(E) a resolution, adopted by the applicant's governing body authorizing a specific person to file the application and execute the agreement for the grant. The resolution must be certified and sealed by the town clerk, lake authority chairman, or lake association district clerk;

(F) any proposed or executed (as determined appropriate by the Commissioner) inter-municipal agreements necessary for the design, construction, operation and maintenance and monitoring of the proposed projects;

(G) a schedule detailing dates for design, construction, and completion of proposed projects;

(H) documented evidence that the applicant's share of funding is in place;

(I) a statement from the applicant's counsel that certifies all necessary easements or rights-of-way have been acquired;

(J) copies of applications for federal, state, and local permits necessary for implementation of the proposed project.

(3) Terms of Funding Assistance.

Grant agreements will be executed as formal contractual agreements between the Department of Environmental Protection and the applicant and shall be subject to the following terms and conditions:

(A) the Commissioner may condition grants as he or she deems appropriate;

(B) the Commissioner may require the applicant to establish watershed management practices to prevent the occurrence of eutrophication;

(C) no grant assistance will be allowed for any work performed before a grant award without the prior written approval of the Commissioner;

(D) payment terms will be established by the grant agreement and shall be based on accomplished tasks;

(E) the award of a grant for a diagnostic feasibility study does not constitute a commitment to approval of a subsequent application for a diagnostic feasibility study grant or eutrophication abatement grant;

(F) the Commissioner may require post implementation water quality monitoring reports as a condition of a grant for eutrophication abatement.

(Effective July 27, 1988)

Sec. 22a-339d-3. Technical program elements

(a) **Diagnostic feasibility study requirements.** Diagnostic feasibility studies consist of those necessary plans and studies which directly relate to the development of eutrophication abatement programs. The diagnostic portion of a study consists of lake water quality

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monitoring and data acquisition to characterize trophic conditions, and watershed studies to identify sources of nutrients and sediments contributing to eutrophication. The feasibility portion of a study consists of an evaluation of alternative methods and procedures to abate eutrophication by control of watershed sources of nutrients and sediments and by management of water quality conditions within the lake.

(1) Content of diagnostic feasibility studies.

The content of the diagnostic feasibility study shall be determined by the Commissioner based on a pre-study conference with the applicant and its consultant regarding the precise plan of study and resulting scope of services to be performed. If deemed appropriate by the Commissioner, a second conference may be held following the diagnostic portion of the study and prior to the feasibility portion of the study. Diagnostic feasibility studies shall address each of the following as determined appropriate by the Commissioner:

(A) a description of the physical characteristics of the lake including location, surface area, mean depth, maximum depth, volume, bathymetry, major hydrologic inflows and outflows, and outflow structures;

(B) a description of the type and amount of public access to the lake;

(C) a review of historical water quality data and the scopes and findings of previous diagnostic feasibility studies;

(D) maps and descriptions of lake watershed characteristics including bedrock geology, soils, slopes, wetlands, land use, and existing zoning;

(E) identification of existing and potential sources of nutrients and sediments including but not limited to residential land, roadway drainage, streambank erosion, construction related erosion, agricultural practices (in consultation with the County Soil and Water Conservation District), and migratory waterfowl and gulls;

(F) lake water quality monitoring data to characterize trophic conditions and identify problems. A quality assurance project plan shall be prepared for proposed monitoring. At a minimum, monitoring shall be conducted at spring overturn, early summer, and late summer and shall include as appropriate secchi disk transparency, temperature and dissolved oxygen structure of the water column, phytoplankton densities and identification of dominant species, nitrogen and phosphorus structure of the water column, mapping of areal extent and density of macrophytes, and physical and chemical characteristics of lake sediments;

(G) field and laboratory quality assurance and quality control documentation records;

(H) a description of the historical and existing biological resources of the lake, particularly fish and waterbird populations;

(I) a review of historical recreational uses of the lake and a description of the uses that are presently impaired by eutrophication;

(J) a review of alternative procedures and methods for controlling watershed sources of nutrients and sediments including technical feasibility, potential adverse environmental impacts, preliminary design of structural elements, and estimate costs;

(K) a review of existing local watershed management programs and a recommended program to insure implementation of best management practices to control watershed

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sources of nutrients and sediments;

(L) a review of alternative methods and procedures for management of water quality within the lake including technical feasibility, potential adverse environmental impacts, preliminary design of structural elements, and estimated costs;

(M) a recommended eutrophication abatement program identifying selected lake management alternatives and watershed management alternatives including estimated capital costs, estimated operation and maintenance costs, implementation schedules, and post implementation monitoring and estimated costs;

(N) a review of the legal, financial, institutional and managerial resources of local authorities and a recommended management plan to insure local implementation of the eutrophication abatement program;

(O) identification of easements and rights-of-way necessary to implement the eutrophication abatement program;

(P) identification of federal, state, and local permits required to implement the eutrophication abatement program;

(Q) a summary of public participation in the development of the recommended eutrophication abatement program;

(R) if the applicant receives funding under the Federal Act, all other information necessary to comply with 40 CFR Part 35 Subpart H, Appendix A.

(Effective July 27, 1988)

Sec. 22a-339d-4. Administrative program elements

(a) **Allowable Project Costs.** The following costs associated with diagnostic feasibility studies and eutrophication abatement programs are eligible for funding assistance:

(1) costs of salaries, benefits and expendable materials the applicant incurs for the project, except as provided for in subdivision (b) (6) of this section;

(2) diagnostic feasibility study report costs directly related to the development of a eutrophication abatement program;

(3) professional, consultant, and contractor services;

(4) preparation of construction drawings, specifications, estimates, and construction contract documents;

(5) costs under approved construction contracts;

(6) costs of complying with sections 22a-1 to 22a-1h, inclusive of the General Statutes;

(7) equipment, instruments, supplies, and chemicals to operate and maintain lake management systems and to conduct post implementation water quality monitoring;

(8) start-up services of new lake management systems including training of the applicant's employees;

(9) costs of complying with the procurement requirements of these regulations;

(10) costs of operation, maintenance, and monitoring of lake sediment removal projects;

(11) costs for controlling agricultural sources of nutrients and sediments if reviewed and recommended by the County Soil and Water Conservation District;

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(12) weed harvesting equipment and weed harvesting disposal plans.

(b) **Unallowable Project Costs.** Costs not directly related to the development of a diagnostic feasibility study or eutrophication abatement program are unallowable. Such costs include, but are not limited to:

(1) costs outside the scope of the approved project;

(2) costs of preparation of applications, including a baseline study, preliminary plan of study, and permits required by federal, state, or local laws and regulations;

(3) administrative, professional, and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts, or other units of government;

(4) personal injury compensation or damage arising out of the project whether determined by arbitration, negotiation, or otherwise;

(5) fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations;

(6) ordinary operating expenses of the applicant, such as salaries and expenses of officers, not related to the project;

(7) costs of water quality monitoring not conducted in accordance with a quality assurance project plan;

(8) approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them;

(9) costs of operation, maintenance, and monitoring of lake management systems and watershed management systems after the first year of operation, except as provided in subdivisions (a) (10) and (c) (5) of this section;

(10) the cost of land acquired in fee simple or by lease or easement to provide public access to a lake;

(11) lake management based principally on the application of aquatic pesticide chemicals;

(12) diagnostic feasibility studies of municipal and industrial wastewater treatment plant discharges to Class B impoundments;

(13) the costs of municipal and industrial wastewater treatment to remove nutrients from discharges to Class B impoundments.

(c) **Allowable Project Costs, If Approved.** The following project costs may be allowed by the Commissioner:

(1) the cost of land acquired in fee simple or by lease or easement that will be an integral part of a eutrophication abatement program;

(2) the temporary application of aquatic pesticide chemicals if used in conjunction with the start-up of another lake management system;

(3) costs of mitigating adverse environmental effects of winter drawdown for macrophyte control;

(4) costs of managing populations of waterbirds;

(5) costs of operation, maintenance, and monitoring of lake management systems if the state has a continuing interest in the project.

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(d) **Required Provisions of Professional Services Contracts.** Municipalities and lake associations shall include subagreement clauses that meet the following requirements:

(1) each subagreement must include provisions defining a sound and complete agreement, including the:

- (A) nature, scope, and extent of work to be performed;
- (B) time frame for performance;
- (C) total costs of subagreement;
- (D) payment provisions;

(2) all subagreements awarded in excess of \$10,000 shall contain provisions requiring compliance with State and Federal equal employment opportunity laws and regulations.

(e) **Required Provisions of Construction Contracts.**

(1) All construction contract specifications shall include the following provisions:

- (A) bid bond in an amount of 5 percent of bid price;
- (B) a statement which indicates a time period for project completion;
- (C) a dollar amount, per day, for liquidated damages;
- (D) extra work and change order profit amounts;
- (E) contractor's insurance, minimum amounts as follows:

(i) contractor's comprehensive and general liability and property damage, \$1,000,000 liability — \$500,000 property;

(ii) owner's protective liability and property damage, \$1,000,000 liability — \$500,000 property;

(iii) contractor's comprehensive motor vehicle liability and property damage, \$1,000,000 liability — \$500,000 property.

(2) Where required by statute, executive order, or regulation, all construction contract specification shall include the following additional provisions:

(A) payment and performance bonds each for 100% of bid price (section 49-41 of the General Statutes);

(B) maximum retainage on payments to contractors must not exceed 5 percent (section 49-41b of the General Statutes);

(C) enforcement of payment by general contractor to subcontractor (section 49-41a of the General Statutes);

(D) substitution of securities for retainage (section 3-112a of the General Statutes);

(E) nondiscrimination clause (section 4-114a of the General Statutes);

(F) a copy of Executive Order No. Three;

(G) prevailing State Wage Rates (section 31-53 of the General Statutes);

(H) a copy of Executive Order No. Seventeen;

(I) contractor's exempt purchase certificate (section 12-426-18 of the Regulations of Connecticut State Agencies);

(J) contractor's worker's compensation insurance (chapter 568 of the General Statutes).

(f) **Types of Contracts.** Each contract shall be a fixed price (lump sum or unit price or a combination of the two) contract, unless the Commissioner gives prior written approval

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for the applicant to use some other acceptable type of contract. The cost-plus-percentage-of-cost type of contract shall not be used in any event.

(g) **Construction Contract Procurement Requirements.** The applicant shall conduct all procurement transactions in a manner that will provide maximum, open, and free competition. Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

- (1) noncompetitive practices between contractors and firms;
- (2) bid collusion;
- (3) organizational conflicts of interest;
- (4) unnecessary experience and bonding requirements;
- (5) local laws, ordinances, regulations, or procedures which give local bidders or proposers preference over other bidders or proposers in evaluating bids or proposals;
- (6) placing unreasonable requirements on firms in order for them to qualify to do the project work.

(h) **Advertising.** If the value of the contract is less than \$25,000 then a minimum of 3 bids shall be solicited. Each construction contract equal to or in excess of \$25,000 shall be awarded after advertising, and advertising shall be in accordance with the following:

(1) the applicant shall cause notice to be given of the solicitation by publication in journals or newspapers of general circulation beyond the applicant's locality, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined;

(2) adequate time, not less than 10 days, shall be allowed between the date when public notice is last published and the date by which bids must be submitted. Bidding documents (including specifications and drawings) shall be available to prospective bidders from the date when such notice is first published;

(3) the applicant 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 applicant 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:

(A) a complete statement of the work to be performed, including necessary drawings and specifications, 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 evaluating the bid prices, and the basis and method for award of the contract;

(D) responsibility requirements or criteria which will be employed in evaluating bidders;

(E) the following statement:

“Any contract or contracts awarded under this invitation for bids are expected to be funded in part by a grant from the State of Connecticut (Department of Environmental Protection). Neither the State of Connecticut nor any of its departments, agencies or employees is or will be a party to this invitation for bids or any resulting contract.”

(F) the prevailing State Wage Rates in accordance with section 31-53 of the General

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Statutes;

(4) the applicant shall provide for bidding by a sealed bid and for the safeguarding of bids received until public opening;

(5) if an applicant desires to amend any part of the bidding documents (including drawings and specifications) during the period when bids are being prepared, the addenda shall be communicated in writing to all firms which have obtained bidding documents at least five working days prior to the bid opening. Any applicant which fails to comply with this deadline and then proceeds to open bids, may not receive funding assistance for any costs associated with such addenda;

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

(7) the applicant shall provide for a public opening of bids at the place, date, and time announced in the bidding documents;

(8) award shall be made to the lowest, responsible, qualified bidder as follows:

(A) after bids are opened, the applicant shall evaluate them for conformance with the methods and criteria set forth in the bidding documents;

(B) the applicant may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the lowest, responsible qualified bidder;

(C) if the applicant intends to make the award to a firm which did not submit the lowest bid, it shall prepare a written statement before any award, explaining why each lower bidder was deemed nonresponsible or unqualified. The applicant shall retain such statement in its files and forward a copy to the Commissioner for review.

(i) **Reporting Requirements.** The applicant shall secure, in writing, the Commissioner's authorization to award each construction contract which has an aggregate value over \$10,000. The request for such authorization shall include:

(1) name, address, telephone number, and employee identification number of the construction contractor;

(2) amount of the award;

(3) estimated starting and completion dates;

(4) project number, name, and site location of the project; and

(5) a copy of the tabulations of bids or offers and the name of each bidder or offeror.

(j) **Professional Services Procurement Requirements.**

(1) Cost-plus-percentage-of-cost and percentage-of-construction-cost contracts are prohibited. Cost reimbursement, fixed price, or per diem contracts or combinations of these may be negotiated for professional services. A fixed price contract is generally used only when the scope and extent of work to be performed is clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate. A per diem contract may be used if no other type of contract is appropriate. An incentive fee may be used if the applicant submits an adequate independent cost estimate and price comparison.

(2) Adequate public notice shall be given for the procurement of professional services for all subagreements. Applicants shall publish a notice of request for qualifications in

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newspapers or publications of general circulation over a reasonable area and, in addition, if desired, through posted public notices or written notification directed to interested persons, firms, or professional organizations inviting the submission of statements of qualifications. The announcement shall clearly state the deadline and place for submission of qualification statements. Public notice is not required under the following circumstances:

(A) for the design or construction phases of a eutrophication abatement project if the applicant is satisfied with the qualifications and performance of any engineer who performed all or any part of the design work and the engineer has the capacity to perform the subsequent steps;

(B) the applicant desires the same consultant to provide professional services for the subsequent steps or for subsequent segments of design work under one grant if a eutrophication abatement project is segmented into two or more construction projects. If the design work is accordingly segmented so that the initial contract for preparation of construction drawings and specifications does not cover the entire eutrophication abatement project to be built under one grant, the applicant may use the same engineering firm that was selected for the initial segment of design work for subsequent segments.

(3) Requests for professional services proposals shall be sent to no fewer than three candidates who either responded to the public announcement or were selected from the prequalified list, unless, after good faith effort to solicit qualifications, fewer than three qualified candidates respond, in which case all qualified candidates must be provided requests for proposals. Requests for professional services proposals shall be in writing and shall contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals shall include a solicitation statement, inform offerors of the evaluation criteria and clearly state the deadline and place for submission.

(4) All proposals submitted in response to the request for professional services proposals shall be uniformly evaluated. The applicant shall also evaluate the candidate's proposed method of accomplishing the work required.

(5)(j)(A) Applicants are responsible for negotiation of their contracts for professional services. Contract procurement including negotiation may be performed by the applicant directly or by another person or firm retained for the purpose and may include the services of technical, legal, audit, or other specialists to the extent appropriate.

(B) The applicant shall submit to the Commissioner documentation of the public notice of need for professional services and selection procedures, and a copy of the proposed subagreement.

(C) The Commissioner shall review the complete subagreement procurement procedure and approve the applicant's compliance with appropriate procedures before the applicant awards the subagreement.

(k) **Deviations.**

The Commissioner may approve deviations from the requirements of subsections (d) to (j), inclusive, of this section when he or she determines that such deviations are essential to effect necessary grant actions or when special circumstances make such deviations in the

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best interest of the State.

(l) Federally funded projects.

If the applicant is receiving funding under the Federal Act, procurement procedures must comply with 40 CFR Part 33.

(Effective July 27, 1988)