

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Agency

Department of Environmental Protection

Subject

Grants to Municipalities and Water Companies for Potable Water Supplies

Section

§ 22a-471-1

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Grants to Municipalities and Water Companies for Potable Water Supplies

Sec. 22a-471-1. Grants to municipalities and water companies for potable water supplies

(a) Definitions

(1) “Potable Water Supply Facilities” or “Facilities” means the necessary facilities to supply an area affected by contamination with potable drinking water.

(2) “Operation and Maintenance” means the activities required to assure the dependable and economical function of potable water supply facilities.

(3) “Commissioner” means the Commissioner of Environmental Protection.

(4) “Municipality” means any metropolitan district, town, consolidated town and city, consolidated town and borough, city, borough, village, fire and sewer district, sewer district and each municipal organization having authority to levy and collect taxes or make changes for its authorized function.

(b) Eligibility

(1) A municipality shall be eligible for funding of the cost of providing a short-term and long-term supply of potable water in instances where groundwater pollution has rendered existing supplies unusable for potable drinking water provided:

(A) (i) The Commissioner of Health Services determines that the extent of pollution creates or can reasonably be expected to create an unacceptable risk of injury to the health or safety of persons using such groundwaters as a public or private sources of water for drinking or other personal or domestic uses, and;

(ii) The Commissioner is unable to determine the person or municipality responsible or if he determines that the responsible persons have no assets other than land, buildings, business machinery or livestock and are unable to secure a loan at a reasonable rate of interest to provide potable drinking water and;

(iii) The Commissioner has ordered the municipality to supply short-term potable drinking water to existing residential buildings and elementary and secondary schools affected by such pollution and long-term provision of potable drinking water to all persons affected by such pollution in accordance with Section 22a-471 of the Connecticut General Statutes, as amended, or;

(B) The municipality fails to recover all expenses as specified in Section 22a-471 (b) (4) (B) (i) of the Connecticut General Statutes, as amended, from the responsible party.

(2) A water company shall be eligible for funding of the cost of providing the most cost effective long term method of rendering the water supply in question usable for potable drinking water provided:

(A) The Commissioner is unable to determine the person or municipality responsible or if he determines that the responsible persons have no assets other than land, buildings, business machinery or livestock and are unable to secure a loan at a reasonable rate of interest to provide potable drinking water and;

(B) The Commissioner, upon review of the required engineering report and after consultation with the Commissioner of Economic Development, determines that a grant is

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appropriate.

(c) Levels of funding assistance

(1) The grant to a municipality providing short-term potable water shall equal 100 percent of the costs;

(2) The grant to a municipality preparing the required engineering report and sampling and testing shall equal 100 percent of the costs;

(3) The grant to a municipality providing capital improvements, including the design and construction costs for the long-term provision of potable water, and monitoring and maintaining individual water treatment systems (during the first year following installation) shall be not less than 50 nor more than 75 percent of the costs; the exact percentage of funding for such costs incurred shall be established by ranking all municipalities in descending order according to such municipality's adjusted equalized net grand list per capita as defined in Section 10-261 of the Connecticut General Statutes, as amended and determining a percentage for each such municipality on a scale from not less than fifty percent to not more than seventy-five percent based upon such ranking;

Determination of the exact percentage of funding is derived by the following formula:

$50\% K \text{ plus } x/169 \text{ times } 25\%K = \text{Municipality's percentage of funding.}$

Where: x = municipality's ranking based on Sec. 10-261 of the General Statutes, as amended

169 = total number of Towns

K = Cost of capital improvements

(4) The grant to a water company preparing the required engineering report and sampling/testing shall equal 50 percent of the costs;

(5) The grant to a water company providing the most cost-effective long term method of rendering the water supply in question usable for potable drinking water shall equal 50 percent of the costs.

(d) Grant Application Materials

A municipality applying for State funding assistance shall file properly executed forms and applications prescribed by the Commissioner. In addition, the following supporting documentation shall be submitted:

(1) An application for the short-term supply of potable water and engineering report assistance may be filed before or after completion of the engineering report. The application shall be on forms prescribed by the Commissioner and shall include:

(A) A Plan of Study for the engineering report which shall include:

(i) Detailed description of the affected area, nature and extent of groundwater contamination and estimated duration of such contamination;

(ii) The nature, scope and methodology of the proposed study, including public participation and time of completion goals;

(iii) Itemized description of the costs of the engineering report including but not limited to sampling and testing costs;

(iv) A schedule for sampling and testing, and

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- (v) A schedule and associated costs for supplying short-term potable water.
- (B) The proposed engineering agreement relating to performance of the required engineering tasks.
- (C) A resolution, adopted by the municipality's governing board, authorizing a specific person to file the grant application and execute the agreement for the grant. This resolution must be certified and sealed by the Town or City Clerk.
- (D) No grant assistance shall be allowed for any engineering work performed before a grant award without the prior written approval of the Commissioner.
- (2) An application for the costs of the design and construction for the long-term capital improvements, and the monitoring and maintaining individual water treatment systems (during the first year following installation) shall be on forms prescribed by the Commissioner and shall include:
 - (A) An engineering report meeting all the requirements set forth pursuant to (f);
 - (B) The executed engineering agreement for the performance of the engineering design and construction related activities;
 - (C) A resolution, adopted by the municipality's governing board, authorizing a specific individual to file the grant application and to execute the agreement for the grant. This resolution must be certified and sealed by the Town or City Clerk;
 - (D) A schedule detailing dates for design, construction, and commencement of operation;
 - (E) A statement of certification that the local share of funding has been legally authorized for design and construction activities;
 - (F) A statement from the Town or City Counsel that certifies all necessary easements have been acquired;
 - (G) Two copies of the contract plans and specifications for the review and approval of the Commissioner;
 - (H) If applicable, a fully executed contract between the municipality and the water company;
 - (I) Any other information that the Commissioner deems necessary; and
 - (J) No grant assistance shall be allowed for any engineering work performed before a grant award without the prior written approval of the Commissioner.
- (e) **Terms of Funding Assistance**
 - (1) The Commissioner may condition grants as he deems appropriate.
 - (2) No grant award shall be made for a potable drinking water facility that would provide capacity for new connections or other developments to be located in environmentally sensitive land such as wetlands, floodplains, prime agricultural lands, or regulated coastal zones. Appropriate and effective grant conditions (e.g. restricting water hook-ups) should be used where necessary to protect these resources from new development.
 - (3) The award of grant assistance is for constructing, designing, reporting, and testing or sampling activities to correct existing contamination problems.
 - (4) Any approval of an engineering report or plans and specifications under this program shall not constitute a commitment or approval of construction funding.

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(f) Technical Program Elements

(1) Engineering Report Requirements

Content of the engineering report shall be at the discretion of the Commissioner based on a pre-report conference with the municipality and its engineering consultant regarding the scope of services to be performed and the scope of the plan of study pursuant to (d) (1) (A). Engineering reports shall include, but are not limited to, the following, unless otherwise specified by the Commissioner:

(A) A detailed description of the existing and potentially affected area including the groundwater contamination problem and the population affected;

(B) A detailed analysis of alternative solutions including, but not limited to: community well systems; individual household filtration systems; new individual wells; and extension of existing water mains. This analysis of alternate solutions shall include: capital costs, operation and maintenance costs; monitoring costs; present worth comparisons of all costs utilizing a twenty year planning period and future development in accordance with the municipality's current zoning regulations; short-term and long-term environmental impacts of the recommended alternative; distribution of costs to the users and Town; relationships to Town and State plans for land use and population growth including the Conservation Development Policies Plan; potential for future contamination; public acceptance; and the reliability of the alternatives;

(C) Design criteria on the viable alternatives considered;

(D) Sampling and testing results which identify the levels and types of contaminants; and contaminant migration analyses;

(E) For the recommended alternative, the following must be addressed:

(i) Estimated construction; operation and maintenance, and monitoring costs (identifying State and local shares) and a description of the manner in which local costs will be financed.

(ii) Cost impacts on users of the potable water supply system, including any assessments, connection costs, and operation and maintenance costs.

(F) A program for the maintaining and monitoring of potable water supply facilities including methods and duration of the program.

(2) Public Participation

(A) The scope and level of detail of the public participation program shall be determined during the development of the plan of study. At a minimum, prior to the acceptance by the municipality of the engineering report, the municipality must hold a public hearing to describe the proposed program and action and to assure that the public's concerns are considered.

(B) The time and place of the public hearing shall be published in a newspaper of general circulation in the municipality at least 10 days in advance, or for such longer period as may be required by local ordinance or charter. Copies of the engineering report must be made available for inspection by the public at least 10 days prior to the hearing.

(C) The Commissioner may waive the public hearing on an engineering report upon request in writing from the municipality stating that the public hearing would not serve the

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public interest.

(g) Administrative Program Elements

(1) Allowable Project Costs. Those costs associated with the planning, design and construction of potable water supply facilities eligible for State funding assistance include but are not limited to:

(A) Costs under approved construction contracts, except for those specific costs which are unallowable pursuant to subdivision (3) of this subsection.

(B) Engineering report costs directly related to the contamination problem.

(C) Costs of complying with the Connecticut Environmental Policy Act.

(D) Preparation of construction drawings, specifications, estimates, and construction contract documents;

(E) Development and preparation of an operation and maintenance manual, if deemed necessary by the Commissioner;

(F) Costs of complying with the procurement requirements of these regulations;

(G) Change orders and the costs of meritorious contractor claims for increased costs provided the costs were not caused by the municipality's mismanagement or vicarious liability for the improper action of others. Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the Commissioner and shall be allowable only to the extent that they were not caused by municipality mismanagement, are reasonable, and do not attempt to pass on to the State of Connecticut the costs of events that were the responsibility of the municipality, contractors, or others;

(H) Costs necessary to mitigate only direct adverse, or physical impacts resulting from the building of the potable water supply facilities;

(I) Replacement parts identified and approved in advance by the Commissioner as necessary to assure uninterrupted operation of the potable water supply facility, provided they are critical parts or major system components which are:

(i) Not immediately available and whose procurement involves an extended "lead-time";
or

(ii) Identified as critical by the equipment supplier; or

(iii) Critical but not included in inventory provided by the equipment supplier.

(2) Allowable Project Costs, if Approved by the Commissioner,

(A) The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of the trench.

(B) The following costs only when both are accomplished: the cost of individual water service connections from the service box to the water meter and the abandonment of wells in accordance with the Well Drilling Code Regulations Sec. 25-128-57 when water sampling indicates that pollution has rendered existing supplies unusable for potable drinking water, as determined by the Commissioner of Health Services.

(3) Unallowable Project Costs. Those costs which are not necessary for the construction of the potable water supply facilities are unallowable. Such costs include, but are not limited

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to:

- (A) Basin or areawide planning not directly related to the project.
- (B) Costs outside the scope of the approved project.
- (C) Approval, preparation, issuance, and sale of bonds or other forms of indebtedness required to finance the project and the interest on them.
- (D) The costs of acquisition (including associated legal, administrative, and engineering costs) of rights-of-way.
- (E) Costs for which payment has been or will be received under any other assistance program or source in accordance with Section 22a-471 (b) (3) (A) or (B), of the Connecticut General Statutes, as amended.
- (F) Preparation of applications and permits required by Federal, State, or local laws.
- (G) The incremental cost of a potable water supply facility or any part thereof that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands, floodplains, or prime agricultural lands.
- (H) The incremental cost of a potable water supply facility that provides incremental capacity for fire flow protection.
- (I) For those potable water supply facilities that may provide capacity beyond that necessary to serve the area of contaminated wells or the area of potential contamination, unallowable project costs shall be determined by the following formula:

Amount of total
construction contract
cost which is
unallowable

$$= \frac{(x - y)}{x} \text{ times } q \text{ times } \frac{2}{3}$$

- Where:
- y = the hydraulic capacity of the minimum pipe size sufficient to serve the contaminated or potential contaminated area.
 - x = the hydraulic capacity of the pipe proposed by the municipality/water company which is larger than necessary to serve the contaminated or potential contaminated area.
 - q = the total construction contract cost of installing the larger pipe proposed by the municipality/water company.

(J) The costs of operation and maintenance of potable drinking water facilities except for the costs of monitoring and maintaining individual water treatment systems during the first year following installation.

(h) Required Provisions of Construction Contracts

As a minimum, all construction contract specifications must include provisions for the following:

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- (1) Bid bond in an amount of 5 percent of bid price (Sec. 49-41 of the Connecticut General Statutes as amended.)
- (2) Payment and performance bonds each for 100% of bid price (Sec. 49-41 of the Connecticut General Statutes as amended.)
- (3) Maximum retainage on payments to contractors must not exceed 5 percent (Sec. 49-41b of the Connecticut General Statutes as amended.)
- (4) Enforcement of payment by general contractor to subcontractor (Sec. 49-41a of the Connecticut General Statutes as amended.)
- (5) Substitution of securities for retainage (Sec. 3-112a of the Connecticut General Statutes as amended)
- (6) Nondiscrimination clause (Sec. 4-114a of the Connecticut General Statutes as amended.)
- (7) A copy of Executive Order No. Three
- (8) Prevailing State Wage Rates (Sec. 31-53 of the Connecticut General Statutes as amended.)
- (9) A copy of Executive Order No. Seventeen.
- (10) Contractor's exempt purchase certificate (Regulation 18 — Sales and Use Tax Division of the State of Conn.)
- (11) A statement which indicates a time period for project completion
- (12) A dollar amount, per day, for liquidated damages.
- (13) Extra work and change order profit amounts
- (14) Contractor's Insurance, minimum amounts as follow:
 - (A) Worker's Compensation (Sec. 31-275 of the Connecticut General Statutes as amended.)
 - (B) Contractor's Comprehensive and General Liability and Property Damage, \$1,000,000.00 — \$500,000.00.
 - (C) Owner's Protective Liability and Property Damage, \$1,000,000.00 — \$500,000.00.
 - (D) Contractor's Comprehensive Auto Liability and Property Damage, \$1,000,000.00 — \$500,000.00.

(i) 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 for the municipality to use some other acceptable type of contract. The cost plus percentage of cost type of contract shall not be used in any event.

(j) Construction Contract Procurement Requirements

The municipality 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;

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- (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; and
- (6) Placing unreasonable requirements on firms in order for them to qualify to do the project work.

(k) **Advertising**

(1) If the value of the contract is less than \$25,000.00 then a minimum of 3 bids shall be solicited.

(2) Each construction contract equal to or in excess of \$25,000.00, shall be awarded after advertising, and advertising shall be in accordance with the following:

(A) Public notice. The municipality shall cause notice to be given of the solicitation by publication in journals or newspaper of general circulation beyond the municipality's locality, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

(B) Time for preparing bid. Adequate time, not less than 10 days, must 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.

(C) Bidding documents. The municipality 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 municipality 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:

(i) A complete statement of the work to be performed, including necessary drawings and specifications, and the required completion schedule.

(ii) The terms and conditions of the contract to be awarded.

(iii) 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.

(iv) Responsibility requirements or criteria which will be employed in evaluating bidders.

(v) 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.”

(vi) The prevailing State Wage Rates in accordance with Sec. 31-53 of the Connecticut General Statutes, as amended.

(3) Sealed bids. The municipality shall provide for bidding by a sealed bid and for the safeguarding of bids received until public opening.

(4) Addenda to bidding documents. If a municipality 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

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obtained bidding documents at least five (5) working days prior to the bid opening. Any municipality failing to comply with this deadline and then proceeds to open bids, must be made aware that costs associated with such addenda shall be deemed noneligible.

(5) Bid modifications. A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening.

(6) Public opening of bids. The municipality shall provide for a public opening of bids at the place, date, and time announced in the bidding documents.

(7) Award to the lowest, responsible, qualified bidder.

(A) After bids are opened, the municipality shall evaluate them for conformance with the methods and criteria set forth in the bidding documents.

(B) The municipality 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 municipality 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 municipality shall retain such statement in its files and forward a copy to the Commissioner for review.

(l) Municipality Reporting Requirements

The municipality shall secure, in writing, the Commissioner's authorization to award each construction contract which has an aggregate value over \$10,000.00. 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.

(m) Grant Requirements For Water Companies

Any water company receiving a grant under Section 22a-471 (b) (2) (A) of the Connecticut General Statutes, as amended, shall make application to the Commissioner of Economic Development. Such application shall include an engineering report in accordance with Section 22-471 (b) (2) (D) of the Connecticut General Statutes, as amended.

(1) If upon review of the engineering report and after consultation with the Commissioner of Economic Development, the Commissioner determines that a grant from the Emergency Spill Response Fund is appropriate, the Department of Economic Development shall transfer the application to the Department of Environmental Protection.

(2) The Commissioner may require any other information he deems necessary in support of the application.

(3) The water company shall comply with subsections (g), (h), (i), (j), (k) and (l) of these regulations.

(n) Deviations

The Commissioner may approve deviations from requirements of these regulations when

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he determines that such deviations are essential to effect necessary grant actions or when special circumstances make such deviations in the best interest of the State.

(Effective June 23, 1986)