

**Title 10—DEPARTMENT OF
NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 4—Grants and Loans**

10 CSR 20-4.040 State Revolving Fund General Assistance Regulation

PURPOSE: This rule sets forth requirements for the implementation of Title VI of the Federal Water Pollution Control Act as amended in 1987, which authorizes the administrator of the Environmental Protection Agency to make capitalization grants to states for financing State Revolving Fund Programs.

(1) Applicability. This rule defines the minimum requirements which apply to all recipients of assistance under the State Revolving Fund (SRF) Program. The recipient must satisfy more stringent requirements, if required to do so by applicable federal laws, regulations, or guidance and state or local statutes, policies, rules, ordinances, or orders. *[Recipients of assistance under the American Recovery and Reinvestment Act of 2009 are subject to the requirements of this regulation, unless otherwise specified.]*

(2) Definitions. The definitions of terms for 10 CSR 20-4.040–10 CSR 20-4.050 are contained in 10 CSR 20-2.010 and subsections (2)(A)–(S) of this rule.

[(A) ARRA—American Recovery and Reinvestment Act of 2009 (P.L. 111-5).]

[(B) BPWTT—Best practicable waste treatment technology.]

[(C) Collection sewers—Sewers having the primary purpose of collecting wastewater from individual properties.]

[(D) Combined sewers—Sewers constructed to carry both storm water and sanitary sewage.]

[(E) Debt service—The costs associated with amortizing loans. These costs include interest charges, penalty charges and repayment of principal.]

[(F) Director of staff—The director of staff of the Missouri Clean Water Commission.]

[(G) EI ERA—State Environmental Improvement and Energy Resources Authority.]

[(H) Infiltration/inflow (I/I)—Groundwater or storm water which enters a sanitary sewer system.]

[(I) Initiation of operation—The date when the first construction contract is completed and the constructed component is capable of being used for its intended purpose.]

[(J) Innovative technology—Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques, such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.]

[(K) Intended use plan—A planning document, prepared by the Department of Natural Resources, that identifies the intended uses of available funds.]

[(L) Interceptor sewers—Sewers having the primary purpose of transporting wastewater from collection sewers to a wastewater treatment facility.]

[(M) Readiness to proceed—The submittal, by the applicant, of a complete engineering report/facility plan and documentation that the applicant has an acceptable debt instrument including any necessary funding commitments from other state and/or federal agencies.]

[(N) Recipient—The recipient of assistance from programs supported by the Water and Wastewater Loan Fund (WWLF), the Water and Wastewater [Revolving Loan Fund (WWRLF)] Loan Revolving Fund (WWLRF), or state bond funds.]

[(O) Staff—Staff of the Missouri Department of Natural Resources.]

[(P) State Revolving Fund (SRF)—The financial assistance program authorized by Title VI of the Federal Clean Water Act. In Missouri the State Revolving Fund consists of the WWLF, the [WWRLF] WWLRF, and those accounts secured by funds from the WWLF and the [WWRLF] WWLRF. The State Revolving Fund is subject to the requirements, restrictions, and eligibilities placed on the State Revolving Fund by the Federal Water Pollution Control Act.]

[(Q) Subagreements—Agreements and contracts entered into by recipients.]

[(R) WWLF—Water and Wastewater Loan Fund. State fund established by the state treasurer pursuant to section 644.122, RSMo.]

[(S) [WWRLF] WWLRF —Water and Wastewater [Revolving Loan Fund] Loan Revolving Fund. State fund under the WWLF into which repayments are held by the state treasurer and from which new loans may be made.]

(3) Project Selection Process. This section delineates the process by which the commission selects projects for receipt of SRF assistance.

(A) The commission shall hold an annual competition for receipt of SRF assistance. This competition will be structured as follows:

1. Applicants/—

A. *SRF applicants must submit an application as described in section (8) of this rule that must be postmarked or received by the department on or before November 15 prior to the fiscal year for which SRF assistance is being sought.* **Applications must be postmarked or received by the Water Protection Program by the calendar date established by the Clean Water Commission (CWC). The date shall be established as part of the annual Intended Use Plan development process. The deadline will be no sooner than sixty (60) days after the date is established by the CWC.** Electronically transmitted applications shall not be accepted. Unsuccessful applicants requesting funds during a given fiscal year shall be considered for funding the next fiscal year and need not reapply. The department may extend this deadline if sufficient applications are not received to use all of the funds expected to be available. Applications received after the deadline may be placed on a project list as determined by the *[Clean Water Commission (CWC)] CWC*. The projects may subsequently be considered for funding by the CWC if the project is ready to proceed during the fiscal year the project appears in the *[Intended Use Plan (IUP)] IUP*;

[B. ARRA applicants must submit an application as described in section (8) of this rule. Applications will be accepted upon announcement by DNR and must meet program guidance and federal law or regulations as appropriate and applicable];

2. Applicants that have an outstanding SRF loan balance must be in compliance with the terms and conditions of their loan agreements to be eligible for additional funding;

3. All qualified applications will be rated and placed on the appropriate list in accordance with 10 CSR 20-4.010 *[and, in addition, applicants seeking ARRA funding shall also be rated in accordance with the American Recovery and Reinvestment Act of 2009 and corresponding federal guidance];*

4. The commission will select the highest rated projects, meeting readiness to proceed criteria, for SRF assistance from SRF funds anticipated to be available during the upcoming fiscal year;

5. The commission may hold a separate competition for projects requesting loans with a term of less than three (3) years; and

6. The commission may hold a separate competition for projects seeking funding whenever appropriate and allowed by federal law.

(B) The commission may direct projects toward specific financial assistance programs contained in 10 CSR 20-4. The commission's decisions shall be based upon the amount of financial assistance funds available, the amount of financial assistance funds requested, the size of the project, the credit worthiness of the applicant and the applicant's authority to incur long-term debt.

(4) Target Interest Rate (TIR). The TIR shall be established by the Missouri Clean Water Commission in consultation with the department and the EI ERA based upon current economic factors, projected fund utilization, deposits in the Wastewater *[Revolving Loan Fund] Loan Revolving Fund*, and actual or anticipated federal capitalization grants. The department will use the Twenty-Five Bond Revenue Index as published in The Bond Buyer (or any successor publication) as the basis for determining the TIR. The department reserves the right to refinance, assign, pledge, or leverage any loans originated under this subsection.

(A) The TIR for all assistance provided under 10 CSR 20-4.041, Direct Loan Program, shall not be less than thirty percent (30%) of the weekly Twenty-Five Bond Revenue Index as published in The Bond Buyer (or any successor publication) the week preceding funding, rounded up to the nearest one-hundredth (0.01) of one percent (1%). The commission may reduce the interest rate to meet the needs of the applicant. In order to reduce the interest rate, the commission must determine that unique or unusual circumstances exist. In addition, the commission may reduce the interest rate for projects impacting enterprise zones as authorized under state law.

(B) The TIR for all assistance provided under 10 CSR 20-4.042, Leveraged Loan Program, shall not be less than thirty percent (30%) of the weekly Twenty-Five Bond Revenue Index as published in The Bond Buyer (or any successor publication) the week preceding funding, rounded up to the nearest one-hundredth (0.01) of one percent (1%). The Clean Water Commission (CWC) shall not undertake project-by-project revisions.

[(C) A disadvantaged community may receive a further reduction in the TIR as determined by the CWC. A disadvantaged community is defined, for the purpose of reducing the TIR, as an applicant that—

1. *Has a population of three thousand three hundred (3,300) or less based on the most recent decennial census;*

2. *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; and*

3. *Has an average wastewater user charge for five thousand (5,000) gallons that is at least two percent (2%) of the median household income of the applicant.*

(D) *For projects funded by the ARRA, the Federal Water Pollution Control Act as amended, or any subsequent federal act, additional subsidization (such as principal forgiveness, negative interest loans, grants, or the like) may be provided as federal law requires or allows.]* **(C) Additional Subsidization. Additional subsidization (such as principal forgiveness, negative interest loans, grants, or the like) may be provided as the Federal Water Pollution Control Act as amended, or any subsequent federal act, requires or allows.**

(5) Loan Fees. The department may charge annual loan fees not to exceed one percent (1%) of the outstanding loan balance of each loan provided from the WWLF or the *[WWRLF] WWLRF*, except as provided under section (6). These fees shall be used in accordance with federal SRF program guidance.

(6) Additional Administrative Fees Allowed. Additional administrative fees may be assessed by the department at the time the administration fee is calculated for failure by a recipient to submit approved documents to the department (for example, operation and maintenance manuals, enacted user charge and sewer use ordinances, executed contract documents, **final project certifications, audits**) 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 will be collected only during the year in which the document is not submitted.

(7) General SRF Assistance Requirements. The commission will prioritize potential SRF projects by assigning priority points in accordance with 10 CSR 20-4.010.

(A) Municipalities, counties, public sewer or water districts, or both, political subdivisions or instrumentalities of the state and combinations of the same, or any entity eligible pursuant to the Federal Water Pollution Control Act as amended, are eligible for SRF assistance. The recipient must demonstrate its legal, institutional, managerial, and financial capability to ensure adequate operation and maintenance of the wastewater treatment works throughout the recipient's jurisdiction **as identified in Section (10)**.

(B) Ownership of facilities, equipment, and real property purchased under the program with a current value in excess of five thousand dollars (\$5,000) may be transferred only with written permission of the department. Transfer of ownership to entities not listed in subsection (7)(A) of this rule will require immediate repayment of assistance.

(C) Assistance under this rule cannot be used for portions of a project receiving a federal construction grant under Title II of the Federal Water Pollution Control Act.

(D) Financial Disclosure. Loan applicants shall provide upon request to the department and the EIARA any detailed financial information about the loan applicant as may be required by the commission, the department, the EIARA, or its financial or legal consultants to determine the applicant's eligibility for the leveraged loan program.

(E) *[For equivalency projects, the]* **The** recipient and its contractors must comply with all requirements associated with funds provided under the Federal Water Pollution Control Act. *[Equivalency projects will be so designated in the annual Intended Use Plan developed in accordance with this rule.]*

(F) If the department determines that an applicant is in significant noncompliance with a valid National Pollutant Discharge Elimination System (NPDES) permit or Missouri State Operating Permit, the Federal Water Pollution Control Act as amended, the Missouri Clean Water Law as amended, or implementing regulations, then the department may refuse to provide financial assistance to such applicant, or require the applicant to reach a binding agreement regarding corrective actions the applicant will take to address such noncompliance.

(G) All loan recipients shall retain the services of a registered Financial Advisor.

(8) Application Requirements. Applicants must submit a completed application form including the information listed in subsections (8)(A)–(C) to be included on the Intended Use Plan. Potential applicants are strongly encouraged to meet with department staff prior to submitting an application.

(A) A project summary which includes:

1. The need for the project;
2. The project components, including maps or drawings showing the project location and layout; and
3. A cost estimate including a cost breakdown.

(B) The most recent financial statement; and

(C) Proposed project schedule.

(9) Facility Planning. All facility plans must be in accordance with accepted engineering practices and the current Waste Treatment Design Guide 10 CSR 20-8.

(A) Requirements for all projects are as follows:

1. The most reasonable environmentally sound and implementable waste management alternatives must be studied and evaluated. Proposed waste treatment management plans and practices shall provide for the most cost-effective technology that can treat wastewater and I/I to meet the current 10 CSR 20-7.015 Effluent Regulations, and 10 CSR 20-7.031 Water Quality Standards/. *The requirement for cost-effectiveness may be waived by the department for projects upon showing that the project provides environmentally preferable benefits, for example sludge utilization, water reuse, or reduction;*

2. A technical and economical evaluation regarding the ability to serve NPDES permitted facilities outside of the applicants local jurisdiction;

[2]3. An estimate of the average user charge including documentation for the basis of the estimate;

[3]4. An assessment of the environmental conditions and impact of the proposed project on the environment is required. The environmental review process and associated public notice requirements are contained in 10 CSR 20-4.050. Additional public participation requirements are outlined in subsections (14)(A) and (B);

(B) Applicants that do not propose to employ a full time operator, forty (40) hours per week, must evaluate passive or easy to operate treatment alternatives before considering a mechanical activated sludge package plant. Passive or easy to operate alternatives may include, but are not limited to, enhanced natural systems, submerged fixed film systems, sand filters, and recirculating pea gravel filters.

(C) Projects over five (5) million dollars are encouraged to provide a multidisciplinary engineering review of plans and specifications.

(D) *[Projects]* Recipients are encouraged to utilize energy and water conservation technologies in their proposed projects.

(E) Recipients shall:

1. Certify that they have studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought; and

2. Has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:

A. The cost of constructing the project or activity;

B. The cost of operating and maintaining the project or activity over the life of the project or activity; and

C. The cost of replacing the project or activity;

(10) Technical, Managerial, and Financial Capability. All applicants must demonstrate that they have the necessary technical, managerial, and financial capability prior to receiving funding. In the event an applicant does not demonstrate adequate technical, managerial, and financial capability, the completion of the proposed project must ensure that the applicant will have the technical, managerial, and financial capability for the continued successful operation and maintenance of the applicants' wastewater system. All funding recipients shall maintain the necessary technical, managerial, and financial capability as long as the wastewater system is in operation.

(A) Technical capability.

1. All publicly owned wastewater systems shall conform to the appropriate 10 CSR 20-8 Design Guide;

2. All publicly owned wastewater systems shall have a sufficient number of certified operators as required by 10 CSR 20-9 Treatment Plant Operations; and,

3. All publicly owned wastewater systems shall have and maintain an updated map showing the size and location of the collection system including, but not limited to, interceptors, force mains, pump stations, and manholes. The map shall be made available to the department upon request.

(B) Managerial capability.

1. All publicly owned wastewater systems shall have an organization chart that shows every position that provides any wastewater system function with the position title, name, business address, and telephone number of the person filling that position. This chart shall show clear lines of authority and supervision. Elected officials and managers that have overall jurisdiction shall also be shown on this chart. This chart shall be publicly displayed and shall be updated within thirty (30) calendar days of any changes. An updated copy of the organization chart shall be made available to the department;

2. All publicly owned wastewater systems shall designate a person or persons who will receive customer complaints and shall have a written procedure for receiving, investigating, resolving, and recording customer complaints. The name, title, business address, business telephone number and office hours of the person(s) designated to receive complaints shall be publicly displayed, along with the written complaint procedure. Complaint records shall be kept for a minimum of five (5) years and shall be made available to the department upon request. Results of investigations shall be used as part of the planning process for future improvements;

3. All publicly owned wastewater systems shall have a written procedure for the reporting of sewer system bypasses to the department; and,

4. All publicly owned wastewater systems shall hold at least one (1) public hearing in accordance with section 250.233 RSMo. prior to establishing or changing the rate structure or service fees. Records of customers' notice and summary of the public meeting shall be kept for a minimum of five (5) years and shall be made available to the department upon request.

(C) Financial capability.

1. All applicants shall submit financial information, including but not limited to annual financial statements, audits, etc., that will allow the department to make a determination as to the applicants' ability to carry out the proposed project;

2. Upon completion of the facility plan, the applicant shall submit a complete, pre-due diligence financial analysis that will enable the department to review the applicants' ability to generate the revenues necessary to operate and maintain the wastewater system including the proposed improvements; and,

3. The recipient shall develop and maintain a user charge system and ordinance in accordance with section seventeen (17) of this rule.

(11) Fiscal Sustainability Plan. For a treatment works proposed for repair, replacement, or expansion, the recipient of a loan shall:

(A) Develop and implement a fiscal sustainability plan that includes:

1. An inventory of critical assets that are a part of the treatment works;

2. An evaluation of the condition and performance of inventoried assets or asset groupings;

3. A certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

4. A plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or

(B) Certify that the recipient has developed and implemented a plan that meets the requirements under subsection (A);

(10/12) Additional Preclosing Requirements.

(A) Submittal Deadline. All documents necessary to provide assistance 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 [pool] loan closing date established by the department. The commission has the authority to extend deadlines if justified.

(B) Final Document Submittal. Documents listed in paragraphs (10)(B)1.–8. must be submitted and approved by the department:

1. Resolution identifying the authorized representative by name. Applicants for assistance under the SRF shall provide a resolution by the governing body designating a **single** representative authorized to file the application for assistance, reimbursement requests, and act in behalf of the applicant in all matters related to the project;
2. Plans and specifications certified by a registered professional engineer licensed in Missouri;
3. Draft engineering contract as described in section (12);
4. Draft user charge ordinance as described in section (17);
5. Draft sewer use ordinance as described in section (17);
6. Proposed project schedule. The following represents the minimum requirements for the project schedule:
 - A. Construction start defined as date of issuance of notice to proceed;
 - B. Construction completion;
 - C. Initiation of operation; and
 - D. Project completion;
7. Certification of easements and real property acquisition. Recipients of assistance under the SRF shall have obtained title or option to the property or easements or condemnation proceedings initiated for the project prior to award of a loan; and
8. Other information or documentation deemed necessary by the applicant or the department to ensure the proper expenditure of state funds.

(11/13) Accounting and Audits. Applicants 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 applicant's financial system is subject to state or federal audits to assure fiscal integrity of public funds.

(A) 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.

1. 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. 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.

2. 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. It also must 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.).

A. 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. Some of the minimum standards for an adequate accounting system are—

(I) The accounting system should be on a double entry basis with a general ledger in which all transactions are recorded in detail or in summary from subordinate accounts;

(II) Recording of transactions pertaining to the construction project should be all inclusive, timely, verifiable, and supported by documentation;

(III) The system must disclose the receipt and use of all funds received in support of the project;

(IV) Responsibility for all project funds must be placed with either a project manager or trust agent;

(V) Responsibility for accounting and control must be segregated from project operations. The accounting system and related procedures should be documented for consistent application;

(VI) The proprietary fund must use the modified accrual or accrual basis of accounting as it provides an effective measure of costs and expenditures;

(VII) Inventories of property and equipment should be maintained in subordinate records controlled by the general ledger and should be verified by physical inventory at least biennially;

(VIII) The accounting system must identify all project costs and differentiate between eligible and ineligible costs;

(IX) Accounts should be set up in a way to identify each organizational unit, function, or task providing services to the construction project;

(X) An important project management objective of the system is the derivation of information regarding actual versus budgeted costs by project task and performing organization; and

(XI) Financial reports should be prepared monthly to provide project managers with a timely, accurate status of the construction project and costs incurred.

(B) Annual Audits.

1. The recipient shall request an audit of the system for the preceding fiscal year to be made by a certified public accountant or firm of certified public accountants employed for that purpose.

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

B. Within one hundred eighty (180) days after the end of the recipient's fiscal year, a copy of the annual report will be submitted to the department.

C. Annual audits shall be required as long as the recipient is in loan repayment status.

2. As required by federal law, the recipient must comply with the provisions of OMB Circular A-133 governing the audit of state and local governments.

A. OMB Circular A-133 states if the recipient receives five hundred thousand dollars (\$500,000) or more in the aggregate during any fiscal year from disbursements from federal sources, including the SRF program, the recipient will complete an audit of its system records for the fiscal year.

B. 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 OMB Circular A-133.

(/12/14) Architectural or Engineering Contracts. The following represents the minimum requirements for the architectural or engineering contracts:

(A) General Requirements for Subagreements.

1. Be necessary for and directly related to the accomplishment of the project work.
2. Be a lump sum or cost plus fixed fee contract in the form of a bilaterally executed written agreement.
3. Be for monetary consideration.
4. Not be in the nature of a grant or gift.
5. State a time frame for performance.
6. State a cost which cannot be exceeded except by amendment.
7. State provisions for payment; and

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

1. Preparing an operation and maintenance manual if required by the department and as defined in subsection (23)(A);

2. Assisting the recipient in bid letting;

3. Assisting the recipient [*subdivision*] in reviewing and analyzing construction bids and making recommendations for award; and

4. Inspecting during construction to ensure conformance with the construction contract documents unless waived by the department.

(C) Executed Engineering Contract Submittal. The final approved executed engineering contract must be submitted prior to the first reimbursement request.

(/13/15) Procurement of Engineering Services. The procurement of engineering services shall be in accordance with sections 8.285 through 8.291, RSMo.

(/14/16) Public Participation. The public must be allowed an opportunity to exchange ideas with the applicant during project development. Public participation must be preceded by timely distribution of information and must occur sufficiently in advance of decision making to allow the recipient to assimilate public views into action. **Public meeting and public hearing notices shall include the date, time and place of the meeting or hearing. The notice may be for multiple meetings or hearings however, each shall have a specified time.** At a minimum, the recipient must provide the opportunities for public participation described in the following:

(A) A public meeting shall be conducted to discuss the alternative engineering solutions. **Public notice of the meeting shall be published at least thirty (30) days prior to the meeting date. The recipient shall prepare a transcript, recording, or other complete record of the proceeding and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review;**

(B) Prior to approval of the draft user charge ordinance, a public hearing, in accordance with section 250.233, RSMo, shall be conducted to specifically address the proposed user charge rates. Public notice of the hearing shall be published at least thirty (30) days prior to the meeting date. The recipient shall prepare a transcript, recording, or other complete record of the proceeding and submit it to the department and make it available at no more than cost to anyone who requests it. A copy of the record should be available for public review; and

(C) Public participation requirements for environmental review are contained in 10 CSR 20-4.050(2)(B)2.

(/15/18) Design. Design of the project will be in conformance with accepted engineering practices and the current *Waste Treatment Design Guide*, 10 CSR 20-8. A preliminary design submittal, including the design criteria and facilities layout sheet, may be required at approximately the twenty percent (20%) design stage.

(/16/19) Intermunicipal Agreements. Prior to closing, if the project serves two (2) or more public entities, the applicant shall submit executed agreements or contracts between the public entities for the financing, construction, and operation of the proposed treatment facilities. At a minimum, the agreement or contract will include:

(A) The operation and maintenance responsibilities of each party upon which the costs are allocated;

(B) The formula by which the costs are allocated;

(C) The manner in which the costs are allocated;

(D) The life of the agreement, which shall be, at a minimum, for the term of the loan;

- (E) The method for resolution or arbitration of disputes;
- (F) The procedure for amending or renegotiating the agreement;
- (G) The enforcement authority; and
- (H) The effective date of the agreement.

(/17/19) User Charge and Sewer-Use Ordinance. Recipients are required to maintain, for the useful life of the treatment works, user charge and sewer-use ordinances approved by the department. User charge and sewer-use ordinances, at a minimum, shall be adopted prior to financing and implemented by the initiation of operation of the financed wastewater treatment works. A copy of the enacted ordinance must be submitted prior to initiation of operation.

(A) The user charge system must 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. The sewer user rate for operation and maintenance, including replacement, shall be proportional and based upon actual use. Each user charge system must 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 for all flow not directly attributable to users be distributed equally among the users. The system shall provide for an annual review of charges. A user charge system shall be adopted by all political subdivisions receiving service from the recipient.

(B) Low Income Residential User Rates.

1. Recipients may establish lower user charge rates for low income residential users after providing for public notice and hearing, in accordance with section 250.233, RSMo. The criteria used to determine a low income residential user must be clearly defined.

2. The costs of any user charge reductions afforded a low income residential class must be proportionately absorbed by all other user classes. The total revenue for operation and maintenance (including equipment replacement) of the facilities, and debt retirement must not be reduced as a result of establishing a low income residential user class.

(C) The sewer-use ordinance shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance also shall require that all wastewater introduced into the treatment works not contain toxic or other pollutants in amounts or concentrations that endanger public safety and physical integrity of the treatment works; cause violation of effluent or water quality limitations; preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal; or inhibit the performance of a pretreatment facility. The ordinance shall require all users to connect to the system within ninety (90) days of service availability.

(/18/20) Specifications. The construction specifications must contain the features listed in the following:

(A) 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 procurements, 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;

(B) The recipient shall avoid the use of detailed product specifications if at all possible;

(C) 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;

(D) 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;

(E) 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;

(F) Domestic Products Procurement Law. In accordance with sections 34.350–34.359, RSMo, the bid documents shall require all manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on a loan project to be manufactured, assembled, or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%);

(G) Bonding. On construction contracts exceeding one hundred thousand dollars (\$100,000), 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;

(H) State Wage Determination. The bid documents shall contain the current prevailing wage determination issued by the Missouri Department of Labor and Industrial Relations, Division of Labor Standards;

(I) **Davis-Bacon Act. Federal requirements specify that state revolving fund projects shall** *[Contractors for ARRA-funded projects must]* comply with the Davis-Bacon Act (40 U.S.C. 276a–276a-7). The current Davis-Bacon wage rate from the United States Department of Labor must be incorporated in the bid documents;

(J) Small, Minority, Women’s, and Labor Surplus Area Businesses. The recipient shall take affirmative steps and the bid documents shall require the bidders to take affirmative steps to assure that small, minority, and women’s businesses are used when possible as sources of supplies, construction, and services. Affirmative steps shall include the following:

1. Including qualified small, minority, and women’s businesses on solicitation lists;
2. Ensuring that small, minority, and women’s businesses are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women’s businesses;
4. Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women’s businesses;
5. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the United States Department of Commerce as appropriate; and
6. If the contractor awards subagreements, requiring the subcontractor to take the affirmative steps in paragraphs (18)(J)1.–5. of this rule;

(K) Debarment/Suspension. The recipient agrees to deny participation in services, supplies or equipment to be procured for this project to any debarred or suspended firms or affiliates in accordance with Executive Order 12549. The recipient acknowledges that doing business with any party *[listed on the List of Debarred, Suspended or Voluntarily Excluded Persons]* **excluded or disqualified from doing business with the federal government** may result in disallowance of project costs under the assistance agreement;

(L) Right of entry to the project site must be provided for representatives of the Missouri Department of Natural Resources, Clean Water Commission, and the EIERA so they may have access to the work wherever it is in preparation or progress. Proper facilities must be provided for access and inspections;

(M) The specifications must include the following statement: “The owner shall make payment to the contractor in accordance with section 34.057, RSMo.”; and

(N) *[Buy American Provision. For ARRA-funded projects, the specifications must include the following statement or a similar statement in accordance with federal guidance: “All iron, steel, and manufactured goods used in this project must be produced in the United States unless a) a waiver is provided to the owner by the Environmental Protection Agency or b) compliance would be inconsistent with United States obligations under international agreements.”]* **American Iron and Steel. In accordance with Federal Water Pollution Control Act, as amended, the Recipient shall require that contractors and subcontractors, will only use iron and steel products in the Project which are produced in the United States in a manner consistent with United States obligations under international agreements. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.**

(21) Design-Build Projects. Recipients desiring to utilize the design-build method of procurement shall confer with the department prior to initiating procurement. The initiation of procurement activities to retain a design-build team may result in the recipients’ project not being eligible for SRF funding.

(19/22) Construction, Equipment and Supplies Procurement. This section describes the minimum procurement requirements which the recipient must use under the SRF program.

(A) 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]* **twenty-five** thousand dollars (*[\$100,000]* **25,000**). The small purchase limitation of *[one hundred]* **twenty-five** thousand dollars (*[\$100,000]* **25,000**) 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 approval and a minimum of three (3) quotes must be obtained prior to purchase.

(B) Bidding Requirements. This subsection applies to procurement of construction equipment, supplies, and construction services in excess of *[one hundred]* **twenty-five** thousand dollars (*[\$100,000]* **25,000**) awarded by the recipient for any project. No contract shall be awarded until the department has approved the formal advertising and bidding.

1. Formal advertising.

A. 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 (preferably 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.

B. Adequate time for preparing bids. A minimum of *[twenty-one (21)]* **thirty (30)** days shall be allowed between the date when public notice, publication, insertion, or document available in a plan room is first published or provided 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.

2. Bid document requirements and procedure. 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 complete 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.

(I) After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents.

(II) 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 low, 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.

(III) 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 nonresponsible and shall retain the statements in its files.

(IV) 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 thousand dollars (\$100,000).]* 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 or bid guarantee;
- (VII) One (1) set of as-bid specifications;
- (VIII) Suspension/Debarment Certification;
- (IX) Certification that the recipient has the necessary funds to complete the project if bids exceed available loan funding;
- (X) *[MBE/WBE]* Disadvantaged Business Worksheet;
- (XI) Recipient's statement that proposed contractor(s) positive efforts, *[MBE/WBE]* **Disadvantaged Business** utilization, *[or both, have]* **has** been reviewed and meet regulatory requirements; and
- (XII) Site certification, if not previously submitted.

(/20/23) 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:

(A) Unit Prices.

1. Original bid items. 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.

2. New items. Unit prices of new items shall be negotiated;

(B) A lump sum to be negotiated; and

(C) 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.

(21)24) Progress Payments to Contractors.

(A) It is the commission's policy that 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.

1. For purposes of this section, progress payments are defined as follows:

A. Payments for work in place; and

B. Payments for materials or equipment which have been delivered to the construction site or which are stockpiled in the vicinity of the construction site in accordance with the terms of the contract, when conditional or final acceptance is made by or for the recipient. The recipient shall assure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.

(B) Appropriate provisions regarding progress payments must be included in each contract and subcontract.

(C) Retention from Progress Payments. The recipient may retain a portion of the amount otherwise due the contractor. The amount the recipient retains shall be in accordance with section 34.057, RSMo.

(22)25) Classification of Costs. The information in this section represents policies and procedures for determining the eligibility of project costs for assistance under programs supported by this regulation.

(A) General. All project costs will be eligible if they meet the following tests:

1. Reasonable and cost effective;

2. Necessary for the construction of an operable wastewater facility including required mitigation; and

3. Meet the eligibility limitations of the Federal Water Pollution Control Act as amended.

(B) Eligible Costs. Eligible costs include, at a minimum:

1. Engineering services and other services incurred in planning and in preparing the design drawings and specifications for the project. These services and their related expenses can be reimbursed based on actual invoices to be submitted after loan closing. For invoice reimbursement, the department must have a copy of the executed engineering contract for planning and design of the project;

2. The cost of subagreements for building those portions of the project which are for treatment of wastewater, correction of I/I, or for new [interceptor] sewers;

3. The reasonable cost of engineering services incurred during the building and initial operation phase of the project to ensure that it is built in conformance with the design drawings and specifications. A registered professional engineer licensed in Missouri or a person under the direction and continuing supervision of a registered professional engineer licensed in Missouri must provide inspection of construction for the purpose of assuring and certifying compliance with the approved plans and specifications. Eligible construction phase and initial operation phase service are limited to [—]:

A. Office engineering;

B. Construction surveillance;

C. Stakeout surveying;

D. As-built drawings;

E. Special soils/materials testing;

F. Operation and maintenance manual;

G. Follow-up services and the cost of start-up training for operators of mechanical facilities constructed by the project to the extent that these costs are incurred prior to this department's final inspection. Costs shall be limited to on-site operator training tailored to the facilities constructed or on- or off-site training may be provided by the equipment manufacturer if this training is properly procured;

H. User charge and sewer-use ordinance; and

I. Plan of operation;

4. Demolition costs. The reasonable and necessary cost of demolishing publicly owned WWTF's which are no longer utilized for wastewater collection, transportation, or treatment purposes. The reasonable and necessary cost of demolishing privately-owned WWTF's which will be eliminated or replaced by a publicly-owned treatment works if the proposed elimination was addressed in the approved facility plan. Generally, these costs will be limited to the demolition and disposal of the structures, removal and disposal of biosolids, final grading and seeding of the site;

5. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

A. Within the allowable scope of the project;

B. Costs of equitable adjustments due to differing site conditions; and

C. Settlements, arbitration awards and court judgments which resolve contractor claims shall be allowable only to the extent that they are not due to the mismanagement of the recipient;

6. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works;

7. The costs of site screening necessary to comply with environmental studies and facilities' plans or necessary to screen adjacent properties;

8. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion, or modification resulting from building the project;

9. Equipment, materials, and supplies.

- A. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation.
- B. Cost of shop equipment installed at the treatment works necessary to the operation of the works.
- C. The costs of necessary safety equipment, provided the equipment meets applicable federal, state, local, or industry safety requirements.
- D. The costs of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment. These items include:
 - (I) Portable standby generators;
 - (II) Large portable emergency pumps to provide pump-around capability in the event of pump station failure or pipeline breaks;
 - (III) Trailers and other vehicles having as their purpose the transportation, application, or both, of liquid or dewatered sludge or septage; and
 - (IV) Replacement parts identified and approved in advance;
- 10. Costs of royalties for the use of or rights in a patented process or product with the prior approval of the department;
- 11. Land or easements *[when used as an integral part of the treatment process]*. Land must be purchased in accordance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, P.L. 91-646, as amended. Certification by the recipient of compliance under this Act is required;
- 12. The cost of I/I correction, other than normal maintenance costs, and treatment works capacity adequate to transport and treat I/I;
- 13. Purchase of a private wastewater system, provided the project will eliminate or upgrade the existing facilities;
- 14. Force account work for construction oversight and engineering planning and design. If force account is used for planning and design, all engineering services during construction must be provided through force account;
- 15. The cost of preparing an environmental impact statement if required under 10 CSR 20-4.050;
- 16. Nonpoint source projects as identified in the most current Missouri Nonpoint Source Management Plan;
- 17. Construction permit application fees, costs of issuance, capitalized interest, and contracted project administration costs;
- 18. Debt service reserve deposits;
- 19. Collector sewers provided that they meet the requirements of either—
 - A. For major rehabilitation or replacement of collection sewers that are needed to assure the total integrity of the system; or
 - B. New collector sewers for existing communities where sufficient treatment capacity exists or adequate treatment will be available when collectors are completed;
- 20. Correction of combined sewer overflows;
- 21. House laterals if they lie within the public easement and will be maintained by the loan recipient;*[and]*
- 22. Storm water transport and treatment systems, and nonpoint source best management practices $[.]$ **and**

23. Fiscal Sustainability Plans.

- (C) Noneligible costs include, but are not limited to:
 - 1. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers;
 - 2. The cost of general purpose vehicles for the transportation of the recipient's employees;
 - 3. Costs allowable in paragraph (22)(B)11. that are in excess of just compensation based on the appraised value or amount determined in condemnation;
 - 4. Ordinary operating expenses of the recipient including salaries and expenses of elected and appointed officials, preparation of routine financial reports and studies, EIERA application fees, and the state operating permit fees or other such permit fees necessary for the normal operation of the constructed facility;
 - 5. Preparation of applications and permits required by federal, state, or local regulations or procedures;
 - 6. Administrative, engineering, and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts, or other units of government;
 - 7. Personal injury compensation or damages arising out of the project;
 - 8. Fines and penalties due to violations of, or failure to comply with, federal, state, or local laws, regulations, or procedures;
 - 9. Costs outside the scope of the approved project;
 - 10. Costs for which grant or loan payments have been or will be received from another state or federal agency; **and**
 - 11. Force account work except that listed in paragraph (22)(B)14. $[.]$ *and*
 - 12. *Costs associated with acquisition of easements and land except that listed in paragraph (22)(B)11., unless and until Congress determines otherwise.*

(23/26) Operation and Maintenance.

(A) 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 develop an operation and maintenance manual. The operation and maintenance manual, if required, must be submitted by eighty percent (80%) construction completion.

(B) Start-Up Training. At fifty percent (50%) construction completion, a start-up training proposal (if required) and proposed follow-up services contract must be submitted. This contract must be approved by ninety percent (90%) construction completion.

(C) Wastewater Operator. The recipient must make provision satisfactory to the department for assuring that qualified wastewater operator and maintenance personnel are hired in accordance with an approved schedule. Qualified personnel shall be those meeting the requirements established under 10 CSR 20-9.020.

(/24/28) Retention of Records. This section describes the minimum record retention requirements for recipients of financial assistance.

(A) Construction-Related Activities. The recipient must retain all financial, technical, and administrative records related to the planning, design, and construction of the project for a minimum period of four (4) years following receipt of the final construction payment from the associated financial assistance or the recipient's acceptance of construction, whichever is later. Records shall be available to state, federal officials, or both, for audit purposes during normal business hours during that period.

(B) Post-Construction Financing Activities. The recipient must retain all financial and administrative records related to post-construction project financing for a minimum period of four (4) years following full repayment of any assistance on the project.

(/25/29) Conflict of Interest. 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.

(A) This conflict would arise when—

1. 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

2. An organization which may receive or has been awarded a subagreement employs, or is about to employ, any person under paragraph (/25/29)(A)1.

(B) 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.

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