

CHAPTER 62-505  
SMALL COMMUNITY WASTEWATER CONSTRUCTION GRANTS PROGRAM

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**62-505.100 Scope. (Repealed)**

Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835(3)(d), 403.1838 FS. History – New 1-25-07, Repealed 2-16-12.

**62-505.200 Definitions.**

For purposes of this rule:

(1) “Affordability Index” means the empirical number that is generated for a local government using the computer model entitled “Final Report Statistical Wt. – No Sales,” which is based on a combination of the most recent median household income, poverty, and unemployment census statistics for the local government. The computer model is extracted from the program entitled “User Manual Affordability Index,” March 2003, Economics Department, Florida State University, Tallahassee, Florida, which is hereby incorporated by reference.

(2) “Available funds” means unobligated grant allocation assessments and other unobligated funds projected to be available.

(3) “Construction cost” means costs associated with allowable construction, equipment, materials, and demolition.

(4) “Construction grant” means financial assistance provided to a project sponsor for design and construction of its wastewater management project.

(5) “Cost-effective” means the lowest present worth (or equivalent annual value) of the implementable and environmentally acceptable alternatives to meet federal, state, and local objectives.

(6) “Department” means the Department of Environmental Protection, Bureau of Water Facilities Funding, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400. Forms and program information can be obtained by writing to this address or by accessing the Bureau’s website at <http://www.dep.state.fl.us/water/wff/cwsrf>.

(7) “Financially disadvantaged small community” or “disadvantaged community” shall mean a municipality which, according to the latest published U.S. Department of Commerce decennial census, had a total population and a service area population of 7,500 or less and a per capita annual income less than the state average per capita annual income. Data may be obtained from the census website at <http://censtats.census.gov/pub/Profiles.shtml>.

(8) “Fiscal year” means the 12-month period between July 1 and June 30.

(9) “Grant” means:

(a) For projects with a State Revolving Fund loan component under Chapter 62-503, F.A.C., the grant percentage subsidy to the project sponsor’s State Revolving Fund loan repayments under subsection 62-503.350(3), F.A.C. Such subsidy shall be transferred from the Grants and Donations Trust Fund directly to the State Revolving Fund; or

(b) For projects without a State Revolving Fund loan component under Chapter 62-503, F.A.C., the reimbursement of the grant percentage of the project costs remaining after deducting other grant funding that the project sponsor has obtained for the project.

(10) "Grant allocation assessment" means that portion of each State Revolving Fund non-capitalization grant project loan repayment under Chapter 62-503, F.A.C., made after June 30, 1997, used solely for the purpose of making wastewater grants to financially disadvantaged small communities under this chapter.

(11) "Grant application" means Form 62-505.900(2), Grant Application, effective January 25, 2007, which is incorporated herein by reference. Copies of this form may be obtained by writing to the Department.

(12) "Preconstruction grant" means the funds available for assistance in completing the wastewater planning documentation including special studies.

(13) "Priority list" means the annual listing of projects scheduled to receive approval for funding during the fiscal year for which the list is prepared.

(14) "Project" means any cost-effective devices and systems associated with wastewater collection, transmission, treatment, or disposal facilities. This includes facilities to reuse reclaimed water from wastewater treatment plants. The principal purpose of the project shall be for domestic wastewater pollution control.

(15) "Project costs" means construction costs plus planning, design, special studies, contingency, legal and technical services, land acquisition; and State Revolving Fund loan service fee, allowance, and interest.

(16) "Project sponsor" means a financially disadvantaged small municipality having jurisdiction over collection, transmission, treatment, or disposal of wastewater, and its residuals.

(17) "Request for inclusion" means Form 62-505.900(1). Request for Inclusion effective January 25, 2007, which is incorporated herein by reference. Copies of this form may be obtained by writing to the Department.

(18) "Service Area" means that area currently served by the project sponsor and any additional areas proposed to be served by the sponsor's project.

(19) "Wastewater planning documentation" means plans and studies that directly relate to selecting facilities for a wastewater management system. The requirements for wastewater planning documentation are set forth under subsection 62-505.700(2), F.A.C.

Specific Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 11-30-98, Amended 7-22-99, 1-25-07, 8-30-07.

### **62-505.300 General Program Information.**

(1) Projects shall compete separately for preconstruction and construction phases of a project. Getting a preconstruction grant does not guarantee construction grant funding.

(2) Grant funding is available for projects with and without a State Revolving Fund loan. The grant amount is a percentage of the project cost remaining after financial assistance from other sources has been deducted and is subject to the limitations in Rule 62-505.350, F.A.C.

(3) Steps involved in obtaining a small community wastewater facilities grant:

(a) Request for inclusion. The project sponsor shall submit to the Department a request for inclusion form to establish project ranking as outlined in Rule 62-505.600, F.A.C. A request for inclusion shall be submitted separately for both the preconstruction and the construction phases of a project.

1. Requests for inclusion shall be reviewed to verify eligibility and accuracy of the information provided such as census tract numbers, service area boundaries, population, priority categories, project costs, justification, and to determine the project scope and grant assistance eligibility.

2. Additional information shall be requested by the Department when the data provided by the project sponsor are incomplete or unclear. Requests for inclusion remaining incomplete or unclear after the first day of the month preceding the month of the hearing shall result in a minimum priority score for the project.

(b) The Department shall notify the project sponsor if the project qualifies for grant assistance, and if so, what the estimated grant percentage will be.

(c) The project sponsor shall notify the Department of its intentions with regards to proceeding with the project.

(d) If the project sponsor elects to proceed with the grant, the project shall compete for funding at the next hearing based on priority score.

(e) Application.

1. A complete grant application shall be submitted to the Department within 120 days after the project has been added to the priority list. The project sponsor may incorporate into the application by reference any information previously submitted to the Department.

2. If no application is received within this 120-day period, the project shall be subject to removal from the grant priority list.

(f) Agreement. If an agreement is not executed within 210 days after a project is added to the priority list, the project is subject to removal from the priority list at the next scheduled public hearing.

1. For projects with a State Revolving Fund loan component, the amount of the grant and the terms of the loan repayment shall be incorporated into the project sponsor's loan agreement.

2. For projects without a State Revolving Fund loan component, a stand-alone grant agreement shall be written.

(4) Allowable project costs. Categories of allowable project costs include the following water pollution control activities:

(a) Land that will be used for the ultimate disposal of wastewater or residuals. Funding shall be limited to the fair market value based on the lowest value of two appraisals.

(b) Project construction and related procurement, the contracts for which are executed after a grant is made. For projects without a State Revolving Fund component, the lower of the as-bid construction costs or final construction costs shall be used in determining the maximum grant amount under Rule 62-505.350, F.A.C.

(c) Demolition and removal of existing structures.

- (d) Contingency for project cost overruns.
- (e) Legal and technical services after bid opening, or receipt of proposals for design/build or construction-manager-at-risk projects.
- (f) Allowable costs for which the sponsor has received prior written authorization from the Department.
- (g) Allowance under subsection 62-503.300(5), F.A.C.
- (h) Interest included in State Revolving Fund loan repayments.
- (i) Department-approved technical services for specialized field studies and tests such as soil and hydrogeological tests, geotechnical evaluations, sewer system evaluations, surveys, wetland delineations, environmental impact statements, and appraisals for eligible land. Projects without a State Revolving Fund loan component shall be limited to 50% of the invoiced costs.
- (j) For projects without a State Revolving Fund loan component, invoiced project planning and engineering costs that do not exceed:  $(25.00 - \text{Natural Logarithm of construction costs})$  times the construction costs divided by 100.
- (k) Service fees included in State Revolving Fund loan repayments.
- (l) Costs incurred before execution of a grant agreement shall be ineligible for reimbursement upon execution of the agreement unless the project sponsor receives prior written authorization to incur such costs. The Department shall issue an authorization to incur costs only after the requirements of Rules 62-505.700 (except for land purchase) and 62-505.750, F.A.C., have been met.
- (5) Unallowable project costs. Unallowable project costs include the following:
  - (a) Acquiring all or part of existing wastewater management facilities.
  - (b) Facilities not in conformance with Department-approved planning documentation, under Rules 62-505.700 and 62-505.750, F.A.C.
  - (c) Facilities not included within the approved project scope as described in a grant agreement.
  - (d) Construction using personnel employed by the project sponsor or construction performed by a Construction-Manager-at-Risk.
  - (e) Costs, such as for pending construction claims, yet to be incurred at the time of the on-site administrative action taken by the Department to document project completion.
  - (f) Site acquisition of sewer rights-of-way, sewage treatment plant sites, and sanitary landfills.
  - (g) That part of any project primarily intended to serve future growth.
  - (h) Costs reimbursed by other grants.
  - (i) Any other cost not listed as allowable under subsection (4), above.
- (6) Project contingency. The amount of the project contingency, at the time of approval of a grant amendment providing funding for post-allowance project activities, shall not exceed 10% of the estimated sum of the costs for allowable land (when the actual costs are unknown), equipment contracts, materials contracts, and construction contracts. The contingency will be adjusted by the Department to not more than 5% of construction, equipment, and materials contract amounts after procurement contracts

have been executed. The contingency remaining after accounting for contract change orders will be retained by the Department when project close-out occurs. Contingency funds will not be used to purchase equipment or pay for construction work not described in the grant agreement. There will be no contingency for land when the costs are known and, for projects without a State Revolving Fund loan, after procurement contracts have been executed.

(7) Program Administration. The Department is authorized to use up to 2% of the grant allocation assessment funds made available each year to pay for the costs of program administration. Such grant allocation assessment funds will be deposited in the Department's Grants and Donations Trust Fund and, together with all investment earnings, will be reserved to pay for the Department's grant program administration expenses.

(8) Binding Commitments. A project sponsor shall obtain, within 180 days of grant agreement execution, a binding commitment for the non-grant share of the project costs described in, and to be incurred under, the grant agreement if such funds are not available at the time of grant application. No grant disbursements shall be made before the non-grant share has been secured.

Specific Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 11-30-98, Amended 7-22-99, 1-25-07, 8-30-07.

#### **62-505.350 Grant Funding.**

(1) A project sponsor shall be allowed to have only one Small Community Wastewater Construction Grant in the preconstruction or construction phase at a time.

(2) If program funding from sources other than grant allocation assessments becomes available, it

(a) Shall first be used to pay shortages in the annual grant allocation allotment.

(b) Then it shall be used to pay down grant obligations for costs incurred by project sponsors by disbursing these funds directly into the State Revolving Fund. The maximum annual grant amount limitation shall not apply to these funds. This shall apply to all existing grants and to new grants with SRF loan components.

(3) Preconstruction grants. Preconstruction grants shall be limited to:  $(25.00 - \text{Natural Logarithm of construction costs})$  times the construction costs divided by 1,000 plus 50% of the costs of Department-approved special studies that are needed to determine project planning parameters.

(a) For projects with a SRF loan component, the grant shall be a subsidy to the loan repayments.

(b) For projects without a SRF loan component, up to 50% of the preconstruction grant shall be available for disbursement after a grant agreement is signed. After all planning documentation is accepted by the Department, the remainder of the preconstruction grant shall be available for disbursement. Construction costs shall be limited to a maximum of \$10,000,000 in calculating the preconstruction grant amount. All disbursement requests shall be for eligible invoiced expenditures.

(4) Construction grants. The amount of funds available to a project sponsor shall be determined by multiplying the construction grant percentage as determined in subsection (5) below, by the project costs. Funds shall be limited to no more than \$500,000 annually and shall be limited to a maximum grant amount of \$10,000,000.

(a) For projects with a State Revolving Fund loan component, the amount of a grant shall be estimated until the time of project close-out. The amount shall be fixed over the remaining loan repayment term.

(b) For projects without a State Revolving Fund loan component, reimbursement of costs shall be as follows:

1. When the grant percentage times the total eligible as-bid project costs is less than \$10,000,000, disbursements shall be the grant percentage times the eligible invoiced project expenditures.

2. When the grant percentage times the total eligible as-bid project costs is greater than \$10,000,000, disbursements shall be \$10,000,000 divided by the total eligible as-bid costs times the eligible invoiced project expenditures.

3. Reimbursement for planning, special studies and engineering costs shall be based on invoiced expenditures. Up to seventy percent of these costs shall be available after a construction grant agreement is signed. The remainder of the expended costs may be requested after all procurement contracts are executed and the allowable amount is adjusted to reflect as-bid costs. Design-build projects shall be limited to 30% of these costs.

4. The amount of the grant remaining after construction is complete shall be disbursed in equal semi-annual payments over a 20-year period beginning in the fiscal year after the fiscal year in which the project is closed out.

(5) Construction grant percentage. The grant percentage shall initially be based on the estimated project costs. The final grant percentage shall be based on as-bid eligible construction costs. Construction grant percentage (CGP) shall be determined using the formula:

CGP = 0.67(200-Affordability Index) times the weighted average of the Base Factors (BF) shown in Table 1, below, as determined by the following formula where CC means "construction costs":

$$BF = \frac{BF_1 \times CC_1 + \dots + BF_n \times CC_n}{\text{Total CC}}$$

Table 1. Project Category	Base% Factor (BF)	Base Priority Score (BPS)
Eliminate certified and documented public health hazards	1.00	500

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DEP-ordered upgrade/rehab of existing treatment plant that is out of compliance with permit (excludes additional capacity)	1.00	500
Eliminate excessive infiltration/inflow	1.00	500
Eliminate failing individual onsite sewerage disposal systems where greater than or equal to 10.0% failed in last three years (excludes failures due to lack of maintenance)	0.75	400
Compliance with laws requiring elimination of discharges to specific water bodies	0.75	400
Upgrade and rehab wastewater facilities	0.50	300
Additional treatment/disposal necessary to meet new regulatory requirements	0.50	300
Eliminate failing individual onsite sewerage disposal systems where less than 10.0% failed in last three years (excludes failures due to lack of maintenance)	0.50	300
Reclaimed water projects that do not eliminate a discharge that is in violation of permit requirements	0.50	300
Additional capacity for average daily flow greater than 70% of design capacity	0.25	200
Residuals management	0.25	100
Projects not otherwise categorized	0.25	100

(6) Assurance of compliance. The project sponsor shall provide assurance that:

(a) Records will be kept using Generally Accepted Governmental Accounting Standards established by the Government Accounting Standards Board. The Department, the Auditor General, or their agents shall have access to all records pertaining to the grant.

(b) Facilities will be properly operated and maintained.

(c) Grant funds will not be used for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

(d) The revenue generation system will be updated annually.

Specific Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 11-30-98, Amended 1-25-07, 8-30-07.

**62-505.360 Rural Hardship Community Grant Funding. (Repealed)**

Specific Authority 403.1838(3)(a), (b) FS. Law Implemented 403.1835, 403.1838 FS. History - New 11-30-98, Repealed 1-25-07.

**62-505.420 Project Allowances. (Repealed)**

Specific Authority 403.1838(3)(a), (b) FS. Law Implemented 403.1835, 403.1838 FS. History - New 11-30-98, Repealed 1-25-07.

**62-505.600 Priority List Information.**

(1) General. The Department shall assign projects to the grant priority list each year depending on the amount of the funding projected to be available, the project's priority score, and the project's readiness to proceed.

(a) A priority list of grant fundable projects shall be developed by the Department after the first day of the month preceding the month of the priority list hearing. Construction projects shall be given priority over preconstruction projects for non-reserved funds.

(b) After the ranking of projects, the proposed priority list shall be posted on the Department's website not later than 14 days before the list adoption hearing to be held under this chapter and shall be mailed to anyone who submits a written request to the Department.

(c) The priority list shall be adopted at a public hearing held by the Department. The annual hearing shall be held on the second Wednesday of October. If additional hearings are necessary, they shall be held on the second Wednesday in January, April, or July.

(d) The list shall become effective immediately after adoption.

(e) Fifteen percent to thirty percent of the unobligated grant funds projected to be available in each fiscal year shall be reserved for preconstruction grants. When the funds remaining will not cover the total amount of the next highest ranked preconstruction grant project the remaining funds shall be allotted to construction projects.

(f) Reserved funds that are not used for preconstruction grants shall be available for assignment to construction projects.

(g) When a project sponsor has completed the requirements of subsections 62-505.700(1) and (2), F.A.C., the project shall be eligible to compete for construction grant funding.

(h) Funds that will not cover the amount of the annual grant allocation for the next highest ranked construction grant project shall be allocated at a subsequent priority list hearing.

(2) Priority score determination. Eligible projects shall be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The final priority score, calculated to the nearest one hundredth (0.01), for each project shall be the weighted average as defined in paragraph (a), below, of the applicable base priority scores shown in Table 1, multiplied by 1.2 if the pollution control is directly related to an impaired water body on the state's adopted verified list of impaired waters, multiplied by a cost-to-benefit index as defined in paragraph (b), below, and then increased for severe economic hardship as defined in paragraph (c), below, if applicable.

(a) Weighted average base priority score. The weighted average base priority score (BPS) shall be determined using the following formula where CC means "construction costs":

$$BPS = \frac{BPS_1 \times CC_1 + \dots + BPS_n \times CC_n}{\text{Total CC}}$$

Total CC

(b) Cost-to-benefit index. The relative costs of achieving public health and water quality benefits shall be reflected in the priority score. The ratio of the total construction cost for each project to the weighted average base score (benefit) for that project shall be computed. The construction cost data used shall be expressed in units of one-thousand dollars (e.g., \$1,000,000 shall become \$1,000 for purposes of determining the cost-to-benefit index). The benefit ratio shall be indexed at not less than 1.0000 nor greater than 1.2000. The cost-to-benefit index (multiplier) for a specific project shall be established to the nearest 0.0001 value as follows:

1.20 – 0.021 x Natural Logarithm of (Construction Cost to Benefit Ratio).

(c) Economic hardship. The extent of the economic hardship existing in a small community to be served by the project shall be reflected in the priority score. Ten points will be added to the priority score, after adjustment under paragraphs (a) and (b), above, when the small community's affordability index is less than 70.

(3) Getting on the list.

(a) The Department shall accept requests for inclusion on Form 62-505.900(1), on the next year's priority list when they are postmarked or delivered before July 1. A separate request for inclusion is required and a separate priority determination shall be made for each phase (preconstruction and construction) of a sponsor's project.

(b) Projects for which a request for inclusion is submitted on or after July 1 and that have retained eligibility shall be eligible to compete for grant funding at the first hearing in the following fiscal year.

(c) Projects that have started construction and have not received an authorization to incur costs shall be ineligible to compete for grant funding at subsequent hearings.

(d) The sponsor shall have postmarked or delivered to the Department all required documentation on or before the first day of the month preceding a priority list public hearing.

1. For a preconstruction project, if a request for inclusion remains incomplete after the above date, that project shall receive the minimum priority score.

2. For a construction project, documentation required under subsections 62-505.700(1) and (2), F.A.C., shall be complete by the above date or that project shall not be considered for funding.

(e) A public hearing shall be held to add projects to the priority list.

(4) Removal from priority list. Projects shall be removed from a priority list upon request of the project sponsor or if the project sponsor fails to comply with the provisions of this chapter. If a project is removed from the priority list, the deobligated funds shall be allocated at a subsequent priority list hearing.

(5) The scope of a preconstruction project described on the priority list shall not be increased to encompass additional work except where such increases have been subject to the list development procedures of Rule 62-505.600, F.A.C. Specific Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 11-30-98, Amended 1-25-07, 8-30-07.

**62-505.650 Priority Determination. (Repealed)**

Specific Authority 403.1835(7), 403.1838(3)(a), (b) FS. Law Implemented 403.1835, 403.1838 FS. History - New 11-30-98, Amended 7-22-99, Repealed 1-25-07.

**62-505.655 Ranking Projects for Priority List Development. (Repealed)**

Specific Authority 403.1838(3)(a), (b) FS. Law Implemented 403.804, 403.1835, 403.1838 FS. History - New 11-30-98, Repealed 1-25-07.

**62-505.680 Priority List Management. (Repealed)**

Specific Authority 403.1838(3)(a), (b) FS. Law Implemented 403.804, 403.1835, 403.1838 FS. History - New 11-30-98, Repealed 1-25-07.

**62-505.700 Planning, Design, Construction, and Procurement Requirements.**

The requirements of subsections (1) through (6) below, where applicable, shall be met for all projects.

(1) Planning. Projects shall be subject to the environmental, social, and economic requirements identified in the grant application. Project planning documentation shall include the following:

(a) Sufficient illustrative detail of the local area to identify where the project or activity would be located, including identification of the planning area, the existing service area, and future project service areas. Landmarks and other readily identifiable features shall be noted.

(b) A description of the recommended facilities, estimated capital costs, and estimated operation and maintenance costs. Costs shall be broken down into project categories to the maximum extent possible.

(c) Cost-effectiveness of feasible alternatives, including regionalization of facilities.

1. Consideration must be given to capital costs and operation and maintenance costs over the useful life of the facilities based on a discount rate projected to be in effect during a planning period of not less than five years.

2. Grant funds shall be available for no more than the amount of the cost-effective alternative.

(d) The need or justification for the project or activity and the environmental and economic impacts and benefits of the project.

(e) Resolution of comments received by the Florida State Clearinghouse during its intergovernmental review of the project.

(f) The public participation process used to explain the project and the financial impacts to affected parties shall include the project sponsor's public meeting held before the project sponsor's acceptance of the planning recommendations. The public meeting shall provide for public participation in the evaluation of project alternatives. Notice of the public meeting shall be in accordance with local requirements.

(g) A new request for inclusion to include the schedule, scope, and costs for implementing the recommended facilities or activities and any changes to the census tracts to account for project changes.

(h) An adopting resolution or other action establishing a commitment to implement the planning recommendations.

(i) A revenue generation system that shall include the user charge system and user charge ordinance or other enforceable schedule for charges, rates, fees, and other collections associated with the revenues that will be dedicated to producing adequate revenue for debt service and operation and maintenance of the wastewater management system. This shall include revenues for replacement of equipment, accessories, and appurtenances necessary to maintain the system design capacity and performance during its design life. The user charge system shall be designed to make the wastewater management system financially self-sufficient.

1. The revenue generation system shall be updated at least annually, and may be updated as necessary to reflect changing conditions, but it shall remain in effect in conformance with this chapter.

2. The project sponsor shall certify annually, if grant funds are received during a given year, that it has updated its revenue generation system in conformance with this chapter.

3. The rate structure of the revenue generation system shall be implemented with a phased schedule, if necessary, at least six months before the first State Revolving Fund loan repayment is due and for projects without a State Revolving Fund loan, before the project is administratively closed out.

(2) Environmental Review. The Department shall perform an environmental review under Rule 62-505.750, F.A.C., for each project to be funded.

(3) Plans and specifications. The project sponsor shall submit biddable plans and specifications conforming to the planning documentation for projects involving construction. For design/build projects the sponsor shall submit a copy of the request for qualifications, request for proposals, and the preliminary design report submitted for permitting. Final permitted plans and specifications shall be submitted for each component of a design/build project when complete.

(4) Site Certification. The project sponsor shall certify that all sites necessary for the construction, operation, and maintenance of the project, or to otherwise carry out project activities over the useful life of the project, are available.

(5) Permit. The project sponsor shall submit evidence that one or more of the following permitting related conditions to exist for the project:

(a) The use of a general permit has been authorized or an intent to issue a permit has been established under rule 62-620, F.A.C.;

(b) The Department has issued other authorization for project construction (includes design/build);

(c) The Department has determined that its authorization is not required prior to construction; or

(d) An intent to issue a permit for construction under Part IV, Chapter 373, F.S., has been established.

(6) Procurement (Reference: 40 CFR 31.36). When procuring property and services under a Small Community Wastewater Facilities Grant, a project sponsor shall follow the policies and procedures it uses for procurements from its non-grant funds provided that the procurement conforms to applicable federal, state, and local laws and regulations. Grant recipients shall submit procurement documentation to the Department for pre-award review. Methods of procurement include small purchase procedures, formal advertising, and competitive or non-competitive proposals. All procurement transactions shall be conducted in a manner providing full and open competition.

(a) Small purchase procurement. For small purchases that do not cost more than \$100,000, price or rate quotations shall be obtained from a minimum of two qualified sources.

(b) Formal advertising. Requirements for the formal advertised competitive bidding method of procurement shall be as follows:

1. All solicitations shall incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured. Bid documents shall break out project categories to the maximum extent possible.

a. Such description shall not contain features that unduly restrict competition.

b. The description shall include a statement of the qualitative nature of the materials, products, or services to be procured, and when necessary for the bid, shall set forth those minimum essential characteristics and standards to which they must conform to satisfy their intended use.

c. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand that must be met by offerors shall be clearly stated.

d. All requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals shall be identified.

2. Project sponsors shall ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

3. The invitation for bids shall be publicly advertised and bids shall be solicited from an adequate number of known suppliers to assure open competition, providing them sufficient time for bid submittal prior to the date set for opening the bids.

4. The invitation for bids, which shall include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

5. All bids shall be publicly opened at the time and place prescribed in the invitation for bids, and a firm-fixed-price contract (lump sum or unit price) awarded to the responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bids.

6. Any or all bids may be rejected if there is a sound, documented reason.

7. Project changes after advertising for bids or other project proposals and before bid or proposal opening shall be made by addendum. Changes to executed contracts involving construction shall be made by change order. The project sponsor shall submit all addenda and change orders to the Department. The Department shall perform an eligibility determination for each change order.

(c) Competitive proposals. Requirements for the competitive proposals method of procurement shall be as follows:

1. Proposals shall be solicited from a minimum of three sources to assure open competition. Sponsors shall request a waiver to this requirement for procurement when three sources are not available.

2. Grant recipients shall have a method for conducting technical evaluations of the proposals received and for selecting awardees.

3. Awards shall be made to the responsible firm whose proposal is most advantageous to the grant recipient, with price and other factors considered.

(d) Noncompetitive proposals. Requirements for the noncompetitive proposals method of procurement shall be as follows:

1. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

2. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

a. The item is available only from a single source;

b. The public exigency or emergency for the requirement shall not permit a delay resulting from competitive solicitation; or

c. After solicitation of a number of sources, competition is determined inadequate.

3. A cost analysis is required verifying the proposed cost data and an evaluation of the specific elements of costs and profits.

(7) Construction-manager-at-risk and design/build contracts:

(a) Requests for proposals shall be used in the selection process.

(b) The request for proposals shall describe the work eligible for a grant, the requirements with which the successful respondent shall comply, and the evaluation process to be used in selecting the successful respondent.

(c) Advertising shall include announcement in a publication having general circulation on a statewide basis, in a construction trade journal, a professional journal, or in the electronic plan room

(d) The time allowed for development of proposals shall be commensurate with the complexity and extent of the work and with the extent of the conceptual documents provided with the request for proposals.

(e) Both the qualifications of the respondents and the price for completing the advertised work shall be considered in the selection process.

(f) The project sponsor shall demonstrate that the competition solicited is sufficient for the complexity and extent of the work.

(g) Requests for proposals shall be submitted to the Department prior to advertising for a determination of compliance with grant program requirements.

(8) Contract responsibilities.

(a) Grant recipients shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) Grant recipients shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the grant recipients shall participate in selection, or in the award or administration of a contract supported by Small Community Wastewater Facilities Grant funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his immediate family, his or her partner, or an organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grant recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grant recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grant recipient's officers, employees, or agents, or by contractors or their agents.

(c) Grant recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(d) Grant recipients shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(e) Grant recipients shall maintain records sufficient to detail the significant history of procurement. These records shall include the following: rationale of the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(f) Grant recipients alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

(g) Grant recipients shall retain all records for three years after final payments are made and all other pending matters are closed.

(h) For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the Department will accept the bonding policy and requirements of the grant recipient when the Department has made a determination that the Department's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) A grant recipient's contracts shall contain provisions for:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms.

2. Such sanctions and penalties as may be appropriate.

3. Termination for cause and for convenience by the grant recipient including the manner by which it shall be effected and the basis for settlement.

4. Access by the grant recipient, the Department, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, or transcriptions.

5. Incorporating the Department's Supplementary Conditions into its bid or request for proposals documents. These conditions contain the following provisions:

a. Equal Employment Opportunity compliance;

b. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act, and Executive Order 11738; and

c. Contracting with small and minority firms, women's business enterprise, and labor surplus area firms (if applicable).

(j) Procurement of professional service shall be in accordance with the Consultants Competitive Negotiations Act, Section 287.055, F.S. The project sponsor shall submit procurement documentation for approval by the Department for grants without a State Revolving Fund loan.

Specific Authority 403.1838(3)(a), (b) FS. Law Implemented 403.1835, 403.1838 FS. History - New 11-30-98, Amended 1-25-07.

#### **62-505.750 Environmental Review.**

(1) General.

(a) The Department shall perform an environmental review for each project to be funded. The environmental review shall establish the environmental significance of a proposed project and whether the planning of the project meets the requirements of this chapter. The environmental review also shall establish the Department's intention to make funding available for a project after the project sponsor has met the applicable requirements of this chapter. The results of the Department's environmental review for each project shall be issued as an environmental information document that shall be valid for five years from the date of issue. The environmental information documents are described in subsections (2) through (5) below. A notice of availability of an environmental information document shall be published in accordance with Department guidelines to announce the results of the Department's environmental review. The notice of availability shall include instructions about the procedures for accessing the project information and the Department's findings. The Department shall provide a 30-day period, commencing as of the date of the notice of availability, for public comment about the environmental impacts of proposed projects. Written comments from the public shall be considered by the Department before approving a project for funding if postmarked or delivered to the Department within the 30-day comment period.

(b) Review procedures, identical to those described in this subsection, shall be used when the Department amends an environmental information document to announce project changes that have potentially significant environmental impacts.

(2) Florida Categorical Exclusion Notice (FCEN). A FCEN shall be used for certain projects that are not expected to generate controversy over potential environmental effects. A FCEN shall not be used when there are documented environmental objections to a project before the local government adopted the planning recommendations provided that such objections have a basis in statute, regulation, or ordinance.

(a) In issuing a FCEN, the Department shall:

1. Briefly describe the project, the justification for the categorical exclusion, and the proposed grant funding;
2. Conclude the environmental review only after the 30-day public comment period, under subsection (1) above, has expired; and
  - a. No information is received about adverse environmental impacts;

b. Information is received about adverse environmental impacts and the objections either are without a basis in statute, regulation, or ordinance or the objections are resolved; or

c. Information is received about adverse environmental impacts, the FCEN is rescinded, and an environmental review is undertaken according to subsection (3) or (4) below.

(b) Projects potentially eligible for categorical exclusion are:

1. Rehabilitation of existing water pollution control system components or replacement of structures, materials, or equipment.

2. Water pollution control systems that do not change the existing discharge point or permitted pollutant concentration limits, and that do not involve acquisition of undisturbed land.

3. Water pollution control systems that serve less than 10,000 people in unsewered communities that involve self-contained individual or cluster systems providing both treatment and disposal of wastewater that will take place near the buildings from which the wastewater is to be discharged.

4. Water pollution control systems in areas where streets have been established, underground utilities installed, or building sites excavated.

5. Treatment plant upgrades that are solely to enable reclaimed water reuse if the treatment level enables unrestricted public access.

(3) Florida Finding of No Significant Impact (FFONSI). A FFONSI shall be used when a project sponsor proposes a project not categorically excluded from a detailed environmental review and not requiring a Florida Environmental Impact Statement. In issuing a FFONSI, the Department shall:

(a) Record the basis for the decision to provide financial assistance for the project, addressing:

1. The environmental consequences of the project;

2. The purpose and the need for the project;

3. The alternatives, including no action, and the cost considerations for the project;

4. Any environmental enhancement measures to be implemented;

5. The public participation process;

6. The results, if available, of the State Clearinghouse Review; and

7. Compliance with relevant rules of the Department.

(b) Consider public comments about environmental impacts of a project if the comments are received within 30 days after the date of posting of the notice of availability on the Department's website.

(c) Conclude the environmental review for the project only after the 30-day comment period has expired and:

1. No information is received about previously unconsidered adverse environmental impacts;

2. Information is received about previously unconsidered adverse environmental impacts and one of the following occurs:

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- a. The objections are either without a basis in statute, regulation, or ordinance, or the objections are resolved;
  - b. A re-evaluation of the project is made as a result of the comments, and the Department confirms the original decision or requires environmental enhancement measures before implementing the project; or
  - c. The FFONSI is rescinded.

(4) Florida Environmental Impact Statement (FEIS). A FEIS and a Florida Record of Decision (FROD) shall be used for a project for which there is an adverse direct or indirect impact on land use and population patterns, the quality of the environment, cultural or environmental resource areas, or the habitats of endangered or threatened species. A FEIS and FROD also shall be used when there is unresolved public controversy over the environmental impacts of a project provided that the objections to the project have a basis in statute, regulation, or ordinance. An FEIS shall be prepared by the Department or, at the direction of the Department and in accordance with the Consultants' Competitive Negotiation Act, Section 287.055, F.S., by others with no conflicting interest in the outcome. In completing the environmental review, the Department shall:

- (a) Issue a notice of intent to prepare a FEIS for the project;
- (b) Develop a plan of study and convene a meeting of government, including EPA, and other interested parties to determine the scope of the FEIS;
- (c) Identify and evaluate project alternatives;
- (d) Provide for public participation and review by federal and state environmental regulatory agencies;
- (e) Ensure that adverse impacts of the project are minimized or eliminated;
- (f) Document the findings of the environmental review using both the FROD and FEIS;
- (g) Announce the funding eligibilities using a FROD and consider public comments about environmental impacts if received during the 30-day period beginning on the date of posting of the notice of availability on the Department's website; and
- (h) Conclude the environmental review only after a 30-day public comment period has expired without receipt of comments about adverse environmental impacts or if, after receipt of such comments, the Department takes action to:
  - 1. Confirm the original decision;
  - 2. Require additional analysis and environmental enhancement as a condition of confirmation of the original decision; or
  - 3. Rescind the original decision.

(5) Florida Reaffirmation Notice (FRAN). A FRAN shall be used to establish the Department's continuing intention to make funds available for unimplemented projects, the planning for which was previously documented as accepted by the Department in a FCEN, FFONSI, FROD, or analogous documents issued by EPA, or amendments to any of the foregoing that are no longer valid after five years have elapsed since issuance. In issuing a FRAN, the Department shall:

- (a) State the findings being reaffirmed;

(b) Consider public comments about changed conditions altering the environmental impacts since the previous FCEN, FFONSI, FROD, or analogous documents issued by EPA, or amendments to any of the foregoing. Comments shall be considered if received during the 30-day period beginning on the date of posting of the notice of availability of the FRAN on the Department's website;

(c) Conclude the environmental review only after the public comment period has expired; and

1. No information is received about changed conditions resulting in adverse environmental impacts;

2. Information is received about changed conditions resulting in adverse environmental impacts and one of the following occurs:

a. The objections are resolved;

b. A re-evaluation of the project is made as a result of the comments and the Department confirms the original decision or requires environmental enhancement measures before implementing the project; or

c. The FRAN is rescinded.

(6) State Clearinghouse. Project planning documentation shall be submitted to the State Clearinghouse for a multi-disciplined intergovernmental review. All comments resulting from this review shall be addressed by the Department prior to its approval of the planning documentation.

Specific Authority 403.1838 FS. Law Implemented 403.1835 FS. History – New 1-25-07.

#### **62-505.800 Audit Required.**

(1) Within 12 months after the effective date of the amendment to the grant agreement establishing final project costs, the project sponsor shall submit to the Department a separate audit report of the grant related provisions, revenues, and expenditures. The audit report also shall address whether the project sponsor complied with requirements, such as implementation of the user charge system, set forth in the grant agreement. The audit findings shall set aside or question any costs that are unallowable under this rule chapter. A final determination of the allowability of such costs shall be made by the Department. The above-described separate project audits shall be required unless the only disbursements were made under a preconstruction grant agreement.

(2) The Department shall conduct an audit within three years following project close-out if grant conditions compliance problems have been noted; record keeping deficiencies are noted during close-out; the project involves unusual, questioned, or apparently irregular costs; or other justification for conducting the audit becomes apparent. The Department of Environmental Protection, Bureau of Water Facilities Funding and the Inspector General jointly shall be responsible for determining whether an audit is to be performed.

(a) The Department shall mail a notice that an audit will be performed to the project sponsor no later than 30 days before the audit.

(b) The Department shall prepare a written report on each audit and shall provide a copy of the report to the project sponsor. The project sponsor must respond, in writing, to the findings and recommendations within 30 days after receipt of a written request from the Department.

Specific Authority 403.1838(3)(a), (b) FS. Law Implemented 403.1835, 403.1838 FS. History - New 11-30-98, Amended 1-25-07.

**62-505.850 Exception to Program Requirements. (Repealed)**

Rulemaking Authority 403.1838(3)(a), (b) FS. Law Implemented 403.1835, 403.1838 FS. History – New 1-25-07, Repealed 2-16-12.