

Minutes of ARRA 2009 Recovery IUP Workshop held on March 4, 2009

This workshop was chaired by Mr. Craig Diltz, P.E., Program Administrator of Florida's Drinking Water SRF.

The workshop started with a discussion of the Economic Recovery Intended Use Plan (IUP). A copy of the IUP can be obtained by e-mailing Paul Brandl at:

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After the IUP discussion, there was a question and answer period. A summary is provided below:

List of Questions and Responses (this is not to be considered as a verbatim transcript but a general summary):

1. If a Request for Inclusion (RFI) is submitted for the Recovery funds, will it also be considered for the regular State Revolving Fund (SRF) funds?

Answer: Yes, definitely.

2. For potential grant-eligible project, what is the "ball park" on financially disadvantaged communities?

Answer: Median Household Income (MHI) lower than the state-wide average. Typically there are two types of grants, those funded at either 65% for sponsors at 80% or above MHI, or 85% for communities below 80% of MHI (based on Chapter 62-552 Florida Administrative Code), with the balance funded as a loan.

3. How soon do the RFI's for consideration of Recovery funds need to be submitted?

Answer: We will be continuing to review RFI's up until a week before we make our final decision (on projects for the Fundable List) but expect to receive additional management direction on this deadline. If you haven't done an RFI yet please submit it as soon as possible.

4. It was mentioned that there are over \$1 billion in projects being considered for the Recovery funds. What kind of breakdown is there in relation to public health risk projects versus lower tier projects such as distribution improvements, etc.? Is that information available for review?

Answer: The numerous RFI's that we have received cover the entire spectrum of project tiers/priorities. We are giving consideration both to projects with a public health risk component that may take longer to be ready, as well as those that are in lower tiers and are at or near "ready to proceed." In RFI's we have reviewed it has been noticed that many submittals are more optimistic regarding their implementation schedules than is realistic. Be advised that we have not been allowed to streamline our process, and this will potentially affect the ability of a project's ability to get through our SRF review/readiness process and meet the funding deadline. If you do not have a grant project, you will get funding, it just may be later and come in under the regular SRF funding process.

The priority and basic purpose for the Drinking Water SRF is to promote compliance with the Safe Drinking Water Act. Under the Recovery program, we have to include another priority that the project has to be "ready to go" in a fast time period, be SRF-eligible, and qualify for a grant. There are additional factors that we have not traditionally had to deal with, such as identification of projects that will create jobs, and there is no priority score basis for how many jobs are created. So a project with a high priority score but creates very few jobs will have preference over a project that creates a lot of jobs.

5. If we already have a project (Polk City) that has completed the pre-construction process with SRF funds and is ready to go to construction but is not a financially disadvantaged community, where does that put our project on the list? It would normally be in position for construction funding.

Answer: You should be in good shape for inclusion for SRF construction funds.

6. Is there any consideration being given to relaxing any of the grant requirements for use of the Recovery funds?

Answer: It will likely all come down to how much of the grant funding can be made under the existing Statutes and SRF Rule Chapter. We are able to "tweak" the grant provisions for the Recovery funding by use of an Emergency Order (which waives certain Statute provisions) if necessary to commit all the grant funds. We will do whatever is required to be able to get all the funds "out the door." Eventually, there is also likely to be a Rule revision/update.

7. Regarding your comments on Rule-making and job creation, at the top of page 2 of the Draft Recovery (Intended Use Plan (IUP) there is additional objectives listed as guidance, one of which states “preserve and create jobs...” Since you will be operating under the existing SRF, are these guidelines likely to change?

Answer: The language was included at the guidance of EPA Region IV as it was contained in the final American Recovery and Reinvestment Act of 2009 (ARRA 2009) Bill. The Recovery IUP will be submitted to EPA along with Florida’s Recovery grant application. How we will implement all of the requirements of the ARRA 2009 language is still being evaluated and more information will be forthcoming.

8. Considering the overall ARRA 2009 provisions, have you look at prioritizing Drinking Water SRF projects that are required as a result of other areas of the Act, such as transportation improvements? These type of utility projects were not planned or budgeted for by communities in their near future work plans, which means we’ve got to “find” the money somewhere. Speaker would like to see grant funds available for these projects.

Answer: There is a lot of merit to what you are stating, but there is not a mechanism included in ARRA 2009 to prioritize projects on that basis, and under the SRF Rule Chapter it would not be given a high priority score.

9. Did I hear you say that Recovery funds for grants would require the provisions of the Davis-Bacon Act and “Buy American,” but that the loans would not?

Answer: No, both Recovery grants and loans will require these provisions. And they will only apply to the projects themselves, not to the regular SRF program funds or to the entire Agency’s program.

10. Is there going to be a difference in the Recovery fund grant or loan? Do the provisions of NAFTA have anything to do with the “Buy American” provision? Does the “Buy American” provision give municipalities any flexibility to sole source an acquisition from an American company? Have there been any guidelines from EPA regarding the “Buy American” clause, because there are waivers under certain circumstances...(inaudible)?

Answer: There would only be minor differences, if any, in the language, with the exception that there will likely be a “ratcheting down” on the

timeframes and specific milestones developed for each project's completion in order that SRF funds may be committed/disbursed on the contract to meet ARRA 2009 requirements. To receive Recovery funds, a project must be under contract for construction or under construction within one year of the ARRA 2009 enactment. EPA guidance indicates that the "Buy American" provision may be waived if it would violate any existing treaties and that "Buy American" provision for steel may be waived if it would raise the overall project cost by 25% or more, or if no reasonable or sufficient quantity is available from American producers.

11. In response to the "green project" provisions in ARRA 2009, are you going to ask (in the RFI process) any questions related to how a project may meet those conditions?

Answer: Yes, we will be evaluating projects to determine how they will be meeting any "green project" conditions (water and energy efficiency) as components of projects in order for us to meet the ARRA 2009 requirement that 20% of our EPA Recovery grant allocation be used for these elements. As we develop our Fundable List we will be in contact with Sponsors to see how much we can "squeeze out" of each project.

12. How about the opportunity to do design-build projects? This approach is being used by FDOT to satisfy the "under construction/under contract" requirement.

Answer: We aren't sure how we can accommodate that type of project. We will be working with the Clean Water SRF section to learn how they have been handling this, since they have more experience with design-build projects than we do.

13. Can the written guidance you said that you have received from EPA be made available?

Answer: Yes, it will be placed on our Drinking Water SRF website.

14. In your opinion, if there is a Recovery grant-eligible project that does not already have an RFI submitted for your review, what are the probabilities of it making the Recovery DWSRF fundable list?

Answer: If it has a high enough priority score and the Sponsor is committed to completing planning work and being under contract/construction by February 16, 2010 we would do our best to get it

on the Fundable List. (Editor's Note: We remain in great need of this type of project.)

15. It was noted by an attendee that there may be very few communities that can meet all of the grant conditions as they exist (in the SRF Rule Chapter) today. They asked for a show of hands as to how many attendees were present that represented a small, financially disadvantaged community with a public health risk component.

Answer: Seven persons raised their hand. It was observed that none of the Sponsors had had completed all of the planning phase requirements. One had a sponsor that had an approved water facilities plan and state clearinghouse acceptance. The attendee speaking made the comment that if you have not started the water facilities plan by now and it is something they have not gone through before, meeting the requirement to be under contract/construction within one year will be difficult. A DWSRF staff member commented that it is possible to review plans and specifications ahead of the facilities plan, and that we will do everything possible to assist a potential sponsor in completing our process and requirements within the required time frame.

16. Craig Diltz stated that if there are any other items that we could post on our web site which would be of help to the Sponsors or their Consultants to get through the process more easily, please contact us. He also noted that there will be a noticed Administrative Hearing forthcoming which will be for approval of the final Recovery 2009 IUP including the Fundable List with all fundable projects and their priority scores.

Reply: Our schedule (when we know it) and a Frequently Asked Questions link were suggested by the attendees.

17. Can you confirm that the Recovery grant funds may only be used for those portions of projects that comprise the public health risk component under the SRF Rule Chapter? For a project with construction costs higher than the Recovery fund's segment cap, will the balance of the project cost be eligible for funding under the regular DWSRF 2009 Fundable List?

Answer: Yes, that is correct according to the existing SRF Rule Chapter requirements as they are now written; however the balance of the project's costs can be funded with Recovery loan funds up to the segment cap. With regard to the balance of project costs that are higher than the Recovery fund segment cap, any additional funding for the project using the regular SRF funds would have to be obtained by going through that fund's project prioritization process and be placed on its Fundable List.

The Recovery fund's EPA capitalization grant allocation is to be kept totally separate from the regular SRF allocation. There would need to be a separate agreement created for the "non-Recovery fund" portion of project funding from the current or future year(s) regular SRF allocations.

18. Do you anticipate any changes to the 65% and 85% grant allocation percentages in developing the Recovery SRF Fundable List?

Answer: Not at this time. It should be noted that the SRF Rule Chapter says "up to 65%" and "up to 85%" which gives us a lot of latitude already. If it were to be considered, it would probably be based on affordability criteria. Based on the above, the Recovery SRF grants are not anticipated to be awarded at 100%, unless directed by Secretary Sole. A comment was made by an attendee that if the grant portion of the projects on the priority list was less than the required amount to meet the ARRA 2009 50% grant funding requirement, it may be necessary to open up the list to additional lower-priority grant projects and he offered a suggestion for developing a New point scale.

Mr. Diltz re-capped what DEP next course of action will be. The Drinking Water section will be going back through all of the RFI's. Those with very low priority scores will not be considered for the use of Recovery SRF funds. Once we get the list pared down to something that looks reasonable based on priority score we're going to go through the RFI's schedule of when the project can be completed. At that point we will probably be contacting potential sponsors not to guarantee funding, but to determine where you really are in the process and if you anticipate being able to complete your project in a suitable time frame in order to get the project under contract. At the point when we develop a reasonable priority list based on readiness to proceed and priority score, we will put it up on our website as a draft and submit our Administrative Hearing notice for publication. If there are no changes, this would be the final priority list of projects which would be sent to EPA and be contained within the final Recovery IUP. We will still accept "last minute" RFI's for consideration of use of the Recovery SRF funds up until a week before the hearing date. Management is making the decision on the amount of Recovery funds which will be used as set-asides, which are used to enhance DEP's ability to get communities in compliance with the Safe Drinking Water Act. Also, take heart in the fact that as far as loans are concerned, the Recovery loan funds will only make up about 25% of our total loan amount available over the next two years, as the majority of loan funds will be made up of EPA's regular SRF annual allocations.