

**CHAPTER 62-503  
STATE REVOLVING FUND LOAN PROGRAM**

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**62-503.101 Scope of the Rule.**

*Rulemaking Authority 403.1835(5)(a) FS. Law Implemented 403.1835 FS. History—New 7-29-04, Repealed 2-16-12.*

**62-503.200 Definitions.**

For purposes of this rule chapter:

(1) “Act” means the Federal Water Pollution Control Act, 33 USC §1251 et seq., as amended, November 2002, also known as the amended Clean Water Act. Sections 212, 319, and 320 and Title VI of the Act pertain to the Clean Water State Revolving Fund, and are hereby adopted and incorporated by reference. This document is available from the Department’s Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/gateway/reference.asp?No=Ref-03908>.

(2) “Affordability Index” The term “Affordability Index” means the empirical number that is generated for a local governmental agency-project sponsor using the computer model entitled “Final Report Statistical Wt. – No Sales,” which is based on a combination of median household income, poverty, and unemployment census statistics for local governments. This computer model can be found in “Updating the Department of Environmental Protection’s Affordability Index, 2011,” August 9, 2011, Economics Department, Florida State University, Tallahassee, Florida, and is hereby incorporated by reference. This document is available from the Department’s Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/gateway/reference.asp?No=Ref-04016>.

(3) “Asset Management Plan” means a systematic management technique for utility systems that focuses on the long-term life cycle of the assets and their sustained performance, rather than on short-term, day-to-day aspects of the assets. This plan includes the identification of and costs for rehabilitating, repairing, or replacing all assets as well as the schedule to do so. Subsection 62-503.700(7), F.A.C., provides details on the contents of the plan.

(4) “Best management practice” means a control technique that is used for a given set of conditions to achieve water quality and water quantity enhancement at a feasible cost.

(5) “Capitalization grant project” means a project for which the project sponsor shall document compliance with specific federal requirements under subsection 62-503.700(1), F.A.C., in addition to the general requirements under subsections 62-503.700(2) through (7), F.A.C., to qualify for a loan. Capitalization grant projects will be identified in an amount corresponding to the annual capitalization grant received by the Department from the United States Environmental Protection Agency (EPA).

(6) “Capitalized interest” means interest accruing at the loan financing rate and compounding annually from the time when disbursements are made until six months before the first semiannual loan repayment is due.

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

(8) “Construction loan” means an assistance agreement to fund a wastewater, stormwater, or non-point source construction project or equipment purchase. To be eligible for a construction loan, a planning document and plans and specifications must be

accepted by the Department, the environmental review process described in Rule 62-503.751, F.A.C., must be complete, all required Department permits and authorizations must have been obtained, and all necessary site certifications must have been submitted to the Department. For design/build projects, the approval of the procurement process shall be accepted in lieu of the plans, specifications, site certifications, and permits. The requirements for planning documents are described in subsection 62-503.700(2), F.A.C., and the requirements for plans and specifications are described in subsection 62-503.700(3), F.A.C.

(9) "Construction manager at risk" means a firm or other single entity that contracts with the project sponsor for a guaranteed maximum price for the work. The construction manager is responsible for performance under individual construction contracts.

(10) "Department" means the Department of Environmental Protection, Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, FL 32399-2400. For electronic information requests and submittals, email [SRF\\_Reporting@dep.state.fl.us](mailto:SRF_Reporting@dep.state.fl.us).

(11) "Design/build" means a contracting procedure whereby a firm or other single entity contracts with the project sponsor for a fixed price or a cost-plus-a-fixed-fee with a guaranteed maximum price, and is responsible for both design and construction of the project. The procurement process must be competitive best value or competitive qualifications based. For a competitive best value selection, the most advantageous proposal to the project sponsor is selected based on criteria that include price and other factors. For competitive qualifications based procurement, the qualifications of the responsible vendor are the primary consideration in the selection process and the responsible vendor shall use open book accounting for this process.

(12) "Design loan" means an assistance agreement to fund design activities that will result in biddable, permittable plans and specifications for an eligible construction project. Design/build projects are not eligible for a design loan. Additionally, a planning document defining the scope of the project to be funded must have been accepted by the Department. The requirements for an acceptable planning document are described in subsection 62-503.700(2), F.A.C.

(13) "Financial hardship" means a situation where the affordability index of a small community to be served by the project is less than 100.

(14) "Financing rate" means the semiannual compounding rate at which charges are imposed on the unpaid principal, including capitalized interest, of a State Revolving Fund (SRF) loan as described in subsection 62-503.300(5), F.A.C., hereby incorporated by reference. The financing rate has a loan interest rate component and, for non-capitalization grant project loans, a grant allocation assessment rate component.

(15) "Fiscal year" means the 12-month period between July 1 and the following June 30.

(16) "Fundable portion" means the portion of a priority list consisting of the projects to which funds allocated each year by the Department have been assigned.

(17) "Funds allocated each year by the Department" means funds that are available or expected to be available for loans during the fiscal year for which a priority list is being developed as a result of the following:

(a) Federal capitalization grants and state appropriations less the amount of any funds appropriated or statutorily designated for specific projects or purposes;

(b) Loan repayments;

(c) Investment earnings;

(d) Net proceeds of bonds issued by the Florida Water Pollution Control Financing Corporation; and,

(e) Funds recovered from loan decreases.

(18) "Grant allocation assessment" means that portion of each repayment of each non-capitalization grant project loan used solely for the purpose of making wastewater grants to financially disadvantaged small communities under Section 403.1838, F.S. The grant allocation assessment is in addition to the principal and interest portions of each non-capitalization grant project loan repayment and is included as a component of the financing rate.

(19) "Inflow/infiltration or I/I project" means a project to reduce excessive inflow or infiltration into the collection system. Infiltration is considered excessive when the total flow exceeds 120 gallons per capita per day during periods of dry weather. Inflow is considered excessive when the total flow exceeds 275 gallons per capita per day during a rain event. Documentation shall include influent flow rates, rainfall records and the population of units connected to the treatment system or lift station.

(20) "Innovative/Alternative project" means a project that demonstrates water or energy efficiency, uses an environmentally innovative approach to treat wastewater or stormwater, or a stormwater project that restores the natural hydrology. The requirements for meeting one or more of these categories are provided in Attachment 2 of EPA's "Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund

Programs,” March 2012, hereby incorporated and adopted as a reference. This document is available from the Department’s Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/gateway/reference.asp?No=Ref-03910>. For energy efficiency projects the recipient shall provide a certification. The certification must state that the accepted project was designed to maximize energy efficiency. Certifications by a certified energy manager (CEM) or a certified energy auditor (CEA) are acceptable. CEMs and CEAs must be certified by the Association of Energy Engineers or equivalent national or international organization. Information on these certifications is available at: <http://www.aeecenter.org/i4a/pages/index.cfm?pageid=3330>.

(21) “Leveraged loan” means a loan issued by the Florida Water Pollution Control Financing Corporation (FWPCFC).

(22) “Loan Service Fee” means a fee paid by the project sponsor of two percent of the total loan amount less the portion of the loan for capitalized interest and shall not be included in the principal of the loan. The loan service fee shall be estimated at the time of execution of the loan agreement, revised with any increase or decrease amendment, and shall be finalized in the final loan amendment based on the total loan disbursed. The loan recipient shall pay the loan service fee from the first available repayments following the final amendment.

(23) “Planning loan” means an assistance agreement to perform the initial planning and administration for a project. The deliverable for this loan shall be a planning document or a sewer system evaluation study. The requirements for the planning document are described in subsection 62-503.700(2), F.A.C. A planning loan shall not be used to acquire any interest in real property.

(24) “Planning portion” means the portion of the priority list consisting of projects that do not qualify for the fundable or waiting portion.

(25) “Pledged revenue” means revenue specifically approved by the Department and dedicated to the repayment of the loan.

(26) “Priority list” means the annual listing of fundable, waiting, and planning portion projects.

(27) “Project” means as follows:

(a) For funding as a result of section 212 of the Act, devices and systems associated with wastewater, reclaimed water or stormwater management facilities; and,

(b) For funding as a result of either section 319 or 320 of the Act, devices and systems or implementation of best management practices associated with nonpoint source water pollution control.

(28) “Project costs” means costs for construction, procurement of equipment and materials, contingency, demolition, legal and technical services, land acquisition, and capitalized interest.

(29) “Project sponsor” means a local government eligible under the Act or other entity eligible as a result of sections 319 and 320 of the Act to receive a loan.

(30) “Request for Inclusion” means completed Form RFI 1, Request for Inclusion, on the CWSRF Priority List, effective 4-22-14, which is hereby incorporated by reference. This form is available from the Department’s Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/Gateway/reference.asp?No=Ref-03911>.

(31) “Segment cap” means the maximum amount available to any one sponsor during a fiscal year. The segment cap amount shall be established at a public meeting approving the list and shall be less than 25 percent of the funds available. Adjustments to the segment cap amount shall be made at a list management public meeting if additional funds become available and all projects eligible for placement on the fundable portion of the priority list at the most recent list approval or list management public meeting have been funded.

(32) “Septic tank failure” means a condition existing within an onsite sewage treatment and disposal system that prohibits the system from functioning in a sanitary manner and that results in the discharge of untreated or partially treated wastewater onto the surface of the ground, into surface water, into ground water, or that results in the failure of building plumbing to discharge properly. However, for the purposes of this rule, failures resulting from improper maintenance of the system or lack of maintenance shall not be considered a septic tank failure.

(33) “Service Area” means that area currently served by the project sponsor and any additional area proposed to be served by the sponsor’s project.

(34) “Small community” means a municipality or unincorporated community with a total population of 10,000 or less as of the most recent decennial census.

(35) “Waiting portion” means the portion of a priority list consisting of projects that are qualified to be on the fundable portion

but cannot be placed on the fundable portion until there are sufficient funds.

(36) "Useful life" means for land – 100 years; conveyance pipes – 50 years; other structures such as buildings and tankage – 30 to 50 years; process equipment – 15 to 20 years; and auxiliary equipment such as power generators and controls – 10 to 15 years.

(37) The following terms and phrases used throughout this rule chapter have the meaning given these words in Section 287.012, 403.1835, 403.1837 or 403.031, F.S.: best value, FWPCFC, and local governmental agencies.

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1832, 403.1835, 403.031, 403.1837 FS. History–New 4-17-89, Amended 12-4-91, 2-23-94, Formerly 17-503.200, Amended 1-4-98, 7-1-99, 2-6-02, 7-29-04, 4-22-14.*

### **62-503.300 General Program Information.**

(1) Steps involved in obtaining a loan.

(a) Request for inclusion. The project sponsor shall submit a Request for Inclusion Form, incorporated by reference in subsection 62-503.200(30), F.A.C., to the Department to establish project ranking on the priority list as outlined in paragraph (1)(e), below, and to determine the financing rate on the loan, as outlined in subsection (5), below:

1. The Department shall review requests for inclusion to verify eligibility and accuracy of the information provided, such as census tract numbers, service area boundaries, population, public health risk, system boundaries, project costs, and to determine the project scope.

2. Additional information shall be requested by the Department when the data provided by the project sponsor are incomplete or unclear.

(b) Documentation required for priority listing. The documentation that must be timely submitted to compete for funding at a priority list meeting varies depending on the type of loan being requested and is known as the readiness-to-proceed criteria. For planning loans, the completed Request for Inclusion form is the only documentation required. For design loans, the Request for Inclusion form and all documentation required in subsection 62-503.700(2), F.A.C., must be submitted and complete. For Inflow and Infiltration (I/I) rehabilitation loans, the Request for Inclusion form, sewer system evaluation study, all documentation referenced in Rule 62-503.751, F.A.C., all required permits and bid documents corresponding to the areas to be rehabilitated must be submitted. For construction loans, the Request for Inclusion form, all documentation referenced in subsections 62-503.700(2) through 62-503.700(5), F.A.C., must be submitted, and the process described in Rule 62-503.751, F.A.C., must be completed.

(c) Priority List Public Meeting.

1. Except as provided in subparagraph 2., below, if funds are available for new projects, a priority list public meeting shall be held on the second Wednesday in August, or as otherwise noticed in the Florida Administrative Register at least 60 days in advance of the public meeting.

2. If the waiting portion from the previous fiscal year exceeds twice the anticipated available funds, no public meeting shall be held, unless it is necessary to add projects to meet federal requirements. If such a public meeting is held, only those projects necessary to comply with the federal requirements shall be considered. For the purposes of this paragraph, anticipated available funds means federal capitalization grants and state matching funds expected to be received during the state fiscal year, loan repayments minus debt service payments to be received during the state fiscal year, any carry over funds from the previous year, and anticipated interest earnings during the fiscal year.

3. If additional funds are available after the priority list public meeting, one or more priority list management public meetings shall be scheduled to allocate the additional funds.

(d) Readiness-to-proceed deadline. For a project to appear on the priority list, the sponsor shall have postmarked or delivered to the Department all documentation as required in paragraph (b), above, no later than 45 days before the priority list public meeting at which the project competes for funding. Electronic submittals to the Department are encouraged. The project sponsor must respond to all Department comments related to the required documentation and must submit these responses at least 15 days prior to the public meeting.

(e) Priority system. Timely submitted 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 for each project shall be determined as described in subparagraphs 1. through 4., below.

1. Base priority score. Each project shall receive a base priority score (BPS) based on the weighted average of its components or facilities. The BPS shall be determined based on the following formula where CPS means the component priority score and CCC means component construction cost or:

$$\text{BPS} = [\text{CPS1} \times \text{CCC1} + \dots + \text{CPSn} \times \text{CCcn}] / \text{Total Construction Cost}$$

Project components shall be assigned component priority scores according to the categories in Table 1.

Table 1

Project Component	CPS
1. Eliminate a documented acute or chronic public health hazard.	500 points
2. Implement a project included in, or to be implemented as a direct result of, an adopted Basin Management Action Plan or a Reasonable Assurance Plan approved pursuant to Section 403.067, F.S.	450 points
3a. Protect surface or ground water by reducing a documented source of pollution, pollution reductions necessary to meet regulatory requirements, or 3b. Projects or activities by local governmental agencies or on-site system management entities, under section 319 of the Act, that correct septic tank contributions to nutrient impaired spring systems.	400 points
4. Address a compliance problem documented in an enforcement action where the Department has issued a notice of violation or entered into a consent order with the project sponsor.	375 points
5. Meet the criteria for Innovative/Alternative; correct excessive inflow/infiltration; scheduled rehabilitation, replacement, or repair described in an approved asset management plan; or reuse that replaces an existing or proposed demand on a water supply.	350 points
6. Planning and design loans and for rehabilitation, replacement or repair not included in an approved asset management plan.	340 points
7. Projects that construct other reclaimed water systems or residuals reuse systems that do not meet the criteria of component 5., above.	300 points
8. Ensure compliance with other enforceable standards or requirements.	200 points
9. Timely submitted project that otherwise meets the requirements of the Act.	100 points

2. Special waters of the state factor. A project base priority score assigned under subparagraph (e)1., above, shall be multiplied by 1.2 if the project is a construction project that will assist in the restoration or protection of Outstanding Florida Waters (pursuant to Section 403.061, F.S.), a water body identified under the National Estuary Program (pursuant to the Act); a federally designated Wild, Scenic or Recreational River Area; or an impaired water body on the State's adopted verified list of impaired waters.

3. Construction projects that result in the elimination of ocean outfalls or are identified in a regional water supply plan developed pursuant to Section 373.709, F.S., shall have 15 bonus points added to the priority score after the adjustment under subparagraph (e)2., above.

4. 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. For a sponsor that qualifies as a small community with a financial hardship, points shall be added to the priority score, using the formula 1000 divided by the Affordability Index, after adjustment under subparagraphs (e)2. and (e)3., above.

(f) Priority List Development. The priority list is developed at the public meeting and includes the fundable, waiting, and planning portions. Projects that meet the requirements of paragraph (b), above, compete for placement on the fundable or waiting portions using a tiered ranking system. Tier 1 includes all projects previously on the fundable portion which require an increase to an existing loan, tier 2 includes new projects that receive a priority score of 350 points or more, and tier 3 includes all other projects. Tier 1 is the highest priority and tier 3 the lowest. Within each tier, projects are ranked in priority score order with the highest score at the top of the tier. Once the segment cap has been determined, the available funds are assigned to projects in tiers 1 and 2 moving down the list until all projects have been assigned funds, up to the lower of the requested amount or the segment cap, or until the available funds are exhausted. The unfunded balance is then placed on the waiting portion, up to a maximum of \$50,000,000.00 million, by tier then priority score order. If funds remain available, they are assigned to projects in tier 3 until the funds are exhausted or all projects have been funded. Projects that must be added to meet special provisions of a federal capitalization grant shall be added to the bottom of the fundable portion, bypassing projects that would otherwise be placed on the fundable portion. After the ranking of projects, the proposed list shall be posted on the Department's website not later than 14 days before the priority list public meeting. Projects from tier 3 that do not receive any funding are placed on the planning portion in alphabetical order. To receive funding, projects on the planning portion must compete for funding at a subsequent priority list public meeting.

(2) Allowable project costs. Costs incurred before execution of a loan agreement shall be ineligible for reimbursement upon

execution of the agreement unless the project sponsor receives prior written authorization from the Department to incur such costs. Categories of allowable project costs include the following water pollution control activities subject to such limitations for leveraged loans as are necessary to maintain the tax-exempt status of bonds issued by the FWPCFC:

(a) Land necessary for and integral to the treatment process and for the ultimate disposal of wastewater or stormwater, including the zone of discharge. Funding shall be limited to the fair market value of the acreage, in fee simple, of the qualifying land. If additional land is acquired, the eligible amount shall be the acreage of the qualifying land divided by the total area purchased times the purchase price;

(b) Construction and related procurement and other arrangements used to implement planned activities (such as a best management practice);

(c) Demolition and removal of existing structures;

(d) Contingency for project cost overruns under subsection 62-503.300(4), F.A.C.;

(e) Technical services after bid opening or award of design/build projects, and legal services resulting directly from the requirements of the Department supplied supplementary conditions that are included in the bid documents to comply with federal requirements, or legal services resulting from contractor non-compliance with the construction contract;

(f) Costs associated with interim financing for project sponsors that proceed without sufficient loan funds from the Department, for which the sponsor has received prior written authorization from the Department;

(g) Capitalized interest;

(h) The purchase of a domestic wastewater facility, excluding the value of land that does not meet the requirements of paragraph 62-503.300(2)(a), F.A.C. In addition, an appraisal is required to identify the land costs that must be excluded;

(i) Technical services for soil and hydrogeological tests, geotechnical evaluations, sewer system evaluations, archaeological surveys and value engineering services performed by a SAVE International Certified Value Specialist. See the SAVE International web site at <http://www.value-eng.org/> for more information;

(j) Costs for planning and design;

(k) Project costs, excluding operational costs, to implement best management practices for agricultural nonpoint source water pollution control;

(l) For sewer system evaluation studies, technical services for generating a sewer system evaluation survey, inflow corrections including replacing clean out caps, installing seals and dishes for manholes, and the televising/cleaning of lines including point repairs as necessary;

(m) For I/I rehabilitation loans, construction and related procurement used to implement the Department approved planned activities for an I/I rehabilitation project;

(n) Preparation and implementation of an asset management plan. To be eligible for reimbursement, the asset management plan must meet the requirements of subsection 62-503.700(7), F.A.C.; and,

(o) Constructed wetlands to be used for the treatment of domestic wastewater.

(3) Ineligible project costs.

(a) Acquiring all or part of existing stormwater, wastewater, or water pollution control management systems, except as allowed in paragraph 62-503.300(2)(h), F.A.C.;

(b) Project facilities or activities not included within the Department approved project scope;

(c) Costs for the projects sponsor's personnel in constructing project facilities or implementing of agricultural best management or conservation practices;

(d) Costs incurred after the project closeout has been conducted by the Department to document project completion, final project costs, and adequacy of sponsor's project files;

(e) Project facilities or services for which the planning, design, construction and procurement requirements of Rule 62-503.700, F.A.C., are not met;

(f) Water pollution control systems or components thereof, under a leveraged loan, that service a private use to the extent that the tax status of bonds issued by the FWPCFC is jeopardized;

(g) Acquisition of sewer rights-of-way, sewage treatment plant sites, sanitary landfills, and other site acquisition that is not necessary for and integral to the treatment process as described in section 212(2)(A) of the Act;

(h) Service connections on private property unless the project qualifies for funding as a result of section 319 of the Act;

(i) Costs incurred before execution of a loan agreement unless the Department has provided written authorization to incur costs;

- (j) Any portion of a project funded by an executed agreement from any regional, state, or federal funding agency; and,
- (k) Any other cost not listed as allowable under subsection (2), above.

(4) Project contingency.

(a) At the time of loan approval and when actual costs are unknown, project contingency shall not exceed 10% of the estimated sum of the construction costs and costs for allowable land. The contingency shall be adjusted by the Department to not more than 5% after procurement contracts have been executed. There shall be no contingency for land when the costs are known.

(b) The contingency remaining after accounting for contract change orders shall be eliminated by the Department when project closeout occurs.

(c) Contingency funds shall not be used to purchase equipment or pay for construction work or other activities not described in the loan agreement.

(5) Financing rate.

(a) The financing rate shall be calculated as follows except that the minimum financing rate shall be 0 percent and the maximum financing rate shall be the market rate:

$$FR = MR - 4 + (4/(1+(100/AI)^3)) - 1/\text{Log}(P)$$

Where:

FR = financing rate

MR = Market Rate

AI = Affordability Index

P = Population served or to be served by the sponsor

When bond proceeds are available for leveraged loans, the market rate shall be the most recent rate at which bonds were sold by the FWPCFC. When bond proceeds are not available, the market rate for interest shall be established using the Thomson Publishing Corporation's "Bond Buyer" 20-Bond GO Index. The market rate, is established by the Department as of January 1, April 1, July 1, and October 1 of each year and it is the average weekly yield during the three months (3) immediately preceding the date of determination. The average weekly yield is derived from the yields reported in the "Bond Buyer" for the full weeks occurring during the three-month period.

(b) The financing rate shall be fixed for the principal amount of the loan and for the duration of the loan repayment period. The financing rate shall be established separately for each amendment resulting from a project cost increase or new segment. The Affordability Index shall be adjusted when a design loan is rolled over to a construction loan to account for changes in project service area or for changes in the census data, but shall remain the same for all construction amendments. The financing rate shall be further adjusted by each of the following for which the project qualifies:

1. Projects with a Department accepted and implemented asset management plan that meets all requirements in subsection 62-503.700(7), F.A.C., shall be eligible for a reduction in the financing rate if implementation has been verified at least three (3) months prior to the first scheduled repayment. The financing rate shall be as calculated in paragraph 62-503.300(5)(a), F.A.C., minus 0.1.

2. Projects that qualify as Innovative/Alternative projects as defined in subsection 62-503.200(20), F.A.C., shall also be eligible for a reduction in the financing rate. For projects that are entirely Innovative/Alternative projects, the financing rate shall be as calculated in paragraph 62-503.300(5)(a), F.A.C., minus 0.1. For projects with components that do not qualify as Innovative/Alternative projects, the financing rate reduction shall be 0.1 times the Innovative/Alternative projects component cost divided by the total as-bid construction cost. For these projects the financing rate reduction shall be applied only after the project has been bid.

3. Projects that include a requirement for Davis Bacon wage rates as required in 29 C.F.R. Part 5, Subpart A (7-1-2013 Edition), hereby incorporated by reference, shall be eligible for a reduction in the financing rate of 0.25. This document is available from the Department's Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/gateway/reference.asp?No=Ref-03912>.

4. Projects that include a requirement for Buy American as required in 40 C.F.R. Part 35, Subpart E (7-1-2013 Edition), or 2 C.F.R. Part 176, Subpart B (1-1-2013 Edition), hereby incorporated by reference, shall be eligible for a reduction in the financing rate of 0.75. This document is available from the Department's Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/gateway/reference.asp?No=Ref-03913>, and <http://www.flrules.org/gateway/reference.asp?No=Ref-03914>.

(c) The financing rate for a non-governmental sponsor of a project that qualifies for funding as a result of section 319 or 320 of

the Act shall be fifty (50%) percent of the market rate as established in paragraph (5)(a), above.

(6) Debt coverage for non-governmental sponsors. A non-governmental sponsor of a project that qualifies for funding as a result of section 319 or 320 of the Act shall document that it has a current term debt and capital lease coverage ratio of at least 1.15. This ratio shall have, as its numerator, net operations income plus non-operating income plus depreciation plus interest on term debt (multi-year debt) minus payroll and income taxes minus owner withdrawals; and, as its denominator, the sum of scheduled payments on term debt and long-term leases.

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History--New 4-17-89, Amended 12-4-91, 2-23-94, Formerly 17-503.300, Amended 1-4-98, 7-1-99, 2-6-02, 7-29-04, 4-22-14.*

### **62-503.430 Loan Applications and Agreements.**

#### **(1) General.**

(a) A complete loan application, Form Application 1, State Revolving Fund Loan Program for Point Source Water Pollution Control Loan Application, effective 4-22-14, or Form Application 2, State Revolving Fund Loan Program for Non-Point Source Water Pollution Control Loan Application, effective 4-22-14, shall be submitted to the Department within 120 days after the project is listed on the fundable portion of the priority list. Both of these forms are hereby incorporated by reference. The project sponsor may incorporate into the loan application, by reference, any information previously submitted to the Department. These forms are available from the Department's Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/gateway/reference.asp?No=Ref-03915>, and at <http://www.flrules.org/gateway/reference.asp?No=Ref-03916>.

(b) To receive a loan, a project sponsor must submit a complete loan application, provide reasonable assurance that it has the financial capability to complete the project and repay the loan, and enter into a negotiated written agreement. Loan agreements shall be offered to project sponsors for projects listed on the fundable portion in the order of receipt of a complete application irrespective of priority score, project rank, or qualification for the small-community reserve funds.

(c) If a project sponsor does not submit a complete loan application within 120 days, or a loan agreement is not executed within 210 days after a project is added to the fundable portion, the project shall be removed from the priority list at the next scheduled public meeting, unless mitigating circumstances are presented to the Department by the beginning of that meeting that document why the application was not submitted or why the agreement was not executed by the appropriate deadline.

(d) Project sponsors shall provide reasonable financial assurance that project activities will be completed including requirements for service providers and equipment suppliers or manufacturers to provide performance guarantees; and insurance covering workers' compensation, comprehensive general liability, vehicle liability, and property damage to the extent that coverage is available for project activities.

(e) Financial hardship loans shall not be awarded with funds from the FWPCFC.

(f) The Department shall have the primary responsibility for drafting the loan agreement and setting its terms. The loan agreement shall have terms to meet program requirements. Loan agreement covenants may vary for direct and leveraged loans. Projects being funded as a result of different sections of the Act or as a result of different sources of pledged revenues may have different loan agreement provisions.

(2) Pledged Revenues. The loan recipient shall make deposits of pledged revenues to a restricted or assigned debt service account and shall be responsible for the maintenance of that account.

(a) Pledged revenues for projects sponsored by a local government shall be a minimum of 1.15 times the amount required to make each semiannual loan repayment unless the project sponsor establishes a restricted or assigned reserve account in an amount not less than the equivalent of two semiannual loan repayments. The pledged revenue coverage for the loan from the Department shall not be transferred or derived from coverage required by senior lien debt instruments.

(b) Pledged revenues for projects sponsored by other than a local governmental agency shall be a minimum of 1.15 times the amount required to make each semiannual loan repayment and shall be secured with collateral having an appraised market value not less than 125% of the loan principal. The appraisal report must be less than 12 months old at the time the loan application is received. The loan applicant must own the real property in fee simple without any mortgages, liens or other encumbrances on the title to the property that would limit the Department's ability to sell the property in case of default on the loan.

(3) Legal Affirmation. When a loan agreement executed by a local government project sponsor is submitted to the Department for execution, it shall include an affirmation by the project sponsor's legal counsel that:

- (a) The loan agreement constitutes a valid and legal obligation of the borrower;
- (b) The loan agreement specifies the revenues pledged to the repayment of the loan; and,
- (c) The pledge is valid and enforceable.
- (4) Security. The Department shall have no lien on or security interest in or claim on any monies or property except as expressly provided in the loan agreement and, for projects sponsored by other than a local government, the security interest agreement.
- (5) Assurance of compliance. The project sponsor shall provide assurance that:
  - (a) Records will be kept using generally accepted accounting practices. The Department, the Auditor General, and their agents shall have access to all records pertaining to the loan.
  - (b) Project facilities will be properly operated and maintained and best management practices shall be continued, as appropriate.
  - (c) Loan funds will not be used for the purpose of lobbying.
- (6) Disbursements. Disbursements to the project sponsor shall be for allowable invoiced costs. Disbursements shall be subject to the following requirements:
  - (a) Requests for disbursements for construction and engineering services costs shall be accompanied by itemized summaries of the materials, labor, or services to identify the nature of the work performed. The disbursement package shall also include a statement that the construction or other service for which payment or reimbursement is sought has been satisfactorily performed;
  - (b) The materials, labor, and services shall be part of the approved project scope; and,
  - (c) The disbursement shall be due under the terms of the loan agreement, and there shall be money available under the loan agreement for payment.
- (7) Repayments. The project sponsor shall begin repaying a loan no later than the date scheduled under the loan agreement. The scheduled date shall be six (6) months after the estimated completion date or, for projects using interim financing to complete the project prior to receiving a SRF loan, six (6) months after the first available interim loan payoff date.
- (8) Loan repayment term.
  - (a) Loan repayment periods for projects sponsored by a local governmental agency shall be limited to twenty (20) years or the useful life of the project, whichever is less. Loan repayment periods shall be extended to a maximum of thirty (30) years as allowed under the Act for projects to benefit a small community with a financial hardship.
  - (b) Repayment periods for loans sponsored by other than a local governmental agency shall be limited to twenty (20) years or the useful life of the project, whichever is less.
- (9) Annual certification. No later than three (3) months prior to the first loan repayment and annually thereafter until the final loan repayment is made, the project sponsor's authorized representative or its chief financial officer shall submit a certification that:
  - (a) Pledged revenue collections satisfy the rate coverage requirement;
  - (b) The restricted or assigned pledged revenue account contains the funds required;
  - (c) The debt service account contains the funds required, if applicable; and,
  - (d) For loans awarded after 4-22-14, that the revenue generation system is in conformance with subparagraph 62-503.700(2)(h)3., F.A.C.
- (10) Remedies for defaults. Remedies for delinquent loan repayment and other events of default shall be limited to those set forth in loan agreements. Events of default shall include noncompliance with any of the terms of a loan agreement. No delay or omission to exercise any right or power accruing upon an event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 4-17-89, Amended 12-4-91, 6-21-93, 2-23-94, Formerly 17-503.430, Amended 1-4-98, 7-1-99, 2-6-02, 7-29-04, 4-22-14.*

### **62-503.500 Funds Reserved for Specific Purposes.**

- (1) Small community reserve. Fifteen percent of the funds allocated each year by the Department less the amount of any bonds issued or to be issued by the Florida Water Pollution Control Financing Corporation shall be reserved to fund projects that will serve small communities. The Department shall administer the small-community reserve funds as follows:
  - (a) A project serving a small community shall retain eligibility for funding from the small-community reserve regardless of the population of the project sponsor seeking funding for the project. However, a project shall not be eligible for funding from the small-community reserve if more than half of the population of the community to be served by the project is located within an incorporated jurisdiction that is not a small community.

(b) When the priority list is adopted, any part of the reserved amount not needed for small-community projects shall become available for all projects.

(2) Grant allocation assessment. Grant allocation assessments and earnings that have been released from any lien securing any bonds shall be used solely for making wastewater management project grants to financially disadvantaged small communities under Section 403.1838, F.S.

(3) Innovative/Alternative project reserve. If required in the federal capitalization grant, funds shall be reserved for Innovative/Alternative projects as defined in subsection 62-503.200(20), F.A.C., if sufficient Innovative/Alternative projects are submitted to use the funds.

(4) Funds reserved for principal forgiveness. If required in the federal capitalization grant, funds shall be reserved for providing loan principal forgiveness to projects that qualify for grants under Section 403.1838, F.S. The percentage of the loan principal forgiven shall be determined as described in subsection 62-505.350(5), F.A.C., and shall be applied at the time each disbursement is made.

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 4-17-89, Amended 12-4-91, 2-23-94, Formerly 17-503.500, Amended 1-4-98, 7-1-99, 2-6-02, 7-29-04, 4-22-14.*

### **62-503.600 Priority List Information.**

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 4-17-89, Amended 12-4-91, 2-23-94, Formerly 17-503.600, Amended 12-26-96, 1-4-98, 7-1-99, 2-6-02, 7-29-04, Repealed 4-22-14.*

### **62-503.700 Planning, Design, Construction, and Procurement Requirements.**

(1) General. The requirements of subsections (2) through (6), below, shall be met for all projects.

(a) Federal regulations incorporated by reference shall be read so that the terms “United States,” “federal,” “EPA,” and “officials of EPA” mean “the Department” unless the context clearly indicates otherwise.

(b) Capitalization grant projects shall be subject to the requirements of specific federal cross-cutting authorities identified in the loan application.

(2) 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. Landmarks and other readily identifiable features shall be noted.

(b) A description of the existing and recommended facilities, estimated capital costs, and estimated operation and maintenance costs, if applicable.

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

(d) A cost comparison of at least three alternatives except for projects in paragraph (e), below.

(e) For projects qualifying for funding as a result of section 319 or 320 of the Act, documentation of conformance with the Act, as incorporated by reference in subsection 62-503.200(1), F.A.C., is required. Acceptable documentation includes at least one of the following:

1. Conservation practices listed in the USDA Natural Resource Conservation Service’s “Field Office Technical Guide, Section IV.” These conservation practices are available on the internet at [http://efotg.sc.egov.usda.gov/efotg\\_locator.aspx](http://efotg.sc.egov.usda.gov/efotg_locator.aspx) and are specific to the county in which the work is to be accomplished.

2. Best management practices established in Florida statute or rule.

3. Agricultural practices implemented to carry out a nutrient management plan prepared by the USDA National Resource Conservation Service or a Florida licensed Professional Engineer.

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

(g) The public participation process used to explain the project and the financial impacts to the public.

1. When a project is eligible for funding as a result of section 212 of the Act, the public participation process 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 and shall inform the public of the capital cost of the proposed project and the long term financial impacts on the customers. Notice of the public meeting shall be in accordance with local requirements or 14 days whichever is greater.

2. When an agricultural practice identified in subparagraphs (e)1. through 4., above, is selected for implementation on the

project sponsor's property and it is eligible for funding as a result of section 319 or 320 of the Act, the public participation requirement shall be deemed to have been met as a result of the environmental review process in Rule 62-503.751, F.A.C.

3. When an agricultural practice identified in subparagraphs (e)1. through 4., above, is selected for implementation on property the project sponsor will acquire, and it is eligible for funding as a result of section 319 or 320 of the Act, the public participation requirement shall be as described in subparagraph (g)1., above.

(h) Financial feasibility information addressing the following:

1. The sources and amounts of revenues to be dedicated to repaying the loan and the expenses, charges, and liens against or to be paid from such dedicated funds or revenues. The information shall demonstrate the ability to repay the loan with a margin of safety. Examples of a margin of safety are as follows:

a. Pledged revenue coverage ratio of at least 1.15 for projects sponsored by a local government agency,  
b. A current term debt and capital lease coverage ratio of at least 1.15, as explained in subsection 62-503.300(6), F.A.C., for projects sponsored by other than a government agency.

2. Capital improvements that will be financed from the same funds or revenues dedicated to repaying the loan. For projects qualifying for funding as a result of section 212 of the Act, information must include capital improvements that will be implemented over at least a two-year period commencing with the first semiannual loan repayment.

3. The proposed system of charges, rates, fees, and other collections that will generate the revenues to be dedicated to loan repayment. The rate structure of the revenue generation system shall be approved at least six months before the first State Revolving Fund loan repayment is due or before the project closeout, whichever occurs first. The rate structure shall be implemented timely to ensure the generation of sufficient revenues dedicated to loan repayment and may be implemented in phases to the extent timely and sufficient revenue generation will be accomplished. The revenue generation system shall be revised, as necessary, to satisfy the pledged revenue requirements of the loan.

(i) An updated 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 if necessary.

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

(k) For a project, or its components, that is to be listed as an Innovative/Alternative project, documentation of how the project is categorically Innovative/Alternative or a business case detailing how the project or its components meet the federal requirements for Innovative/Alternative projects in Attachment 2 of EPA's "Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs," March 2012.

(l) The electronic submittal of planning documentation is encouraged.

(3) Plans and Specifications. The project sponsor shall submit biddable plans and specifications conforming to the planning documentation described in subsection 62-503.700(2), F.A.C., for projects involving construction. For design/build projects the sponsor shall submit a copy of the request for qualifications or requests for proposals, and the preliminary design report submitted for permitting. Final permitted plans and specifications shall be submitted for each component of the project. Electronic submittals are encouraged.

(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 all required permits have been obtained, or written documentation from the applicable permitting authorities that the project will be permitted, or that a permit is not required.

(6) Procurement must be in conformance with 40 C.F.R. 31.36, (July 1, 2011), hereby adopted and incorporated by reference. This document is available from the Department's Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400, or at <http://www.flrules.org/gateway/reference.asp?No=Ref-03917>. When procuring property and services under a SRF loan, a project sponsor shall follow the policies and procedures it uses for procurements from its non-SRF funds provided that the procurement conforms to applicable federal, State and local laws and regulations, and the following requirements:

(a) All procurement transactions shall be conducted in a manner providing full and open competition. The use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals is prohibited. For small purchases that do not cost more than \$100,000.00 price or rate quotations shall be obtained from a minimum of two qualified sources.

(b) Construction contractors shall be selected according to a recognized procurement method such as formal advertised

competitive bidding, competitive best value or competitive qualifications based proposals, or noncompetitive proposals. Delivery methods shall be design/bid/build, design/build or construction manager at risk.

(c) 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.

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, 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 a procurement. The specific features of the named brand which 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 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.

(d) Competitive proposals shall be solicited from an adequate number of qualified sources to ensure open competition. The loan recipients shall have a method for conducting technical evaluations of the proposals received and for selecting awardees.

1. For the competitive best value selection method of procurement, awards shall be made to the responsible firm whose proposal is most advantageous to the loan recipient, with price and other factors considered.

2. For the competitive qualifications based selection method of procurement, statements of qualifications shall be solicited from an adequate number of sources. Statements of qualifications received from at least three responsible vendors shall be considered adequate unless it is determined by the loan recipient that it is in its best interest to proceed with the procurement having received less than three proposals. Statements of qualifications shall be evaluated based on the request for qualifications. Awards shall be made to the responsive and responsible vendor whose statement of qualifications is deemed to be most advantageous by the loan recipient.

(e) 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 verifying the proposed cost data and an evaluation of the specific elements of costs and profits, is required.

4. Loan recipients shall submit the proposed procurement to the Department for pre-award review.

(f) Design/build and construction manager at risk (CMR) procurement:

1. Competitive best value or competitive qualifications based selection shall be used as the selection process for design/build

procurement.

a. Requests for competitive best value or competitive qualifications based selection proposals shall be submitted to the Department prior to advertising for a determination of compliance with loan program requirements.

b. The proposal solicitation shall describe the work eligible for a loan, 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, in a professional journal, or in an electronic plan room.

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

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

f. The design/build team will be identified as part of awarding the contract. If the construction contractor is not identified as part of the award, procurement shall follow steps to ensure a competitive process as described in paragraphs 62-503.700(6)(a) through 62-503.700(6)(d), F.A.C.

2. Requests for proposals shall be used in the selection process for CMR procurement. The request for proposals shall describe the work eligible for a loan, the requirements with which the successful respondent shall comply, and the evaluation process to be used in selecting the successful respondent.

a. Advertising shall include announcement in a publication having general circulation on a statewide basis, in a construction trade journal, in a professional journal, or in an electronic plan room.

b. 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.

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

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

e. Requests for proposals shall be submitted to the Department prior to advertising for a determination of compliance with loan program requirements.

f. Work performed directly by the CMR shall be limited to no more than 50% of the guaranteed maximum price unless a higher percentage is requested and approved by the Department. For any construction work that will be performed by the CMR, bids or request for proposals shall be submitted to and reviewed by the sponsor or any other neutral party as determined by the sponsor to avoid a conflict of interest.

(g) Loan 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.

(h) Loan 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 loan recipient shall participate in selection, or in the award or administration of a contract supported by SRF 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 loan 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. Loan 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 loan recipient's officers, employees, or agents, or by contractors or their agents.

(i) Loan 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. Loan recipients are also encouraged to complete water efficiency and energy audits to minimize operational costs.

(j) Loan 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.

(k) Loan recipients shall maintain records sufficient to detail the significant history of a procurement. These records shall

include the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(l) Loan recipients 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.

(m) Retention of all required records for five (5) years after loan recipients or subloan recipients make final payments and all other pending matters are closed.

(n) For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the Department shall accept the bonding policy and requirements of the loan 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.

(o) A loan 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; and,

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

4. Access by the loan 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, and transcriptions.

5. Incorporating the Department's Supplementary Conditions into its bid or request for proposals documents. These Supplementary Conditions include, but are not limited to, 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).

(7) Asset Management Plans. Loan recipients are encouraged to implement an asset management plan to promote long term sustainability of the system. To be accepted for the financing rate adjustment and to be eligible for reimbursement, an asset management plan must be adopted by ordinance or resolution and written procedures must be in place to implement the plan and it shall be implemented timely. The plan must include each of the following:

(a) Identification of all assets within the project sponsor's system;

(b) An evaluation of the current age, condition, and anticipated useful life of each asset;

(c) The current value of the assets;

(d) The cost to operate and maintain all assets;

(e) A capital improvement plan based on a survey of industry standards, life expectancy, life cycle analysis, and remaining useful life;

(f) An analysis of funding needs;

(g) An analysis of population growth and wastewater or stormwater flow projections, as applicable, for the sponsor's planning area, and a model, if applicable, for impact fees; commercial, industrial and residential rate structures; and industrial pretreatment fees and parameters;

(h) The establishment of an adequate funding rate structure;

(i) A threshold rate set to ensure the proper operation of the utility, if the sponsor transfers any of the utility proceeds to other funds, the rates must be set higher than the threshold rate to facilitate the transfer and proper operation of the utility; and,

(j) A plan to preserve the assets; renewal, replacement, and repair of the assets as necessary, and a risk-benefit analysis to determine the optimum renewal or replacement time.

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 4-17-89, Amended 8-1-90, 12-4-91, 6-21-93, 2-23-94, Formerly 17-503.700, Amended 1-4-98, 7-1-99, 2-6-02, 7-29-04, 4-22-14.*

### **62-503.751 Environmental Review.**

#### (1) General.

(a) The Department shall perform an environmental review for each project to be funded. The environmental review shall evaluate the environmental significance of a proposed project and whether the planning of the project meets the requirements of this chapter. The results of the Department's environmental review for each project shall be issued as an environmental information document which shall be valid for five (5) years from the date of issue, after such time, the document is no longer valid unless a Florida Reaffirmation Notice, pursuant to subsection 62-503.751(5), F.A.C. is written by the Department. The different environmental information documents are described in subsections (2) through (5), below. A notice of availability of an environmental information document shall be published in the Florida Administrative Register 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 thirty (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 within the thirty (30) day comment period to the Department.

(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 governmental agency 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 loan 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 for which a categorical exclusion will be used 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; and,
5. Treatment plant upgrades that are solely to enable public access reuse.

(3) Florida Finding of No Significant Impact (FFONSI). The Department shall issue a FFONSI 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.

(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:
  - 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), as required in 40 CFR Part 35 Subparts K & L, 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 public objection over the environmental impacts of a project provided that the objections to the project have a basis in statute, regulation, or ordinance. A 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 thirty (30) day period beginning on the date of posting of the notice of availability in the Florida Administrative Register; 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 (5) 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 thirty (30) day period beginning on the date of posting of the notice of availability of the FRAN in the Florida Administrative Register.
- (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.

(7) Project Revision Memoranda (PRM). For a project that requires modifications to the selected alternative that do not alter its environmental effects, a PRM shall be written by the Department to document the changes.

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 7-29-04, Amended 4-22-14.*

### **62-503.800 Audits Required.**

(1) Federal or State Audit Required.

(a) In the event that the project sponsor expends \$500,000 or more in federal awards in its fiscal year, the project sponsor must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as published in the *Federal Register*, June 26, 2007, hereby adopted and incorporated by reference. This document is available from the Department's Clean Water State Revolving Fund Program, 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400 or electronic versions are available at [http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf), or <http://www.flrules.org/gateway/reference.asp?No=Ref-03918>.

(b) Section 215.97, F.S., imposes audit requirements on the project sponsor and sub-recipients based on designated thresholds for expenditures. Each agreement entered into pursuant to this rule chapter shall include the audit requirements applicable to the project at the time the agreement is executed.

(2) For your information, pursuant to Section 215.97, F.S., the State is authorized to conduct an audit within five (5) years following project closeout if loan compliance problems have been noted; record keeping deficiencies are noted during close-out; the project involves unusual or questioned costs; or other justification for conducting the audit becomes apparent.

(a) The Department shall give the project sponsor advance notice of any 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.

*Rulemaking Authority 403.1835(10), 403.1837(9) FS. Law Implemented 403.1835, 215.97 FS. History—New 4-17-89, Amended 12-4-91, 2-23-94, Formerly 17-503.800, Amended 1-4-98, 2-6-02, 7-29-04, 4-22-14.*

### **62-503.850 Exceptions to Program Requirements.**

(1) The Department shall consider a request for an exception to the requirements of this chapter if the exception does not conflict with state or federal law or federal regulations.

(2) A request for exceptions must contain the following information:

- (a) The name of the project sponsor; project number; award date, application date, and the assistance amount involved.
- (b) The specific rule to which an exception is requested.
- (c) A complete description of what the exception would accomplish and justification for the exception.
- (d) A statement of whether the same or a similar exception previously has been sought; and, if so, an explanation of the reason for that request and the outcome.
- (e) A demonstration that compliance with the specified rules is unnecessary for abatement of pollution and protection of public health.
- (f) A demonstration that the economic, social, and environmental costs of compliance exceed the economic, social, and environmental benefits of compliance.

*Rulemaking Authority 403.1835(10) FS. Law Implemented 403.1835 FS. History—New 4-17-89, Formerly 17-503.850, Amended 7-29-04, 4-22-14.*