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# Loan Interests

## SDWLP IUP for SFY 09

*Becky Scott*

The Safe Drinking Water Loan Program Intended Use Plan (IUP) for State Fiscal Year (SFY) 2009 is included in the Appendix of this newsletter. Section 1452(b) of the Safe Drinking Water Act requires that each state prepare an annual IUP. The IUP identifies the uses of the funds in the Drinking Water State Revolving Fund and describes how those funds support the goals of the Act.

The IUP is part of Wisconsin's capitalization grant application package for Federal Fiscal Year 2008 funds. After EPA awards Wisconsin's capitalization grant, we will use the grant and state matching funds, as well as other money available in the state revolving fund, to provide financial assistance for drinking water projects and fund programmatic set-asides during SFY 2009.

The SFY 2009 SDWLP Draft Funding List is included with the IUP. We will publish the Final Funding List after we receive our capitalization grant. If you have questions regarding the Draft Funding List, contact Jeanne Cargill at (608) 267-7587 or [jeanne.cargill@wisconsin.gov](mailto:jeanne.cargill@wisconsin.gov).

If you have questions or comments regarding the IUP, please contact Becky Scott at (608) 267-7584 or [rebecca.scott@wisconsin.gov](mailto:rebecca.scott@wisconsin.gov). ☐

## Needs Survey – We Need Your Help

*Becky Scott*

### **What is the survey and why do we need your help?**

EPA, in cooperation with the states, conducts the Clean Watersheds Needs Survey (CWNS) every four years to collect capital needs for wastewater treatment, stormwater management, and nonpoint source pollution control. Survey results are compiled by EPA and ultimately reported to Congress and made available to the public.

Submitting documentation that EPA can use in the Needs Survey is extremely important as the federal government may use CWNS results to determine each state's allocation of federal funds to the state revolving loan program in the future. Wisconsin currently receives an annual capitalization grant equal to 2.74% of the national allocation for the Clean Water State Revolving Fund program. There has been an ongoing push in Congress to base the capitalization grant allocation formula on numbers reported in the CWNS. If this happens, Wisconsin stands to lose a considerable amount of federal grant funding for the Clean Water Fund Program. Wisconsin's wastewater treatment needs reported in the 2004 CWNS comprised only 1.94% of national needs; adding stormwater and nonpoint needs raised the percentage to just 2.24%. This is why we are asking every municipality to help us document Wisconsin's needs as completely as possible. Your participation in the

CWNS will help us return your federal tax dollars to Wisconsin.

**Who are we contacting for help?**

DNR already mailed letters and survey forms to all treatment plants and collection systems in Wisconsin with a population under 10,000. If your facility has a population of 10,000 or less and you haven't received one of these forms, please contact Becky Scott at 608-267-7584 or [rebecca.scott@wisconsin.gov](mailto:rebecca.scott@wisconsin.gov).

We are contacting facilities with populations greater than 10,000 by e-mail, phone, or letter over the next several months. You don't need to wait to be contacted though in order to provide us with information. Data collection will continue through mid-February 2009.

**What projects can be counted in the CWNS?**

The 20-year timeframe for projects to be counted in the CWNS is from January 1, 2008 through December 31, 2028. This means any wastewater, storm water, or nonpoint pollution control project that had not started construction as of January 1, 2008 can be counted. Needs can include traditional wastewater projects, expansion or rehabilitation of your collection system, decentralized wastewater management, water quality related storm water management projects, projects for nonpoint pollution prevention as well as abatement, certain brownfield redevelopment projects and sanitary landfill remediation among others. If you have a non-drinking water capital project that has a water quality benefit or a water-related public health benefit, we can count it in the Survey, regardless of how it is being funded.

**What sort of documentation do we need?**

In order for EPA to accept your documentation, it needs to include the following elements:

- a description of the problem being addressed,
- a description of the proposed solution to the problem,
- the cost of the proposed solution.

Facility Plans and Capital Improvement Plans (CIP) often are the best documents for wastewater projects (if the CIP includes a description of the problem), but most documents that include the necessary information can be used. A complete list of acceptable documents as well as further information on the CWNS can be found on EPA's website at: <http://www.epa.gov/cwns/cwns2008.htm>

You can submit documents, or portions of documents, by mail or electronically. We need you to include the cover page and table of contents as well as the sections described above.

Please send relevant documentation to: Becky Scott, CF/2  
WDNR  
PO Box 7921  
Madison, WI 53707-7921

Or by e-mail: [rebecca.scott@wisconsin.gov](mailto:rebecca.scott@wisconsin.gov)

We greatly appreciate your assistance in this effort. ☺



# Specifications: How Specific Should They Be?

*Dave Calhoon*

*Note: This article is not intended as legal advice. DNR personnel are not qualified or authorized to provide legal advice to local units of government concerning procurement laws, which are complicated. Therefore, local units of government are urged to consult their attorneys to ensure compliance with procurement laws. Wisconsin's municipal procurement laws are found, in part, in Chapters 61, 62, and 66, Wis. Stats.*

Plans and specifications describe what an owner wants to build during a project. One reason for creating plans and specifications is to enable bidders to determine the price of their bids. Plans and specifications may contain varying levels of detail, from broad descriptions of desired performance (generally not seen in our projects) to detailed instructions that list specific dimensions, materials, and even brand-name pieces of equipment or qualified subcontractors. Occasionally, the Environmental Improvement Fund (EIF) receives a complaint from an equipment supplier or a construction firm that the latter type of specification is overly restrictive and unfairly infringes upon its right to compete for work on a public construction project. Restrictive specifications aren't prohibited in our loan programs, but municipalities should be careful about using them and should be prepared to justify their use in the event of a bid challenge or protest.

In general, state law requires municipalities to solicit competitive bids for public construction projects costing in excess of \$25,000. This is to ensure that the public receives the goods and services provided at the lowest feasible cost, given other laws, rules, and regulations related to public construction. State statutes allow municipalities to classify contractors as to their qualifications and to create a classified list of contractors. They also require bidders to include in their bids a list of the subcontractors they propose to engage (s. 66.0901, Wis. Stats.).

There are some exceptions to the competitive bidding requirements. If the materials for a project are donated or if the labor is provided by volunteers, a municipality is not required to solicit competitive bids for public construction. Additionally, a municipality is not required to solicit competitive bids: if construction is necessitated by an emergency; if the municipality does the work itself; when procuring professional services, such as engineering; or when buying mobile equipment. (If a piece of equipment requires professional installation and becomes a permanent fixture of a project site, the installation of that equipment may be considered public construction, in which case, competitive bidding is required.)

Given the above rules and constraints, there are certain things a designer can do to maximize competition and avoid a bid protest. There are two types of restriction that are of concern: equipment restrictions and subcontractor qualification restrictions. For equipment, a common practice is to list brand-name items to establish a level of quality or performance, followed by the words, "or equal." For subcontractors, listing qualified firms in the specifications or bid form is not recommended by the EIF, but if such a list is used, the municipality should

consider explicitly stating that other qualified firms may be used and leaving space in the bid form for writing in firm names and other relevant information.

Sometimes, specifications include a long list of steps a bidder must go through to prove that an alternative item proposed is the equal of the item specified or that an alternative subcontractor is qualified. These requirements can be problematic if there is a bid protest.

Ultimately, municipalities are responsible for ensuring that their specifications and procurement procedures comply with laws and regulations. Municipalities should consult their attorneys about appropriate procurement practices. If a contractor believes that a restrictive specification infringes upon its right to compete for work on a project, its first appeal should be to the municipality. If the EIF concludes that a specification or procurement process was illegal, we may declare a project or portion of a project ineligible for EIF financing.

An architect or engineer has the right and the obligation to design facilities that will meet the owner's needs, i.e., something that will work and be cost-effective. When writing a restrictive specification, the designer should make sure that it truly results from the owner's needs, not simply from its preferences. The designer should be prepared to justify the restriction as reasonable, necessary, and in the best interests of the municipality. In evaluating whether or not a specification is unduly restrictive, the key is to balance the designer's obligation to design something that will meet the owner's needs with the public benefit that results from free and open competition. φ

## Calendar of Events

August 1, 2008  
Postmark Deadline  
*LRLP Applications*

October 1, 2008  
Postmark Deadline  
*LRLP Applications*

October 5-7, 2008  
Funding Sources Committee  
Information Booth  
WI Towns Association  
Paper Valley Hotel  
*Appleton WI*

October 22, 2008  
Funding Sources Committee  
Information Booth  
League of Municipalities  
*Stevens Point WI*

November 18, 2008  
Funding Sources Workshop  
Registration, 8:30am  
Presentation, 9:00am – 12:15  
*WRWA Plover WI*

November 19, 2008  
Funding Sources Workshop  
Registration, 8:30am  
Presentation, 9:00am -12:15  
*Southwest Tech College  
Fennimore WI*

# New Federal DBE Regulations

*Bob Ramharter*

The federal government has promulgated new Disadvantaged Business Enterprise (DBE) rules. These rules will impose some additional requirements for bidding, record keeping and reporting. We expect that the new requirements will only apply to a relatively small subset of loan recipients. Environmental Loans staff are in the process of developing the new program and implementation plans. We expect that the new requirements will not be in place before January 1, 2009. Look for more information on the new rules in future issues of *Loan Interests*.

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# Low Interest Loans for Drinking Water Projects

*Jeanne Cargill*

The Safe Drinking Water Loan Program (SDWLP) provides low interest loans to municipalities that need to finance drinking water system construction projects. The SDWLP's current market rate is 4.3%. Our loan interest rates are 55% of market (currently 2.365%), and 33% of market (currently 1.419%) for disadvantaged municipalities. A disadvantaged municipality has a population under 10,000 and a median

household income (MHI) that is 80% or less of the state's MHI.

For the third year in a row, the SDWLP has more dollars available than municipalities are requesting for drinking water projects. The SDWLP should be a principal funding source for drinking water projects in the state. If you are planning a drinking water construction project, be certain to evaluate the SDWLP as a potential funding source. Our revolving fund is growing and there's a good chance we'll have funds available for your project at a very attractive interest rate. We'd like to be able to use all of the dollars we have available to fund projects that will make Wisconsin's drinking water supplies safe.

If you have questions regarding the SDWLP, contact Jeanne Cargill at (608) 267-7587 or [jeanne.cargill@wisconsin.gov](mailto:jeanne.cargill@wisconsin.gov). φ