

Clean Water Fund Memorandum (2021 – 002)

SOLE SOURCING of EQUIPMENT for CLEAN WATER FUND CONSTRUCTION PROJECTS

I. PURPOSE

With prior written approval to do so, the Connecticut Department of Energy and Environmental Protection (DEEP) Clean Water Fund (CWF) regulations (Sec. 22a-482-4 (h) (12) (A) and (B)) allow state grant and loan assistance for sole sourced equipment in construction contract documents under certain circumstances. This memorandum provides guidance for requesting approval to incorporate sole sourced equipment into CWF eligible construction contracts.

Note that all state and federal CWF and SRF requirements apply, including but not limited to, American Iron and Steel provisions and prohibitions on certain telecommunications and video surveillance services or equipment.

II. GOVERNING AUTHORITY

Section 22a-482-4 (h) (12) (A) (i) RCSA states:

“No specification for bids or statement of work in connection with such works shall be written in such a manner as to contain proprietary, exclusionary or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary **interchangeability of parts and equipment, or at least two brand names or trade names of** comparable quality or utility are listed and are followed by the words "or equal". If brand or trade names are specified, the municipality must be prepared to identify to the Commissioner, or in any protest action, the salient requirements (relating to the minimum needs of the project) which must be met by any offeror. The single base bid method of solicitation for equipment and parts for determination of a low, responsive bidder may not be utilized. With regard to materials, if a single material is specified, the municipality must be prepared to substantiate the basis for the selection of the material.”

Section 22a-482-4 (h) (12) (B) RCSA states:

“A specification shall not require the use of structures, materials, equipment, or processes which are known to be available only from a sole source, unless the Commissioner determines in advance that the municipality's engineer has adequately justified in writing that the proposed use meets the particular project's minimum needs or the Commissioner determines that use of a single source is necessary to promote innovation.”

Section 22a-482-3 (a) (1) RCSA states:

“...demonstrate that the selected alternative is cost-effective, i.e. is the most economical means of meeting effluent and water quality goals while recognizing environmental considerations.”

III. POLICY

Three (3) levels of sole sourcing may be considered and are generally described here:

- (A) Sole sourcing to match existing equipment
- (B) Sole sourcing of equipment with no equal
- (C) Sole sourcing of physically differing major equipment through pre-selection

(A) Matching Existing Equipment

Sole sourcing may be used to specify equipment which matches equipment already in use, such as pumps, mixers, valves, PLCs, instruments and other equipment, as long as it is demonstrated to the DEEP's satisfaction that it results in increased reliability and efficiency of the plant.

Procedure:

1. Municipality submits a letter to the DEEP requesting approval to sole source the desired item(s). The Municipality shall clearly identify and detail the items and describe the reason sole sourcing is warranted.
2. DEEP will review the request and may require additional information as needed.
3. DEEP may issue an Approval for Sole Source letter with conditions as appropriate.

The Municipality may include sole source requirements for items NOT approved by the DEEP, but these should be listed as separate bid items and shall be paid for with local funds.

(B) Equipment with no equal

With prior written approval from DEEP to do so, the Municipality may sole source equipment where only one manufacturer can furnish the desired equipment. This process includes an in-depth engineering evaluation.

Procedure

1. Request to Conduct an Engineering Evaluation

Municipality submits to DEEP, for review and approval, a request to conduct an engineering evaluation for sole sourcing, with justification for the need of the desired equipment.

2. Engineering Evaluation Procedure

If DEEP approval is given to conduct the engineering evaluation as requested, the Municipality develops and submits, for DEEP review and approval, a detailed description of the evaluation procedure to be used. The procedure should include, as a minimum:

- a. Development of at least two typical alternative systems, along with the desired alternative.
- b. Inclusion of site, structural, architectural, electrical, I&C, and other costs, as appropriate, to compare alternatives.
- c. Twenty-year life cycle criteria to be used in evaluating alternatives (power cost, O&M cost, interest rate, etc.).
- d. Non-monetary criteria if included.

Engineering evaluation procedure documents should be submitted to DEEP at least 30 days prior to the anticipated evaluation date to allow for review and required follow-up, if any.

2. Request to Sole Source

The Municipality submits to DEEP, a written request to allow the desired equipment, as recommended by the Engineer, be included as a sole sourced item in the construction contract documents. The request shall include the results of the engineering evaluation described in Item 2

above and provide the following information to justify the selection and demonstrate compliance with CWF requirements:

- a. Summary of the process conducted to evaluate the alternatives,
- b. List of alternatives compared, with detailed description of each,
- c. Detailed cost analysis (inclusive of Items 2.b. and 2.c above) of each alternative compared, with the basis of the cost information used, and
- d. Non-monetary criteria, if used, with detail for each alternative considered.

(C) Physically Differing Major Equipment

With prior written approval from DEEP to do so, pre-selection of major equipment which physically differs significantly from one supplier to another may be undertaken. This process would include competitive bidding and an in-depth bid proposal evaluation, and would result in a formal supply contract with fixed pricing, scope, and performance guarantee with the selected supplier.

Justified need may include, but is not limited to, equipment configurations which differ significantly among candidates, and which require different site, structural, mechanical, electrical and controls designs for each.

Typical equipment approved for pre-selection may include:

- Ultraviolet Light (UV) disinfection systems
- Phosphorus removal systems
- Oxidation ditch systems
- Sequencing Batch Reactor (SBR) systems
- Other if the need is justified to the satisfaction of DEEP

Procedure

1. Pre-selection Process Approval Request

Municipality submits a request to DEEP, for review and approval, to preselect for sole sourcing, with justification of the need for this pre-selection.

2. Request for Proposals (RFP) Documents

If DEEP approval is given for the use of a pre-selection process, develop and submit pre-selection RFP documents to DEEP for review and approval. Documents should be submitted to DEEP at least 30 days prior to the anticipated advertisement date for the sole sourced equipment to allow for DEEP review and required follow-up. Documentation shall include the DEEP Required Construction Contract Provisions, all other CWF required provisions, and the following:

- a. Instructions to Bidders
 - i. A clear statement of how the equipment purchase and inclusion in the construction contract will be structured.
- b. Bid Form and Attachments
 - i. A bid proposal form consistent with the scope of supply.
 - ii. Life cycle cost information required.
 - iii. Non-monetary analysis information required.
- c. Bid Bond and Performance Bond Requirements
 - i. Agreement that describes the scope of supply and other requirements including performance timing.
 - ii. Supply contract conditions.

- d. Specifications
 - i. Detailed system and design conditions, scope of supply, required submittals and required services during design and construction.
 - ii. Spare parts approval or separate bid item.
 - iii. Standard one-year warranty only.
 - iv. No warrantee period services.
- e. Drawings and other background info related to the proposed major equipment.
- f. Performance Demonstration Requirements and Methods (if included).
- g. Warranty Requirements.

Note: Addenda issued during the bidding period shall be submitted for review and approval of DEEP prior to the bid opening.

3. Bid Evaluation and Request to Sole Source

The Municipality submits to DEEP a written request to allow the selected proposer's equipment, as recommended by your consultant, be included as a sole sourced item in the construction contract. Include, as a minimum, the following information to justify the selection and to demonstrate compliance with CWF requirements:

- a. Copy of the RFP advertisement.
- b. List of each qualified and complete proposal received.
- c. Summary of the process conducted to evaluate the proposals.
- d. For each qualified and complete proposal include:
 - Twenty Year Life Cycle Cost Analysis.
 - Non-monetary Analysis.
 - Copy of each proposer's bid documents.

If approved by DEEP, the proposal shall be included in the construction contract documents with the scope and cost of supply.

IV. FINAL DETERMINATION

In all cases, sole sourcing of equipment requires the prior written approval of DEEP. A request for sole source approval must be submitted with sufficient time for DEEP review (at least a minimum of 30 days and preferably 60 days for Items III.(B) and (C) above). All requested documentation must be submitted in a complete manner and be clearly organized and identified. All state and federal CWF and SRF requirements apply, including but not limited to American Iron and Steel provisions and prohibitions on certain telecommunications and video surveillance services or equipment. The final determination is at DEEP's full discretion and may not be appealed.

V. DEFINITIONS

CWF: Connecticut Clean Water Fund

CGS: Connecticut General Statutes

RCSA: Regulations of Connecticut State Agencies

SRF: State Revolving Fund

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Date



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