IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR DRINKING WATER AND WASTEWATER FACILITIES

DOCKET NO. 58-0122-2401 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Idaho Board of Environmental Quality (Board) and is now pending review by the 2025 Idaho State Legislature for final approval. Pursuant to Section 67-5224(2)(c), Idaho Code, this pending rule must be approved by concurrent resolution of the Legislature. Pursuant to Section 67-5291(2), Idaho Code, all temporary, pending, and final rules of any nature may be approved or rejected by a concurrent resolution of the Legislature. The concurrent resolution shall state the effective date of the approval or rejection. If approved by concurrent resolution, the rules will become effective on July 1, 2025, unless otherwise specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: This rulemaking was initiated in compliance with Executive Order No. 2020-01, Zero-Based Regulation (EO 2020-01), issued by Governor Little on January 16, 2020. A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 4, 2024, Vol. 24-9, pages 652 through 668. After consideration of public comments, the proposed rule has been revised at Subsections 031.02.e. and 032.03, with additional editorial revisions in Section 050 and 080. The remainder of the rule has been adopted as initially proposed. The board meeting documents are available at Drinking Water and Wastewater Grants: Docket No. 58-0122-2401 | Idaho Department of Environmental Quality.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the rulemaking, contact the undersigned.

Dated this 4th day of December, 2024.

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DOCKET NO. 58-0122-2401 – ADOPTION OF PENDING RULE

**Substantive changes have been made in the pending rule.
Italicized red text that is *double underscored* indicates
amendments to the proposed text as adopted in the pending rule.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin,
Volume 24-9, September 4, 2024, pages 652 through 668.**

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2025 Idaho State Legislature.

THE FOLLOWING IS UPDATED TEXT IN THE PENDING RULE FOR ZBR DOCKET NO. 58-0122-2401

(Only those sections or subsections that have changed from the original proposed text are printed in this Bulletin following this notice.)

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR DRINKING WATER AND WASTEWATER FACILITIES

031. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking ~~shall~~ will be invited to ~~submit an application~~ apply. The applicant ~~shall~~ must submit to the Department, by the priority target date, a completed application ~~in~~ on a form prescribed by the Department. ~~(3-31-22)~~( )

02. Application ~~Requirements~~ Contents. Applications ~~shall~~ must contain the following documentation, as applicable: ~~(3-31-22)~~( )

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; ~~and~~ ~~(3-31-22)~~( )

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein ~~shall~~ must be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 032; ~~and~~ ~~(3-31-22)~~( )

c. A ~~plan of study~~ scope of work describing the work tasks to be performed in the planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ~~and~~ ~~(3-31-22)~~( )

~~**d.** Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (3-31-22)~~

~~i. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (3-31-22)~~

~~ii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (3-31-22)~~

~~iii. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (3-31-22)~~

~~e~~**d.** A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 032; ~~and~~ ~~(3-31-22)~~( )

~~f~~**e.** A demonstration that the obligation to pay the costs for which funding is requested~~,~~ is the result or will be the result of the applicant's compliance with applicable requirements for *public works procurement*

~~*competitive bidding* requirements~~ and ~~requirements for~~ professional service contracts, including without limitation, the ~~requirements~~ provisions set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; ~~and~~ ~~(3-31-22)~~( )

~~g~~**f.** A statement regarding how the non-grant portion of the project will be funded; and (3-31-22)

~~h~~**g.** For incorporated nonprofit applicants only, Articles of Incorporation and~~/or~~ Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. ~~(3-31-22)~~( )

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information ~~required by~~ listed in Subsection 031.02. ~~(3-31-22)~~( )

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. (3-31-22)

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits ~~the former~~ an applicant from reapplying for another grant when the project deficiencies are resolved and project readiness is secured. ~~(3-31-22)~~( )

032. DETERMINATION OF ELIGIBILITY OF COSTS.
The Department will review the application, including ~~any~~ necessary contracts ~~required~~ to be submitted with the application, to determine whether the costs are eligible costs for funding. ~~(3-31-22)~~( )

01. Eligible Costs. Eligible costs are those determined by the Department to be: (3-31-22)

a. Necessary costs; (3-31-22)

b. Reasonable costs; and (3-31-22)

c. Costs that are not ineligible as described in Subsection 032.05. (3-31-22)

02. Necessary Costs. The Department will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the ~~plan of study~~ scope of work for the planning document. ~~(3-31-22)~~( )

03. Reasonable Costs. Costs will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable requirements for *public works procurement* ~~*competitive bidding* requirements~~ and ~~requirements for~~ professional service contracts, including without limitation, the ~~requirements~~ provisions set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~*(3-31-22)*~~( )

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, and reasonable ~~and not ineligible costs include~~: ~~(3-31-22)~~( )

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (3-31-22)

b. Professional and consulting services, specifying costs of individual tasks. (3-31-22)

c. Engineering costs specifying costs of individual tasks, directly related to the planning of facilities including but not limited to the preparation of a planning document and environmental review ~~report~~; ~~(3-31-22)~~( )

d. Financial, technical and management capability analysis; (3-31-22)

e. Public participation for alternative selection; (3-31-22)

f. Certain direct and other costs as determined eligible by the Department; and (3-31-22)

g. Legal costs necessary to allow for the completion of the ~~facility plan~~ planning document. ~~(3-31-22)~~( )

05. Ineligible Project Costs. ~~C~~Examples of costs which are ineligible for funding include, but are not limited to: ~~(3-31-22)~~( )

a. Planning not directly related to the project; (3-31-22)

b. Personal injury compensation or damages arising out of the project; (3-31-22)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (3-31-22)

d. Costs outside the scope of the approved project; (3-31-22)

e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (3-31-22)

f. Preparation of a grant application; (3-31-22)

g. All costs related to assessment, defense and settlement of disputes~~, unless such costs are integral to the completion of the project~~; ~~(3-31-22)~~( )

h. Costs of supplying ~~required~~ permits or waivers; and ~~(3-31-22)~~( )

i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department in advance of incurring costs~~;~~. ~~(3-31-22)~~( )

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department will notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. ~~If such costs are included in the engineering contract, the Department will also provide notification to the engineer.~~ The applicant may provide the Department with additional information in response to the notice. ~~(3-31-22)~~( )

07. Eligible Costs and the Grant Offer. The grant offer will reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs ~~that have not yet been set~~. Actual eligible costs may differ from ~~such~~ estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. ~~(3-31-22)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered ~~by certified mail~~ to applicants who received high priority ranking, were invited to ~~submit an application~~ apply, and provided a complete application. ~~(3-31-22)~~( )

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-31-22)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's

designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grant recipient, the grant offer will become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the ~~Director~~ Department that the grant recipient has complied with all agreement conditions and has prudently managed the project. The ~~Director~~ Department may, as a condition of payment, require that a grant recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements ~~shall~~ will be interpreted according to the law of grants in aid. No third party ~~shall~~ may acquire any rights against the State or its employees from a grant contract agreement. ~~(3-31-22)~~( )

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated, and payments may be increased or decreased as provided in Section 060. ~~(3-31-22)~~( )

05. Terms of Agreement. The grant offer ~~shall~~ will contain terms of agreement ~~as prescribed by the Department including, but not limited to~~ and special conditions as determined ~~necessary~~ by the Department for the successful planning of the project, including but not limited to: ~~(3-31-22)~~( )

a. Terms consistent with these rules and consistent with the scope of the grant project; ~~and~~ ~~(3-31-22)~~( )

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; ~~and~~ ~~(3-31-22)~~( )

c. Terms consistent with applicable state provisions pertaining to planning documents; and ~~(3-31-22)~~( )

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability ~~shall~~ must be one hundred thousand dollars ($100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. ~~(3-31-22)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

080. WAIVERS.

~~Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration that a significant public health hazard exists~~The Department may amend the priority list or grant a waiver from the provisions of these rules on a case-by-case basis upon full demonstration that the following conditions exist. ~~(3-31-22)~~( )

01. Public Health Protection. The requirement is not necessary for the protection of public health and the environment and does not affect the priority ranking status of the project. ( )

02. Affordability Criteria Exceeded. The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. ( )