

THE STATUS OF AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS FOR WATER AND WASTEWATER PROJECTS

By Steven A. Dutch, PE



On February 17 2009, the American Recovery and Reinvestment Act (ARRA) was signed by the President to create jobs through public works construction. Part of the Act authorized the United States Environmental Protection Agency (EPA) to provide money for drinking water and clean water projects through State Revolving Fund (SRF) programs administered in Florida by the Florida Department of Environmental Protection (FDEP). Florida's allocated funds have included approximately \$132 million for clean water projects, and \$88 million for drinking water projects. Fifty percent of these funds must be obligated to loan forgiveness. The Act also requires that 20% of the money be dedicated to green projects.

In order to preclude the potential for monies to be withdrawn and allocated to another state, the FDEP is required to have all ARRA funds obligated and construction contracts signed by February 17, 2010. The FDEP's goal, however, is to have all loan agreements signed by September 23, 2009 and construction projects bid, awarded and contracts executed by October 1, 2009. This will enable the FDEP to be eligible to receive monies that may be reallocated from other programs.

To make sure the deadlines would be met; complete project submittals were due by April 29, 2009. These submittals included facilities plans, biddable plans and specs, and construction permits. The selection process for project eligibility follows existing rules and priority criteria set up for the SRF program. All projects that met the April 29, 2009 deadline were evaluated and scored on the basis of the documentation submitted in the application. Priority scores were reviewed by a committee of SRF staff, and the eligibility of local governments for principal forgiveness was determined based on existing statutory criteria and rules. Projects that had already been approved and placed on the SRF priority list had a distinct advantage to receive ARRA funding.

It should be noted that approved Environmental Information Documents were not required by the deadline, as these documents are advertised for comment by the FDEP after the submittal date. Funding agreements, however, will not be prepared for the local governments to sign until the environmental comment period has passed. If there are comments, the agreement will be held until the comments are addressed. If the comments cannot be adequately addressed and the funding agreement is not executed by October 1, 2009, the project may be bypassed and the funds will be reallocated to other projects.

The funding limits for individual projects were set at \$10 million for clean water projects from combined ARRA and Clean Water SRF funds, and \$6 million for drinking water projects, with a maximum of \$3 million from the ARRA funds. For projects with estimated costs that exceed the funding limits, the local government must demonstrate that they have committed to funding the balance of the project costs.

The response to the ARRA program has been overwhelming. Requests for funding under the clean water portion of the program have totaled over \$1.5 billion with projects meeting the program requirements totaling \$317 million and, as of May 13, 2009, the FDEP has obligated nearly \$64 million of the clean water funds to ten local governments. This has included over \$29 million to green projects. An additional 15 local government projects have been recommended to receive a combined \$68 million, which would obligate the balance of the clean water funds. Other communities meeting the program requirements by the April 29, 2009 deadline are declared eligible to receive reallocated funds or new funds, if available. The reallocated funds will first be provided to incompletely funded projects on the approved list up to the maximum amount. Funds will then be given to the next eligible project on the priority list.

Requests for funding under the drinking water program have totaled approximately \$1 billion. Because the backlog of SRF requests for drinking water funds was small, and the priority ranking criteria included a public health component, projects meeting the drinking water program requirements totaled only \$152 million. Of those, through mid-May 22 projects totaling \$63 million have been funded and additional projects are being reviewed for eligibility. Priority is being given to those projects documented to be addressing public health issues, supported by studies and lab results. The deadline for submittal of documentation for this aspect of the program is July 12, 2009, with the hearing for obligation of funds scheduled for August 12, 2009.

Projects receiving funds must agree to include the FDEP Supplementary Conditions, Davis-Bacon wage rate criteria, Disadvantage Business requirements, and a Buy- American Certification in the bid documents. With the large amount of imported construction materials, the Buy-American requirements have raised the largest concern. At present, if a piece of equipment is assembled in the United States, even if it has foreign manufactured components, it meets the Buy-American criteria. However, there has been particular concern regarding incidental items such as nuts, bolts, and other fasteners, fittings, tubing, gaskets and the like that are manufactured overseas. In response to these concerns, the EPA reviewed the impacts of using 100% American-made materials in all equipment and determined that the increase in costs and, more importantly, the delays in implementing of the construction projects, would be inconsistent with the public interest and the goals of the ARRA. Therefore, the EPA issued a nationwide waiver of the Buy-American requirements for *de minimus* incidental components to be incorporated into the project, not to exceed 5% of the total cost of materials.

If all requirements and schedules are met, the ARRA will bring over \$220 million in additional construction money to Florida for water and wastewater projects. In addition to creating jobs, this will improve the environment and public health for all Floridians.

(Sources: FDEP and EPA program memos and other documents)

Steve Dutch is a Senior Consultant in CSI's Environmental Engineering Department and maintains an office in both our Tampa and Lakeland locations. He has a Bachelor of Science in Civil Engineering from the University of Maine. Steve has over thirty-six years experience in water and wastewater system planning, design, construction and operation. He can be reached at (863) 529-4701 or sdutch@chastainskillman.com.

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