

The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment
October 17, 2012*



His Excellency, Governor John H. Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

Sole Source

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to amend the **Sole Source** contract (PO#1019168) with Business Finance Authority (Vendor No. #170393) Concord, NH, by increasing the original amount by \$30,000 from \$45,000 to \$75,000 to assist the Drinking Water State Revolving Fund loan program in underwriting services for privately owned public water system, effective upon Governor & Council approval through June 30, 2014. The contract was originally approved on September 28, 2011 as ITEM #85. 100% Federal Funds.

Funding is available in the account as follows with the authority to adjust encumbrances in each of the state fiscal years through the Budget Office if needed and justified. Funding for FY 2014 is contingent upon continuing appropriation and availability of funds:

| | <u>FY13</u> | <u>FY14</u> |
|---|-------------|-------------|
| 03-44-44-441010-47180000-102-500731 | \$15,000 | \$15,000 |
| Dept Environmental Services, DWSRF Administration, Contracts for Program Services | | |

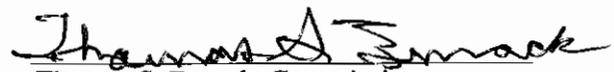
EXPLANATION

This amendment is greater than ten percent(10%) of the initial amount and will therefore be modified to sole source as it would not be cost effective to rebid. The amendment increases the price limitation of the contract with the Business Finance Authority (BFA) so that DES may meet the infrastructure needs of additional privately owned water systems that are interested in funding through this program. All other conditions of the original contract will remain in full effect. The estimated annual budget is \$30,000 per year, an increase of \$15,000 per year. Exhibit B provides the hourly billing rates and direct, indirect and overhead cost for the BFA.

In past years, DES entered into a Memorandum of Agreement with the BFA, to provide financial advice and guidance on lending funds to private individuals and corporations, including review of credit worthiness, advisability of issuing loans, and preparation of draft loan agreements and associated legal documents.

The 1996 amendments to the Safe Drinking Water Act (SDWA) and RSA 486:14 established a Drinking Water State Revolving Fund (DWSRF) to assist public water systems in financing the cost of infrastructure needed to achieve or maintain compliance with the SDWA and hence, protect public health. Privately owned public water systems are eligible to borrow these funds. In the event that the Federal funds become no longer available, General funds will not be requested to support this program.

We respectfully request your approval.


Thomas S. Burack, Commissioner

Attachments

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
Telephone: (603) 271-2513 • Fax: (603) 271-5171 • TDD Access: Relay NH 1-800-735-2964

**AMENDMENT #1
TO
CONTRACT
BETWEEN
DEPARTMENT OF ENVIRONMENTAL SERVICES
AND
N.H. BUSINESS FINANCE AUTHORITY**

DRINKING WATER STATE REVOLVING FUND PROGRAM

WHEREAS the State of New Hampshire has entered into a contract with the N.H. Business Finance Authority (BFA) in the amount of \$45,000.00 for financial services to assist the Department of Environmental Services (DES) with Drinking Water State Revolving Fund (DWSRF) loans to privately owned public water systems effective July 1, 2011 through June 30, 2014.

WHEREAS the State of New Hampshire wishes to increase the amount of the contract from \$45,000 to \$75,000, an increase of \$30,000 for FY 2013 and FY 2014 due to an increase in the number of private loans awarded in FY 2012 and anticipated in future years. Additional funding was also needed due to the decision by DES management to accelerate the schedule for soliciting applicants for the FY11 capitalization grant.

NOW THEREFORE, amend the original contract between DES and the BFA as approved by Governor and Council on September 28, 2011, as Item #85 in the following manner:

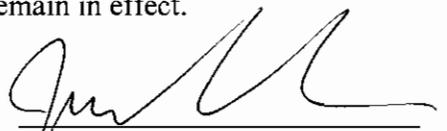
Change section 1.8 (Price Limitation) in the General Provisions of the Agreement under to read: \$75,000

Change Scope of Services in Exhibit A to read: "The budget will not exceed \$30,000 per year."

Change Task #2 and Task #3 in Exhibit B each to read: \$30,000

All other conditions outlined in the contract shall remain in effect.


Thomas S. Burack, Commissioner
Department of Environmental Services


Jack Donovan, Executive Director
Business Finance Authority

 10-4-12
Assistant Attorney General
Department of Justice
Evan Mulholland, AAG

EXHIBIT A
SCOPE OF SERVICES

- Review loan applications from privately owned public water systems based on information provided by DES. Loans will be reviewed using Loan Policy shown in Attachment A.
- Review the legal structure of the applicant (corporation, partnership, limited liability partnership or sole proprietor), its ownership and its Board of Directors if applicable; business name, location, principal owners/stockholders, type of business and products/services, date established; The adequacy, timeliness and completeness of the applicant's financial statements (audited or un-audited).
- Review the applicant's financial overview; the historical financial condition of the applicant and its comparison to industry norms; the applicant's record of earnings and cash flow; the applicant's history of borrowing and adherence to the terms and conditions; the applicant's equity and collateral; and the applicant's ability to repay the loan.
- Make financial recommendations to DES regarding the advisability of granting a loan.
- Provide draft loan agreements and associated documents for privately owned public water system projects. These services may require advice from BFA legal counsel.
- Maintain project files of all loan applications and related documents for privately owned public water systems.
- Assist DES at hearings and meetings as necessary to provide financial advice regarding the loan applications.
- Accept and use funds from DES for financial services provided. The BFA will bill based upon direct costs plus an overhead mark-up as shown on Exhibit B and will maintain adequate documentation to substantiate all program related costs. The budget will not exceed \$30,000 per year.
- Comply with all applicable federal regulations regarding the DWSRF program.

EXHIBIT B
BUDGET & PAYMENT METHOD

All services shall be performed to the satisfaction of the Department of Environmental Services before payment is made. All payments shall be made upon receipt and approval of stated outputs and upon receipt of associated invoices.

The Project budget is as follows:

| Task Number/Description | Private Loan Underwriting Services |
|--------------------------------|---|
| 1. FY2013 | \$30,000 |
| 2. FY2014 | \$30,000 |
| TOTAL | \$60,000 |

Hourly Rates*:

David Howe: \$275.00 – consulting lawyer
Jack Donovan: \$113.68
Michael Donahue: \$72.50
William Rushforth: \$87.51
Brenda Pelletier: \$46.03

*See next page for direct, indirect and overhead costs.

Note # 1: Legal services provided through the BFA are reimbursed without markup from BFA. Currently the BFA utilizes the services of David M. Howe Esquire for the DWSRF program.

Note: # 2: All services are billed at hourly rates on a monthly basis.

EXHIBIT C
SPECIAL PROVISIONS

No special provisions.