

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING -- DIVISION OF FINANCIAL ASSISTANCE
JUNE 5, 2007**

ITEM 8

SUBJECT

CONSIDERATION OF A WAIVER OF CERTAIN REQUIREMENTS OF THE STATE REVOLVING FUND (SRF) LOAN POLICY (POLICY) AND THE SMALL COMMUNITY WASTEWATER GRANT (SCWG) PROGRAM GUIDELINES (GUIDELINES) FOR THE NEVADA COUNTY SANITATION DISTRICT NO. 1 (DISTRICT); CASCADE SHORES WASTEWATER TREATMENT PLANT PROJECT (PROJECT)

DISCUSSION

Nevada County Sanitation District No. 1 is requesting that the State Water Resources Control Board (State Water Board) waive the competitive bidding requirements in Section IV of the Policy, the Minority Business Enterprise/Women's Business Enterprise requirements in Section X.F of the Policy, and the competitive bidding requirement in Section X of the Guidelines. The District has requested this waiver because it has been unable to obtain affordable bids after two rounds of bidding for the Project, and wishes to contract for construction of the Project pursuant to Section 20783 of the California Public Contracts Code (PCC). The District believes that it can construct the Project affordably using the alternative procedure of PCC 20783.

The Division of Financial Assistance (Division) approved the Facility Plan for the District's Project on July 21, 2006, and the District agreed with the Facility Plan on July 27, 2006. Submittal of a draft revenue program is a standard part of the Facility Plan Approval. A Proposition 218 vote is held if necessary and current sewer service rates are not sufficient to repay the loan.

The initial bid opening for the District's Project on September 7, 2006, produced a low bid that would result in a cost to the ratepayers of \$4500 per year. The proposed rate increase was put to public vote pursuant to Proposition 218, and the community rejected the increased assessment. The District rejected the bids for the first round of bidding on December 12, 2006.

A second round of bidding was conducted and the new bids were opened on February 22, 2007. The low bid was not significantly lower and would have resulted in costs to the ratepayers of \$4400 per year. The District rejected the second round of bids on March 27, 2007.

The District and Division staff met on March 28, 2007, to discuss the District's intentions to use the alternative procurement procedure defined in the PCC and to seek the Division's agreement with this approach. PCC Section 20783 allows the District, after rejecting bids for a project, to declare by four-fifths vote that the work can be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market. The District may have the work done in this manner in order to take advantage of lower costs. The District adopted Resolution No. SD07-13 on April 24, 2007 by four-fifths vote declaring that the work can be performed more economically by day labor or the materials or supplies furnished at a lower price in the open market.

The District has received an unsolicited proposal from Water System Integrators (WSI) that may offer an affordable solution to the District's wastewater treatment needs. The District has retained an engineering firm to determine whether the WSI proposal will reliably meet the

District's Waste Discharge Requirements (WDRs). If the WSI proposal can meet the District's needs, the District will then negotiate with an experienced contractor to construct the required improvements. The District believes that it can reduce the overall construction cost of this Project from the approximately \$5 million bid cost to approximately \$2.5 million to \$3 million.

In addition to the District's engineering consultant reviewing the alternative proposals, Division staff will review the District's proposals in accordance with the remaining requirements of the SRF Policy. Division will review the proposal and construction contract to ensure that they are consistent with the Facility Plan and that they are likely to result in a complete Project that will meet the District's goals.

In addition, since the District's property owners have previously rejected a Proposition 218 property assessment, Division staff recommends that the State Water Board condition execution of the Loan and Grant Agreements for this Project on the successful approval by the voters of a Proposition 218 assessment sufficient to support repayment of the SRF Loan and adequately operate and maintain the constructed facility. The Loan agreement will not be executed until approval of the draft Revenue Program in accordance with Section IX.E.2.

POLICY ISSUE

Should the State Water Board approve a waiver of the requirements of the Policy and Guidelines as described above for the proposed Project?

Should the State Water Board condition execution of the Loan and Grant Agreements for this Project on the successful approval of a Proposition 218 assessment sufficient to support repayment of the SRF Loan and adequately operate and maintain the constructed facilities?

FISCAL IMPACT

The Division, pursuant to State Water Board Resolution 2007-0004, on September 8, 2006, approved a Preliminary SRF Loan Commitment of \$3,100,000, and a SCWG Combination Grant Commitment of \$1,941,943, for the District's Project. No additional funds will be approved by this item.

REGIONAL WATER BOARD IMPACT

The Central Valley Regional Water Board has prescribed WDRs and a National Pollutant Discharge Elimination System (NPDES) Permit for the District to annually discharge tertiary treated wastewater to Gas Canyon Creek. The Regional Water Board has also issued Cease and Desist Order (CDO) No. R5-2006-0035, to ensure the District's compliance with the Permit. Completion of the proposed Project will ensure compliance with the discharge requirements and the CDO.

STAFF RECOMMENDATION

The State Water Board should approve the waiver of the requirements of the Policy and Guidelines as described in the discussion above.

The State Water Board should condition execution of the loan and grant agreements for this Project on the successful approval of a Proposition 218 assessment sufficient to support repayment of the SRF Loan and adequately operate and maintain the constructed facilities.

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2007-**

**A WAIVER OF CERTAIN REQUIREMENTS OF THE STATE REVOLVING
FUND (SRF) LOAN POLICY (POLICY) AND THE SMALL COMMUNITY WASTEWATER
GRANT (SCWG) PROGRAM GUIDELINES (GUIDELINES) FOR THE NEVADA COUNTY
SANITATION DISTRICT NO. 1 (DISTRICT); CASCADE SHORES WASTEWATER
TREATMENT PLANT PROJECT (PROJECT)**

WHEREAS:

1. The Division of Financial Assistance (Division) approved the Facility Plan for the District's Project on July 21, 2006, and the District agreed with the Approval on July 27, 2006;
2. The Division, on September 8, 2006, approved a Preliminary SRF Loan Commitment of \$3,100,000, and a SCWG Combination Grant Commitment of \$1,941,943, for the District's Project;
3. The Division's Loan Commitment expires if the District does issue Notice to Proceed (NTP) with construction by July 6, 2007, and the Loan Agreement is not signed by the applicant by September 1, 2007; the District will be unable to meet these deadlines under the current circumstances;
4. The Division's SCWG commitment for the construction grant portion of the Grant expires February 8, 2008, if the District does not issue a NTP with construction of the Project;
5. The District has conducted two rounds of bidding for its Project and rejected all bids on both occasions;
6. The District's property owners have rejected a property assessment that would have supported construction of the Project using these bids;
7. The District adopted Resolution No. SD07-13 on April 24, 2007, by four-fifths vote stating its belief that it can construct the Project using the alternative procedures of California Public Contracts Code (PCC) Section 20783 more economically than it can using traditional bidding;
8. The District estimates the construction cost savings using the alternative procedures of PCC Section 20783 will be \$2 million to \$2.5 million;
9. The District requested a waiver of the competitive bidding requirements in Section IV of the Policy, the Minority Business Enterprise/Women's Business Enterprise requirements in Section X.F of the Policy, and the competitive bidding requirements in Section X of the Guidelines, in order to undertake a contracting arrangement pursuant to PCC Section 20783; and
10. Division Staff will review the technical specifications of the District's proposed Contracts and review the District's proposals to ensure that they meet the objectives of the Facility Plan and that they are likely to result in a complete project that will meet the District's goals.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Waives the competitive bidding requirements of Section IV of the Policy, the Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) requirement of Section X.F of the Policy, and the competitive bidding requirement of Section X of the Guidelines.
2. Will only execute the Loan and Grant Agreements for this Project if the District's voters have approved a Proposition 218 assessment sufficient to support repayment of the SRF Loan and adequately operate and maintain the constructed facilities.
3. Extends the Preliminary SRF Loan Commitment expiration date in the Division's, September 8, 2006 approval; the Preliminary SRF Loan Commitment will expire if the District does not issue NTP by February 8, 2008.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 5, 2007.

Song Her
Clerk to the Board