



## Alternative Contracting/Service Agreement – Pilot Rule Project FINAL REPORT

### Relating to Chapter 173-98 WAC Uses and Limitations of the Water Pollution Control Revolving Fund (SRF)

#### Background and rationale for report

In 2002, the Department of Ecology's (Ecology) Water Quality Program proposed the use of a pilot rule project as a means to potentially amend Chapter 173-98 WAC, Uses and Limitations of the Water Pollution Control Revolving Fund, (SRF). Several public bodies requested Ecology to initiate the pilot rule project to initially allow them to use the "Service Agreements" concept per Chapter 70.150 RCW, Water Quality Joint Development Act to receive low interest loans awarded under Chapter 173.98 WAC for completion of wastewater facilities.

This report explains Ecology's completion of the pilot rule project. The report also satisfies the provisions of Chapter 34.05 RCW Administrative Procedure Act and RCW 34.05.313 Feasibility studies — Pilot projects. The report is written in an outline format for easier readability.

Through the pilot rule-making process, the concept expanded to include provisions of Chapter 39.10 RCW, Alternative Public Works Contracting Procedures, and Chapter 35.58 RCW, Powers of Metropolitan Municipal Corporations. The pilot rule project is referred to as the Alternative Contracting/Service Agreement (AC/SA) process, in the *Guidelines for the FY 2006 Water Quality Program Funding Cycle*, at: <http://www.ecy.wa.gov/biblio/0410062.html>.

At the beginning of the process, in compliance with the state of Washington's rule-making process, Ecology submitted a CR 101 form, Pre-proposal Statement of Inquiry, signed by then Water Quality Program Manager, Megan White, to the Code Reviser's Office on November 7, 2002. The form was designated: AO # 02-15, (WSR 02-23-009).

The city of Tacoma and Spokane County were the only participants in the pilot rule throughout the period 2003 - 2005. During the Fiscal Year 2007 (FY 2007) funding cycle, King County requested and received an SRF loan offer under AC/SA provisions for its Marine Outfall Project.



## **Key elements**

Key Elements of “Alternative Contracting/Service Agreement (AC/SA)” Pilot Rule Project, 2002-2006:

- Step process (facilities plan approval, design approval, construction) suspended for AC/SA pre-qualified applicants.
- Deviation from standard procurement procedures allowed per applicable RCW.
- SRF loan ceiling amounts still pertain.

## **Alternative Contracting/Service Agreement (AC/SA) participants**

- Provide eligibility documentation to Ecology, such as a cost and time-to-complete estimate for AC/SA versus conventional design/bid/construct.
- Submit applications during funding cycle.
- Prioritize and rank the first year they apply for funding.
- Thereafter assign to the top of the funding offer list each year until the project is funded.
- Submit detailed cash flow projection for each year. (Yearly cash flows were to be used to set yearly loan allocations).

## **Issues identified in 2003**

Several issues were identified very early in the pilot rule project. Concerns were raised by management and staff regarding:

- AC/SA projects may need established ceiling(s) amounts for statewide distribution of SRF funds available to other projects.
- Highest priority public health and small hardship projects that should be funded above AC/SA projects.
- Readiness to proceed.
- Cost increases.

For several reasons, concerns noted above were not addressed, and a “wait and see” approach was used. Reasons included, but were not limited to:

- The SRF portfolio of funds available was then relatively robust.
- SRF funds available closely matched funds requested.
- Ecology anticipated stable federal capitalization grants (for the then foreseeable future).
- AC/SA projects initially caused no impacts on other applicants.

## **Challenges and experiences (2003 – 2006)**

- Recession kept SRF interest rates very low.
- Demand for SRF became considerably higher and is anticipated to remain high with many new facilities needed.
- SRF was weakened by zero percent interest loans to disadvantaged communities and early repayments of high interest rate – high dollar loans.
- In FY 2006, the federal government began to reduce SRF capitalization grants to all states by about 20 percent per year.

## **AC/SA projects: Background and status**

### **Tacoma**

- Original SRF request: \$52 million via AC/SA provisions in FY 2004 cycle of calendar year 2003.
- Amount of loan spent: \$29.4 million as of September 30, 2006.
- Cost increase 2003–2006: \$42 million to \$94 million total.
- Ecology Action: Committed to \$52 million original loan application.
- Latest loan request (Competitive FY 2007): \$42 million.
- Funds Offered in FY 2007: \$21.2 million (based on priority of FY 2007 project & funds available).

### **Spokane**

- Original SRF request: \$73.4 million in FY 2004 cycle of calendar year 2003.
- Loan Signed: August 16, 2004 - \$8.5 million (with provisions for increases up to \$73.4 million).
- Ecology NPDES action: Pending TMDL suspended design and construction of project, August 18, 2004.
- Amount of loan spent: \$66,321.
- Cost increase 2003–2006: Unknown.

### **King County (Brightwater Marine Outfall)**

- Original SRF request: \$23.9 million in FY 2007 cycle.
- Loan Offered: \$947,246 based on funds needed for coming year, with provisions for increases up to \$23.9 million (full funding).
- Latest amount for which the project is eligible: \$16.0 million.

## **Issues identified during pilot rule project**

- Pilot project requests now limit funds available for all projects.
- There are no funding safeguards for higher priority projects.
- There are no provisions for small disadvantaged communities.

- Readiness to proceed provisions are inadequate (costs and time for procurement of AC/SA contractor).
- Congress is severely reducing and may eliminate capitalization of SRF.
- Yearly cash flow projections from the one active AC/SA recipient are nearly always inaccurate, and the recipient is reluctant to submit them.

## **Major issues as of 2006**

- Amount allocated to any one project or public body.
- Providing funds for non AC/SA communities are a higher priority (such as public health hazards and hardships).
- Readiness to proceed with issues (i.e., technical prerequisites, cost, project duration controls) causing lengthy delays.
- Short and long-term interest rates adjustments to ensure fund perpetuity.
- Cost and time to complete projects.

## **Conclusion**

Ecology decided to discontinue the pilot rule project at the end of the FY 2007 funding cycle. Staff and management discussed the proposal to end the pilot rule project with the Water Quality Program's Financial Assistance Council and Ecology's Water Quality Program Management Team. Ecology held a widely advertised public meeting on July 12, 2006, to explain its intentions to end the pilot rule project. Most of those in attendance voiced neutral or positive support of Ecology's proposal. Ecology is being responsive to the expressed concerns of public bodies that may eventually proceed with AC/SA. As a result of its experiences and public and stakeholder input, Ecology's Water Quality Program will:

- Continue to manage existing AC/SA agreements in accordance with the pilot rule process guidelines and Chapter 173.98 WAC.
- Discontinue pilot rule project at the end of the FY 2007 funding cycle.
- Not accept AC/SA project proposals in the present FY 2008 funding cycle.
- Incorporate information derived from the pilot project into the ongoing process to revise funding rules (Chapter 173-98 WAC) before the FY 2009 funding cycle begins.
- Likely accept applications for new AC/SA projects once again in September 2007, for the FY 2009 funding cycle.

### **For more information please contact**

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