

Subsec. (a)(4). Pub. L. 97-117, §8(b), struck out “in the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981” after “purpose in such State” and provision that excluded from term “eligible treatment works” collector sewers, interceptors, storm or sanitary sewers or the separation thereof, or major sewer rehabilitation.

1980—Subsec. (a)(1). Pub. L. 96-483, §9(a), inserted provisions relating to modification to a lower percentage rate by the Governor of the State and issuance of guidelines by the Administrator for the concurrence in any such modification.

Subsec. (a)(2). Pub. L. 96-483, §9(b), inserted provision relating to the modification by the Governor of the State to a percentage rate no less than 15 per centum greater than the modified uniform rate in which the Administrator has concurred.

1977—Subsec. (a). Pub. L. 95-217 designated existing provisions as par. (1) and added pars. (2) to (4).

PROMULGATION OF FEDERAL SHARES

Act July 9, 1956, ch. 518, §4, 70 Stat. 507, authorized the Surgeon General to promulgate Federal shares under the Federal Water Pollution Control Grant Program as soon as possible after July 9, 1956, in the manner specified in the Water Pollution Control Act, act June 30, 1948, ch. 758, 62 Stat. 1155, and provided that such shares were to be conclusive for the purposes of section 5 of act June 30, 1948.

§ 1283. Plans, specifications, estimates, and payments

(a) Submission; contractual nature of approval by Administrator; agreement on eligible costs; single grant

(1) Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposed project for the construction of treatment works for which a grant is applied for under section 1281(g)(1) of this title from funds allotted to the State under section 1285 of this title and which otherwise meets the requirements of this chapter. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project.

(2) AGREEMENT ON ELIGIBLE COSTS.—

(A) LIMITATION ON MODIFICATIONS.—Before taking final action on any plans, specifications, and estimates submitted under this subsection after the 60th day following February 4, 1987, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.

(B) LIMITATION ON EFFECT.—Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 1361 of this title, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallow-

able under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 1342 of this title for such project.

(3) In the case of a treatment works that has an estimated total cost of \$8,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works.

(b) Periodic payments

The Administrator shall, from time to time as the work progresses, make payments to the recipient of a grant for costs of construction incurred on a project. These payments shall at no time exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

(c) Final payments

After completion of a project and approval of the final voucher by the Administrator, he shall pay out of the appropriate sums the unpaid balance of the Federal share payable on account of such project.

(d) Projects eligible

Nothing in this chapter shall be construed to require, or to authorize the Administrator to require, that grants under this chapter for construction of treatment works be made only for projects which are operable units usable for sewage collection, transportation, storage, waste treatment, or for similar purposes without additional construction.

(e) Technical and legal assistance in administration and enforcement of contracts; intervention in civil actions

At the request of a grantee under this subchapter, the Administrator is authorized to provide technical and legal assistance in the administration and enforcement of any contract in connection with treatment works assisted under this subchapter, and to intervene in any civil action involving the enforcement of such a contract.

(f) Design/build projects

(1) Agreement

Consistent with State law, an applicant who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

(2) Limitation on projects

Agreements under this subsection shall be limited to projects under an approved facility plan which projects are—

(A) treatment works that have an estimated total cost of \$8,000,000 or less; and

(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and sub-surface disposal systems.

(3) Required terms

An agreement entered into under this subsection shall—

(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 1282 of this title;

(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this subchapter; and (iii) not later than 1 year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 1342 of this title;

(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

(E) contain such other terms and conditions as are necessary to assure compliance with this subchapter (except as provided in paragraph (4) of this subsection).

(4) Limitation on application

Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

(5) Reservation to assure compliance

The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallocate the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

(6) Limitation on obligations

The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 1285 of this title for grants pursuant to this subsection.

(7) Allowance

The Administrator shall determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 1281(f) of this title.

(8) Limitation on Federal contributions

In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (3).

(9) Recovery action

In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

(10) Prevention of double benefits

A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this subchapter for the same project.

(June 30, 1948, ch. 758, title II, §203, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 835; amended Pub. L. 93-243, §2, Jan. 2, 1974, 87 Stat. 1069; Pub. L. 95-217, §§18, 19, Dec. 27, 1977, 91 Stat. 1571, 1572; Pub. L. 96-483, §6, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 97-117, §9, Dec. 29, 1981, 95 Stat. 1626; Pub. L. 100-4, title II, §§203, 204, Feb. 4, 1987, 101 Stat. 16, 17.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-4, §203, designated provision relating to submission of plans, specifications, and estimates, and provision relating to contractual nature of approval by Administrator as par. (1), designated provision relating to requirements for awarding single grant for combined Federal share of cost of preparing plans and specifications, and building and erection of treatment works as par. (3), and added par. (2).

Subsec. (f). Pub. L. 100-4, §204, added subsec. (f).

1981—Subsec. (a). Pub. L. 97-117 substituted “\$8,000,000” for “\$4,000,000” and struck out provision that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed \$5,000,000.

1980—Subsec. (a). Pub. L. 96-483 substituted “\$4,000,000” and “\$5,000,000” for “\$2,000,000” and “\$3,000,000”, respectively.

1977—Subsec. (a). Pub. L. 95-217, §18, provided that, in the case of a treatment works that has an estimated total cost of \$2,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works, and that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed \$3,000,000.

Subsec. (e). Pub. L. 95-217, §19, added subsec. (e).

1974—Subsec. (d). Pub. L. 93-243 added subsec. (d).

§ 1284. Limitations and conditions

(a) Determinations by Administrator

Before approving grants for any project for any treatment works under section 1281(g)(1) of this title the Administrator shall determine—

(1) that any required areawide waste treatment management plan under section 1288 of this title (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;

(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 1313(e) of this title and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 1315(b) of this title;

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 1313(e) of this title, except that any priority list developed pursuant to section 1313(e)(3)(H) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title and for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 1283(a) of this title which utilizes processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title.¹

(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capac-

ity will be required, after taking into account, in accordance with regulations promulgated by the Administrator, efforts to reduce total flow of sewage and unnecessary water consumption. The amount of reserve capacity eligible for a grant under this subchapter shall be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under section 1288 of this title, or an applicable municipal master plan of development. For the purpose of this paragraph, section 1288 of this title, and any such plan, projected population shall be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate. Beginning October 1, 1984, no grant shall be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs (including existing needs of residential, commercial, industrial, and other users) on the date of approval of a grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on October 1, 1990. In any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal financial assistance under this subchapter, the incremental costs of the additional reserve capacity shall be paid by the applicant;

(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment. When in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

(b) Additional determinations; issuance of guidelines; approval by Administrator; system of charges

(1) Notwithstanding any other provision of this subchapter, the Administrator shall not approve any grant for any treatment works under section 1281(g)(1) of this title after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's juris-

¹ So in original. The period probably should be a semicolon.