

STATE WATER RESOURCES CONTROL BOARD
ORPHAN SITE CLEANUP FUND GRANT GUIDANCE
FOR GRANTS FUNDED WITH FEDERAL LEAKING
UNDERGROUND STORAGE TANK FUNDS PURSUANT TO THE
AMERICAN RECOVERY & REINVESTMENT ACT OF 2009
(Guidance For Non-Profits and Other Private Parties)



January 2010

Health and Safety Code section 25299.50.2 established the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Fund (Orphan Site Cleanup Fund or OSCF) to address petroleum contamination from underground storage tanks (USTs) at sites that qualify as brownfields. This guidance document has been provided to assist eligible non-profits and other private party applicants in complying with state and federal requirements for OSCF grant agreements when grants are funded with funds from the United States Environmental Protection Agency (U.S. EPA) under the American Recovery and Reinvestment Act of 2009 (ARRA). Specifically, this document is intended to provide general grant information and information regarding the grant process, procurement requirements, and ARRA-specific requirements for non-profits and other private party applicants. This guidance is not a regulation and may not be cited as legal authority.

Section I – General Grant Information

Grant Funding

Eligible OSCF applicants will receive grant funding based on their readiness to move forward with response actions and availability of funds. Pursuant to the conditions for the use of federal money from the U.S. EPA under the ARRA, OSCF funds may be used for eligible response costs incurred on and after July 15, 2009.

There are two types of grants, an assessment grant and a cleanup grant. An applicant may receive an assessment grant, cleanup grant, or both an assessment grant and a cleanup grant.

Assessment Grants provide funding for response actions that characterize, assess, and investigate an unauthorized release from a petroleum UST. These actions include, but are not limited to, a preliminary site assessment, soil and water investigation, and the preparation of a corrective action plan as defined in accordance with California Code of Regulations, chapter 16, article 11. Assessment grants may also provide funding for UST removal, free product removal, and limited soil excavation.

Cleanup Grants provide funding for response actions that carry out cleanup activities and include, but are not limited to, implementing a corrective action plan and verification monitoring. Cleanup grants will be awarded once an applicant demonstrates that a corrective action plan is complete and approved by the regulatory agency overseeing the response actions at the site or the applicant demonstrates that response actions are necessary during the site development process and are necessary to protect human health, safety, and the environment.

Non-profits and other private party grantees issued OSCF grants using ARRA funds must comply with both federal and state requirements, including federal procurement requirements in 40 Code of Federal Regulations (CFR) part 30 and ARRA-specific reporting and transparency requirements regarding job creation. Prior to receiving an OSCF grant using ARRA funds, applicants must certify that they have completed the OSCF online training course on fraud, waste, and abuse. (Applicants who do not have access to the internet may request a paper copy of the training course.) All OSCF grantees that receive ARRA funding may be subject to audit and/or investigation by the United States Office of Inspector General and/or the California Office of Inspector General. It is the grantee's responsibility to be aware of and comply with all of the terms and conditions in the grantee's Grant Agreement. Failure to comply may result in termination of the Grant Agreement and/or prosecution.

Section II – Grant Process and Procurement Guidance for Non-Profits and Other Private Parties

Non-profits and other private party grantees must comply with the 40 CFR section 30.40 through section 30.48. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality, and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the grantee. Any and all bids or offers may be rejected when it is in the grantee's interest to do so. (40 CFR § 30.43.) (Note: Applicants who previously received a grant from the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Account may be eligible for the sole source exception.)

Sole Source Vendor - If the applicant has not or will not go through a competitive procurement process and will use a sole source vendor instead, the applicant must demonstrate that the use of a sole source vendor meets the requirements of 40 CFR sections 30.40 through section 30.48. If the contract exceeds the small purchase threshold fixed at 41 U.S.C § 403, subd. (11) (currently \$100,000), the applicant must at a minimum provide: (1) basis for contractor selection; (2) justification for lack of competition; and (3) basis for award cost or price. (40 CFR § 30.44.)

More information on the two ways that non-profits and other private party applicants may use to demonstrate that their procurement process complies with 40 CFR section 30.43, is provided below in the section on Request for Qualifications/Proposals (RFQs/RFPs).

Grant Agreement Process

1. Pre-Grant Letter

Eligible non-profits and other private party applicants who are prepared to move forward with response actions will be sent a pre-grant agreement package that includes a complete copy of the applicable grant agreement template with all of the exhibits. The applicant will be instructed on how to proceed with the procurement process and preparing the required pre-grant documents. Due to federal time limitations, the grant agreement will require the grantee to expeditiously proceed with and complete the project. All project work must be completed by September 30, 2011.

2. Pre-Grant Paperwork, Scope of Work, and Budget

Pre-Grant Paperwork

Non-profits and other private party applicants must submit the following pre-grant documents to their assigned grant manager.

- ✓ Applicant's Data Universal Numbering System (DUNS) No. – Applicants must obtain a DUNS No. in order to receive ARRA funds. Go to <http://fedgov.dnb.com/webform/> to obtain a DUNS No.
- ✓ Applicant's Central Contractor Registration (CCR) No. – Applicants must obtain a CCR No. in order to receive ARRA funds. Go to <http://www.ccr.gov/> to obtain a CCR No.
- ✓ Fraud Prevention Training Self-Certification.
- ✓ Regulatory Agency approved workplan for site assessment or cleanup response work
- ✓ Scope of Work (SOW) (Exhibit A) based on approved regulatory workplan and an estimated Budget (Exhibit B) to implement SOW.
- ✓ RFQ/RFP. An applicant may receive a grant agreement before completing the procurement process. (See section 5 of this guidance for information about the procurement process.) The grant agreement will require the applicant to follow the procurement rules as outlined in

section 5. Reimbursements for any response work will be contingent on grantee completing the RFQ/RFP process.

NOTE: All Disadvantaged Business Enterprise (DBE) good faith effort forms (DBE Forms 1 through 5) as identified in the DBE Guidance Document must be submitted with the procurement package. The DBE Guidance Document is located at: http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml. DBE Form 6 must be completed upon grantee awarding of contract to prime contractor.

3. Grant Agreement

If the grantee has not completed the procurement process, the Underground Storage Tank Cleanup Fund (USTCF) Technical Unit will review the proposal and approve an estimated budget. If the grantee has completed the procurement process, the USTCF Technical Unit will review the procurement package and approve the proposed Scope of Work, Project Work Schedule, and Budget in accordance with section 5 of this guidance.

Once the grant agreement is negotiated, the grant manager will prepare and mail four original copies of the grant agreement to the applicant for signature. All four original copies must have original signatures and all four signed original copies must be mailed back to the grant manager for execution.

4. Executed Grant Agreement

The grant manager will mail the grantee a copy of the executed grant agreement along with instructions for reimbursement of costs. The grantee may submit payment requests for a minimum of \$500 on an on-going basis from the execution date of the grant agreement up to the final payment date as identified in Exhibit B of the grant agreement.

5. Procurement: (RFQs/RFPs and DBE)

Pursuant to 40 CFR § 30.44, RFQs/RFPs must provide all of the following:

- (1) A clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
- (2) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

- (3) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- (4) The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.
- (5) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- (6) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

RFQs/RFPs must advise interested bidders that funding for this project has been provided or will be provided in full or in part by the American Recovery and Reinvestment Act of 2009 and the Orphan Site Cleanup Fund, through an agreement with the State Water Resources Control Board.

The State Water Resources Control Board (State Water Board) recommends that the RFQs/RFPs also include specific information regarding the terms and conditions of the grant agreement. (Note: Pertinent terms and conditions in the grant agreement must be included in the grantee’s contract with the contractor and the contractor’s contracts with subcontractors.)

OSCF applicants must make good faith efforts to solicit bids from eligible DBE vendors. DBE Link is found on our website at:
http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml.

To help non-profits and other private party applicants demonstrate that their procurement process complies with 40 CFR section 30.43, the State Water Board recommends that non-profit and other private party applicants designate the State Water Board as the recipient of the bids as described in (a) below. If the applicant does not choose to designate the State Water Board as the recipient of the bids, the applicant must comply with the requirements in (b) below.

a. If the applicant ***chooses to designate the State Water Board as the recipient of the bids***, the applicant must submit the following documents (paper copies) as part of the procurement package to the applicant’s assigned grant manager.

- ✓ A regulatory agency approved workplan. A workplan details the response actions to be taken to achieve the required response work. The regulatory agency must approve the work plan in writing.
- ✓ Workplan approval document from regulatory agency.
- ✓ A copy of the RFQ/RFP Package that complies with 40 CFR part 30. The RFQ/RFP must include the OSCF Project Number and location and instruct bidders that the bids must be received by the State Water Board by a specified deadline. Bidders must submit the bids to the State Water Board at:

State Water Resources Control Board
 Division of Financial Assistance
 Orphan Site Cleanup Fund
 P.O. Box 944212
 Sacramento, CA 94244-2120

- ✓ List of vendors to whom the RFQ/RFP package was sent to and their mailing addresses with proof of service.

b. If the applicant ***chooses not to designate the State Water Board as the recipient of the bids***, the applicant must submit the following documents (paper copies) as part of the procurement package to the applicant's assigned grant manager for evaluation of grant agreement funding.

- ✓ A regulatory approved workplan. A workplan details the response actions to be taken to achieve the required response work. The regulatory agency must approve the work plan in writing.
- ✓ Workplan approval document from regulatory agency.
- ✓ Applicant must submit an RFQ/RFP Package that complies with 40 CFR part 30 or submit the awarding document to the selected contractor, demonstrating compliance with 40 CFR part 30.
- ✓ List of vendors to whom the RFQ/RFP package was sent to and their mailing addresses with proof of service.
- ✓ A copy of all bids received and a list of the bids received from contractors and the contact person's name.
- ✓ Proposed Scope of Work, Project Work Schedule, and Budget prepared by selected contractor.

- Site assessment proposals need to include an **expanded** Scope of Work with contingency phase work built in to finish the site assessment and complete a corrective action plan.
- Cleanup proposals need to include the work necessary to carry out an approved corrective action plan or remedial action plan.
- The budget must include the cost of complying with all of the terms and conditions in the grant agreement, **including compliance with all of the following:**
 - **The Davis-Bacon Act.** (Refer to page 12 of “Guidance to Regions For Implementing the LUST Provision of the American Recovery and Reinvestment Act of 2009” dated June 2009. See link at: <http://www.epa.gov/oust/eparecovery/lustproguid e.pdf> and Exhibit E of the grant agreement.)
 - **Disadvantaged Business Enterprise requirements.** (See DBE Guidance Document located at: http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml.)
 - **Buy American section 1065 requirements.** (Refer to page 13 of “Guidance to Regions For Implementing the LUST Provision of the American Recovery and Reinvestment Act of 2009” dated June 2009. See link at: <http://www.epa.gov/oust/eparecovery/lustproguid e.pdf>, if applicable.)

The Grantee should award the contract to their contractor within 90 days of the effective date of the grant agreement.

6. USTCF Technical Review

a. If the applicant ***chooses to designate the State Water Board as the recipient of the bids***, USTCF Technical staff will review the applicant’s approved workplan, RFQ/RFP, and all responsive bids received by the State Water Board and pre-approve eligible costs. The applicant will then select a contractor who will provide the following documents to the applicant’s grant manager.

- ✓ Proposed Scope of Work, Project Work Schedule, and Budget prepared by selected contractor.

- Site assessment proposals need to include an **expanded** Scope of Work with contingency phase work built in to finish the site assessment and complete a corrective action plan.
- Cleanup proposals need to include the work necessary to carry out an approved corrective action plan or remedial action plan.
- The budget must include the cost of complying with all of the terms and conditions in the grant agreement, **including compliance with all of the following:**
 - **The Davis-Bacon Act. (Refer to page 12 of “Guidance to Regions For Implementing the LUST Provision of the American Recovery and Reinvestment Act of 2009” dated June 2009. See link at: <http://www.epa.gov/oust/eparecovery/lustproguid e.pdf> and Exhibit E of the grant agreement.)**
 - **Disadvantaged Business Enterprise requirements. (See DBE Guidance Document located at: http://www.waterboards.ca.gov/water_issues/programs/ustcf/oscf.shtml.)**
 - **Buy American section 1065 requirements. (Refer to page 13 of “Guidance to Regions For Implementing the LUST Provision of the American Recovery and Reinvestment Act of 2009” dated June 2009. See link at: <http://www.epa.gov/oust/eparecovery/lustproguid e.pdf>, if applicable.)**

USTCF Technical staff will approve the proposed Scope of Work, Project Work Schedule, and Budget.

b. If the applicant ***chooses not to designate the State Water Board as the recipient of the bids***, USTCF Technical staff will: review the applicant’s approved workplan and all bids received; approve the proposed Scope of Work, Project Work Schedule, and Budget; and pre-approve eligible costs.

7. Grant Agreement Amendment (As applicable)

After the grantee completes the procurements process, the State Water Board may propose adjustments to the estimated budget based on USTCF Technical staff’s review of the procurement paperwork, scope of work, and budget. The

grantee will receive an electronic copy of the any proposed amendment to the grant agreement with the proposed amendment(s) to the Scope of Work, Project Work Schedule, and/or Budget. The grantee will be given ten days to either concur with the revised agreement or provide a written reason why the proposed Scope of Work, Project Work Schedule, or Budget should be modified. OSCF Program staff will work with USTCF Technical staff to review any requested modifications. Upon agreement of both parties, a grant amendment will be executed.