Environmental Protection Agency

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whether determined by adjudication, arbitration, negotiation, or otherwise;
(d) Fines and penalties due to violations of, or failure to comply with, Federal, State, or local laws;
(e) Costs outside the scope of the approved project;
(f) Interest on bonds or any other form of indebtedness required to finance the project costs;
(g) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in §35.940–4;
(h) Site acquisition (for example, sewer rights-of-way, sewage treatment plantsite, sanitary landfills and sludge disposal areas) except as otherwise provided in §35.940–3(a);
(i) Costs for which payment has been or will be received under another Federal assistance program;
(j) Costs of equipment or material procured in violation of §35.938–4(h);
(k) Costs of studies under §35.907(d)(6) and (7) when performed solely for the purpose of seeking an allowance for removal of pollutants under part 403 of this chapter;
(l) Costs of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works;
(m) Construction of privately-owned treatment works, including pretreatment facilities, except as authorized by section 201(h) of the Act and §35.918;
(n) Preparation of a grant application, including a plan of study.

§ 35.940–3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the construction of a treatment works. The following costs are allowable if reasonable and if the Regional Administrator approves them in the grant agreement:
(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process, or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent);
(b) Land acquired after December 26, 1977, that will be used for storage of treated wastewater in land treatment systems before land application.
(c) Land acquired after December 26, 1977, that will be used for composting or temporary storage of compost residues which result from wastewater treatment, if EPA has approved a program for use of the compost.
(d) Acquisition of an operable portion of a treatment works. This type of acquisition is generally not allowable except when determined by the Regional Administrator in accordance with guidance issued by the Administrator.
(e) Rate determination studies required under §35.925–11.
(f) A limited amount of end-of-pipe sampling and associated analysis of industrial discharges to municipal treatment works as provided in §35.907(t).

§ 35.940–4 Indirect costs.

Indirect costs shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those cost elements allowable under §35.940–1. Where the benefits derived from indirect services cannot be readily determined, a lump sum for overhead may be negotiated if EPA determines that this amount will be approximately the same as the actual indirect costs.

§ 35.940–5 Disputes concerning allowable costs.

The grantee should seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, before execution of the grant agreement). Final determinations concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with the “Disputes” provisions of part 30, subpart J, of this subchapter.

§ 35.945 Grant payments.

The grantee shall be paid the Federal share of allowable project costs incurred within the scope of an approved project and which are currently due and payable from the grantee (i.e., not including withheld or deferred amounts), subject to the limitations of §§35.925–18, 35.930–5, 35.930–6, and 35.965(b) and (c), up to the grant amount set forth in the grant agreement and any
amendments thereto. Payments for engineering services for step 1, 2 or 3 shall be made in accordance with §35.937–10 and payments for step 3 construction contracts shall be made in accordance with §§35.938–6 and 35.938–7. All allowable costs incurred before initiation of construction of the project must be claimed in the application for grant assistance for that project before the award of the assistance or no subsequent payment will be made for the costs.

(a) Initial request for payment. Upon award of grant assistance, the grantee may request payment for the unpaid Federal share of actual or estimated allowable project costs incurred before grant award subject to the limitations of §35.925–18. Payment for such costs shall be made in accordance with the negotiated payment schedule included in the grant agreement.

(b) Interim requests for payment. The grantee may submit requests for payments for allowable costs in accordance with the negotiated payment schedule included in the grant agreement. Upon receipt of a request for payment, subject to the limitations set forth in §30.615–3 of this subchapter and §§35.935–12, 35.935–13, and 35.935–16, the Regional Administrator shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of Federal payments to the grantee for the project is equal to the Federal share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment. Generally, payments will be made within 20 days after receipt of a request for payment.

(c) Adjustment. At any time before final payment under the grant, the Regional Administrator may cause any request(s) for payment to be reviewed or audited. Based on such review or audit, any payment may be reduced for prior overpayment or increased for prior underpayment.

(d) Refunds, rebates, credits, etc. The Federal share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Reasonable expenses incurred by the grantee for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(e) Final payment. After completion of final inspection under §35.935–14, approval of the request for payment which the grantee designates as the “final payment request,” and the grantee’s compliance with all applicable requirements of this subchapter and the grant agreement, the Regional Administrator shall pay to the grantee any balance of the Federal share of allowable project costs which has not already been paid. The grantee must submit the final payment request promptly after final inspection.

(f) Assignment and release. By its acceptance of final payment, the grantee agrees to assign to the United States the Federal share of refunds, rebates, credits or other amounts (including any interest) properly allocable to costs for which the grantee has been paid by the Government under the grant. The grantee thereby also releases and discharges the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Regional Administrator and the grantee.

(g) Payment of costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Notwithstanding the provisions of paragraph (a) of this section, if the Regional Administrator determines it is necessary for the expeditious completion of a project, he may make advance payment after grant award under §4.502(c) of this subchapter for the EPA share of the cost of any payment of relocation assistance by the grantee. The requirements in §30.615–1 (b) and (d) of this subchapter apply to any advances of funds for assistance payments.