

Funding Construction Manager at Risk Projects Through the Water Pollution Control Loan Fund

Ohio's legislature has revised Ohio Revised Code Chapter 9 to enable public authorities to use Construction Manager at Risk (CMAR) contracts to construct public facilities. Ohio EPA's Water Pollution Control Loan Fund (WPCLF) is a source of financing available to communities who wish to use this alternative project delivery method for their water quality and water supply projects. Ohio EPA recommends that communities use the following steps to seek WPCLF loans for CMAR construction projects.

- Nominate the project for WPCLF funding. Ohio EPA usually invites communities to nominate projects in late summer for funding the following calendar year.
- Inform Ohio EPA of the plan to use a CMAR project delivery method. Meet to discuss what stage the design and CMAR engagement are in (RFQ, RFP), and the community's plans and schedule for next steps. The community and Ohio EPA also will discuss the plan for meeting WPCLF program requirements for a construction loan, such as providing Disadvantaged Business Enterprises the opportunity to participate in the project.
- If the project will require an NPDES permit, request proposed effluent limits. Ohio EPA will work with the community to identify water quality based effluent limits for the discharge.
- Provide Ohio EPA planning information that describes the problem the project will solve, alternative solutions that were evaluated, and the selected cost-effective alternative. Preferably, the planning information is provided before extensive design is completed, so that Ohio EPA can confirm that the project concept will meet WPCLF program requirements.
- Apply for an NPDES permit if the project requires it, as soon as possible after effluent limits for the discharge are identified. If the project will increase pollutant loadings to waters of the state, an Antidegradation Review will be needed, along with time for the public to comment on the proposed project and for Ohio EPA to respond to the comments. Because the Antidegradation Review can affect the community's project schedule, the documentation required by Ohio Administrative Code Rule 3745-1-05 should be submitted to Ohio EPA as early as possible.
- Apply for a Permit to Install (PTI). The PTI application will include detailed engineering plans, technical specifications, and contract "front end" documents. The PTI application may be submitted to Ohio EPA either before or after the community engages the CMAR, depending on the CMAR's degree of involvement in developing the design. We encourage the community to meet with Ohio EPA to discuss what design information should be included in the PTI

application. Ohio Administrative Code Rule 3745-42 identifies regulatory requirements for the application.

- As part of the WPCLF construction loan process, the community will document the procedures it used in accord with Ohio Revised Code Chapter 9.334 and Ohio Administrative Code Rule 153:1-6-01 to:
 - Qualify and rank at least three potential CMAR firms from which to request pricing and technical proposals (“short-listed” firms)
 - Evaluate pricing and technical proposals from short-listed firms
 - Rank firms based on best value (technical and cost)
 - Negotiate contract with best-ranked CMAR. This could include a Guaranteed Maximum Price as detailed in the ORC and OAC.
- The price negotiated with the CMAR will be a key part of the community’s construction loan application. Ohio EPA staff will answer questions and help the community resolve issues that arise during the loan application process.
- During and after construction, Ohio EPA will be available as a resource for questions and issues that may arise such as changes to the project, implementation of operation and maintenance procedures, and evaluation of the project’s performance.
- ORC Chapter 9.334 provides for the possible distribution of shared savings between the CMAR and the community for projects performed under a Guaranteed Maximum Price. The shared savings distribution is negotiated between the community and the CMAR and is included in the contract between the parties. After the work is completed, if there are funds remaining in the CMAR’s contingency, a shared savings change order may be executed by the CMAR and the community. The community’s share of the savings would be realized as a reduction in its WPCLF loan amount. The CMAR’s share of the savings would be paid as a project cost under the WPCLF construction loan.