

1 Department of Commerce

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3 Adopted Permanent Rules Relating to Petrofund Corrective Action

4 Costs

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6 Rules as Adopted

7 2890.0010 DEFINITIONS.

8 [For text of subps 1 and 2, see M.R.]

9 Subp. 2a. **Board.** "Board" means the petroleum tank release
10 compensation board.

11 [For text of subp 3, see M.R.]

12 Subp. 3a. **Consultant services.** "Consultant services"
13 means professional consulting, investigation, or design services.

14 Subp. 3b. **Contractor services.** "Contractor services" means
15 products and services within a scope of work that can be defined
16 by typical written plans and specifications including, but not
17 limited to, excavation, treatment of contaminated soil and
18 groundwater, soil borings and well installations, laboratory
19 analysis, surveying, electrical, plumbing, carpentry, and
20 equipment.

21 [For text of subps 4 to 7, see M.R.]

22 2890.0075 DOCUMENTATION OF REASONABLENESS.

23 Subpart 1. **Generally.** The applicant shall prove the
24 reasonableness of all incurred eligible costs. Effective for
25 any contract entered into or commenced on or after the effective
26 date of this part, the applicant shall solicit a minimum of two
27 written competitive bids for each contractor service, and two
28 written proposals for consultant services. The board shall pay
29 only those costs it determines to be reasonable.

30 Subp. 2. **Contractor services; bids.** The applicant or its
31 agent shall solicit, publicly or privately, a minimum of two
32 written competitive bids in a form prescribed by the board based
33 upon comparable unit costs for each contractor service performed
34 in connection with corrective action from contractors considered
35 by the applicant or its agent to be qualified and who shall have

1 all necessary licenses and government approvals for the work to
2 be performed.

3 Copies of the written bids shall be submitted to the board
4 with the application for reimbursement. Unit costs
5 substantially in excess of those in the bid of the lowest
6 qualified bidder shall be considered prima facie unreasonable by
7 the board.

8 Subp. 3. **Consultant services; proposals.** The applicant
9 shall solicit a minimum of two written proposals for consultant
10 services from consultants considered by the applicant to be
11 qualified in a form prescribed by the board setting forth the
12 qualifications of the consultant and estimates of costs for
13 consulting services. The applicant must make a good faith
14 effort to assure that the costs in the proposal selected are
15 reasonable considering the qualifications of the consultant and
16 the services to be performed.

17 Copies of the written proposals shall be submitted to the
18 board with the application for reimbursement. The board shall
19 require the applicant to justify the reasonableness of the costs
20 in the proposal selected if the reasonableness of the costs is
21 not apparent in the documentation submitted with the application.

22 The applicant may present evidence of reasonableness by a
23 showing that the lowest cost proposal was selected, or that the
24 services to be performed or the selected consultant's
25 qualifications, including, but not limited to, education,
26 experience, certifications and registrations, health and safety
27 training, insurance, availability and references, justified the
28 selection of a higher cost proposal.

29 Subp. 4. **Exemptions.** The applicant shall be granted an
30 exemption from the requirement that a minimum of two bids be
31 obtained for each contractor service or a minimum of two
32 proposals be obtained for consultant services:

33 A. if the board determines that the applicant has
34 provided satisfactory evidence:

35 (1) that only one contractor or consultant was
36 reasonably available to perform the necessary service and that

1 costs are not substantially in excess of costs charged for
2 similar services by a comparable contractor or consultant in the
3 same geographical area; or

4 (2) that the necessary services were required by
5 an emergency, including the abatement of free product, for which
6 there was not sufficient time to obtain bids or proposals; or

7 B. if the board makes an annual determination that
8 the applicant has established that a standing contract that was
9 entered into via a bidding or evaluation process will result in
10 reasonable corrective action costs by providing to the board:

11 (1) documentation of the bidding process that led
12 to the standing contract for contractor services or a written
13 explanation of the evaluation process that led to the standing
14 contract for consultant services; and

15 (2) a written explanation of why the standing
16 contract results in lower corrective action costs than obtaining
17 bids or proposals on a per job basis.

18 **Subp. 5. Reasonableness of incurred costs.**

19 Notwithstanding subparts 1 to 4, the board may consider all
20 invoice costs submitted for reimbursement to determine whether
21 the costs incurred are reasonable.

22 **2890.0090 APPLICATION PROCESS.**

23 **Subpart 1. Applications.** A person who requests
24 compensation from the fund shall complete, sign, and submit to
25 the board a written application. The application shall be made
26 on a form prescribed by the board and shall contain at least the
27 following:

28 A. the name of the person making the application;

29 B. a description of the site of the release;

30 C. (1) for costs associated with corrective action
31 related to soil contamination, a copy of the commissioner's
32 approval of a soil corrective action plan, or evidence that a
33 proposed soil corrective action plan has been submitted to the
34 commissioner; or

35 (2) for costs associated with corrective action

1 that will address the entire release, including groundwater if
2 necessary, a copy of the commissioner's approval of a
3 comprehensive corrective action plan, or evidence that a
4 proposed comprehensive corrective action plan has been submitted
5 to the commissioner; or

6 (3) a closure letter issued by the commissioner;

7 D. an itemized list of all corrective actions taken,
8 the eligible costs associated with the actions, and the name of
9 the engineer, contractor, or subcontractor who performed the
10 action; and

11 E. documentation of solicitation of competitive bids
12 or proposals or qualification for exemption as required by part
13 2890.0075.

14 [For text of subps 2 to 6, see M.R.]

15 REPEALER. Minnesota Rules, parts 2890.0060, subpart 5; and
16 2890.0070, subpart 2, are repealed.