§ 17-1903. Contracts for construction of sewage treatment works.

1. As used in this section:

a. "Sewage treatment works" means a facility for the purpose of treating, neutralizing or stabilizing sewage, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

b. "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

c. "Eligible project" means a project for the construction of sewage treatment works, (1) for which a permit has been issued pursuant to section 17-0701 of this article, (2) which is, in the judgment of the commissioner, in accord with applicable comprehensive studies and reports made pursuant to section 17-1901, if any, (3) which is, in the judgment of the commissioner, eligible for federal pollution abatement assistance, whether or not federal funds are then available therefor, (4) which conforms with applicable rules and regulations of the commissioner, (5) which is, in the judgment of the commissioner, necessary for the accomplishment of the state water pollution control program, and (6) either (a) the erection, building, acquisition, alteration, reconstruction, improvement or extension of which is commenced or is to be commenced between the date on which this act becomes a law and March 31, 1972, or (b) any portion of the erection, building, acquisition, alteration, reconstruction, improvement or extension of which is undertaken between the date on which this act becomes a law and March 31, 1972.

d. "Municipality" means any county, city, town, village, district corporation, county or town improvement district, or sewer authority now

existing in a city, the New York State Environmental Facilities Corporation acting pursuant to subdivision three of section twelve hundred eighty-five of the public authorities law, or any two or more of the foregoing which are acting jointly in connection with an eligible project.

e. "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for construction of sewage treatment works, pursuant to section 6 of the Federal Water Pollution Control Act as enacted by section 1 of the Federal Water Pollution Control Act amendments of 1956 and acts amendatory thereto.

f. "Federal assistance" means funds available, other than by loan, from the federal government to a municipality, either directly or through allocation by the state, for construction of sewage treatment works or which are used for such construction, pursuant to the Federal Water Pollution Control Act and acts amendatory thereto or pursuant to any other federal law or program.

2. For the purpose of discharging the state responsibility with respect to the protection and promotion of the health of the inhabitants of the state by the provision of sewage treatment works, the commissioner, in the name of the state, may enter into contracts with municipalities having power to construct, operate and maintain sewage treatment works, and any such municipality may enter into a contract with the commissioner, concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

a. An estimate of the reasonable cost of the project as determined by the commissioner.

b. An agreement by the commissioner to pay to the municipality, during the progress of construction of each phase of the project (said phases to be construction of interceptors, substructure, superstructure, outfalls or other similar major components of a project), subject to

final computation and determination of the state grant upon completion of the entire project reflecting the actual eligible cost thereof, a portion of the cost of the project representing the part of the non-municipal share of the cost of the project that is not paid by the federal government, determined in the following manner:

(1) An amount equal to thirty per cent of the actual cost of the project, or an amount equal to thirty per cent of the estimated reasonable cost of the project, whichever is lower, provided, however, that the state payment under this subparagraph shall be reduced by the amount of any federal assistance received or to be received by the municipality which is in excess of sixty per cent of the cost of the project, together with,

(2) If necessary to limit the municipal share of the cost of the project to forty per cent, an additional amount which when added to the amount of federal assistance, if any, received or to be received by the municipality, equals thirty per cent of the actual cost of the project, or equals thirty per cent of the estimated reasonable cost of the project, whichever is lower.

c. An agreement by the municipality

(1) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 17-0701;

(2) To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the commissioner;

(3) to operate and maintain the sewage treatment works in accordance with applicable provisions of this article, the state sanitary code and rules and regulations of the commissioner;

(4) to apply for and make reasonable efforts to secure federal assistance for the project;

(5) to secure the approval of the commissioner before applying for federal pollution abatement assistance, in order to maximize the amounts of such assistance received or to be received for all projects in New York state, including amounts for reimbursement of payments made by the state pursuant to subparagraph (2) of paragraph b of this subdivision; and

(6) to provide for the payment of the municipality's share of the cost

of the project.

d. A provision that, in the event that federal assistance which was not included in the calculation of the state payment pursuant to paragraph b of this subdivision becomes available to the municipality, the amount of the state payment shall be recalculated with the inclusion of such additional federal assistance and the municipality shall either (1) pay to the state the amount by which the state payment actually made exceeds the state payment determined by the recalculation or, (2) if such additional federal assistance has not been received by the municipality, authorize the state to receive and retain such amount from the federal government.

3. The commissioner may adopt rules and regulations pursuant to subdivision 2 of section 17-0303 governing the making and enforcing of contracts pursuant to this section.

4. All contracts entered into pursuant to this section shall be subject to approval by the state comptroller, and by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit by and upon the warrant of the comptroller on vouchers approved by the commissioner.

5. The commissioner shall prepare and file with the department an annual report on the scope and results of construction undertaken pursuant to this section.

6. In connection with each contract concerning an eligible project the commissioner shall keep adequate records of the amount of the payment by the state pursuant to subparagraph (2) of paragraph b of subdivision 2 of this section, and of the amount of federal assistance received by the municipality. Such records shall be retained by the commissioner and shall establish the basis for application for federal reimbursement of such payments made by the state. The commissioner is hereby authorized to make such applications in appropriate cases.

7. In the event that a project is an eligible project by reason of

clause (b) of subparagraph (6) of paragraph c of subdivision 1 of this section rather than by reason of clause (a) of such subparagraph, then the estimated reasonable cost of the project determined pursuant to paragraph a of subdivision 2 of this section and the actual cost of the project for the purpose of subparagraphs (1) and (2) of paragraph b of such subdivision shall be calculated only with respect to that portion of the erection, building, acquisition, alteration, reconstruction, improvement or extension of the sewage treatment works which is undertaken after the date on which this act becomes a law.

8. The commissioner may advance funds to a municipality in accordance with the following provisions:

a. Prior to entering into a contract authorized by subdivision 2 of this section, the commissioner may advance funds to a municipality, in an amount up to five per cent of the estimated reasonable cost of an eligible project as determined by the commissioner, for the purpose of assisting the municipality in defraying expenses of an eligible project incurred in advance of construction. This advance shall be payable, upon the warrant of the comptroller on a voucher approved by the commissioner, after formal acceptance by the municipality of the federal pollution abatement assistance offered pursuant to the provisions of the Federal Water Pollution Control Act and amendments thereto or at the discretion of the commissioner after state submission of the project to the federal government and in the absence of a federal offer.

b. The amount of the advance shall be deducted from the amount of the state payment to be made to the municipality, pursuant to the agreement of the commissioner with the municipality, when construction of the entire project is one-half completed.

c. The municipality shall initiate construction of the project within the time specified in the approved project which, in any event, shall not be later than two years after the date of such advance of funds. If construction is not initiated within such time, the amount of the advance shall be repaid to the state. Whenever such municipality shall fail to make any such repayment to the state, upon request of the

commissioner, the state comptroller shall cause to be withheld from state-collected, locally-shared taxes or state aid, whichever he shall determine and to which such municipality would otherwise be entitled, a sum sufficient to reimburse the state for the amount due and owing the state.

9. To the extent that funds available pursuant to chapter 176 of the laws of 1965 (Pure Waters Bond Act) are not needed to finance the state share of projects, the construction of which was undertaken prior to April 1, 1972, the commissioner is authorized to provide assistance to municipalities for the construction of "water quality improvement projects" as defined in section 51-0303 of this chapter. The use of funds as authorized by this subdivision will be governed by the provisions of titles 1 and 3 of article 51 of this chapter, provided however, that subdivisions 1 through 8 of this section will continue to apply to projects construction of which was undertaken prior to April 1, 1972.