



# **CONSTRUCTION CONTRACT**

## **INVITATION FOR BIDS**

**New York City**  
**Department of**  
**Environmental Protection**  
59-17 Junction Boulevard  
Flushing, New York 11373

**Rohit Aggarwala**  
Commissioner

**Joseph Vaicels**  
Assistant Commissioner  
Agency Chief Contracting  
Officer

**Bid Booklet**  
**(with additional volumes of Contract Terms, Specifications**  
**and Drawings)**

**Contract:** **KENS-EAST-2**

**Description:** **KENSICO-EASTVIEW CONNECTION**  
**KENSICO SITE PREPARATION**

**DEP Bid Administrator**  
**59-17 Junction Boulevard, 17th Floor**  
**Flushing, New York 11373**

**April 2023**

## **NOTICE TO NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION CONTRACTORS**

Please be advised that all notices required to be submitted to the New York City Department of Environmental Protection (“DEP”) Commissioner pursuant to Article 11, Article 27, Article 30, and Article 78<sup>1</sup> of the City of New York Standard Construction Contract must now instead be submitted electronically to the following email address: [commcontractnotices@dep.nyc.gov](mailto:commcontractnotices@dep.nyc.gov).<sup>2</sup> Upon receipt, DEP will send an acknowledgement via email. The DEP Commissioner will no longer accept physical copies of said notices.

If a contractor is unable to comply with this notice, please contact [commcontractnotices@dep.nyc.gov](mailto:commcontractnotices@dep.nyc.gov) immediately to make alternative arrangements.

Please note the above email address may only accept messages that are ten megabytes or smaller. If your submission is larger than that, please contact [commcontractnotices@dep.nyc.gov](mailto:commcontractnotices@dep.nyc.gov) to request a link that will allow you to upload the documents.

Thank you for your anticipated cooperation.

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<sup>1</sup>Please note that Article 78 appears only in the 2017 City of New York Standard Construction Contract.

<sup>2</sup>Please be advised that this notice only applies to documents that must be submitted to the DEP Commissioner. Please follow the contract and the Procurement Board Policy Rules when submitting documents to the Comptroller of the City of New York, the Contract Dispute Resolution Board, or any other entity.

## **SECTION A**

**See Bidder's Certification  
of Compliance with Iran  
Divestment Act and  
Bidder's Identification of  
Subcontractor in  
PASSPort**



# **NOTICE TO BIDDERS**

Please be advised that, The Iran Divestment Act of 2012 (effective April 12, 2012) is codified at State Finance Law("SFL") 165-a and General Municipal Law ("GML") §103-9. The Iran Divestment Act, with certain exceptions, prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran. To implement the law, each bidder or proposer is required to certify at the time it submits its bid or proposal that it is not on a list of entities engaged in investment activities in Iran created by the Commissioner of the NYS Office of General Services pursuant to the State Finance Law. If a bidder or proposer is on the list, an Agency will be able to award a contract to such a vendor only in situations where the vendor is taking steps to cease its investments in Iran or where the vendor is a necessary sole source.

Attached is a rider implementing the Iran Divestment Act. **ALL BIDDERS ARE REQUIRED TO COMPLETE THE BIDDER'S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT IN PASSPORT**



**IRAN DIVESTMENT ACT COMPLIANCE RIDER FOR  
NEW YORK CITY CONTRACTORS**

The Iran Divestment Act of 2012, effective as of April 12, 2012, is codified at State Finance Law (“SFL”) §165-a and General Municipal Law (“GML”) §103-g. The Iran Divestment Act, with certain exceptions, prohibits municipalities, including the City, from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Pursuant to the terms set forth in SFL §165-a and GML §103-g, a person engages in investment activities in the energy sector of Iran if:

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

A bid or proposal shall not be considered for award nor shall any award be made where the bidder or proposer fails to submit a signed and verified bidder’s certification.

**Each bidder or proposer must certify that it is not on the list of entities engaged in investment activities in Iran created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. In any case where the bidder or proposer cannot certify that they are not on such list, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons why such statement cannot be made. The City of New York may award a bid to a bidder who cannot make the certification on a case by case basis if:**

**(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or**

**(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.**

## **NOTICE TO BIDDERS**

This is to inform you that due to heightened security, we require identification of all people attending the pre-bid site visit.

The pre-bid meeting will be held on the date and at the location indicated on the *Notice to Bidders* in PASSPort. After the meeting, there will be a site visit that requires clearance from the DEP Police. Each person interested in attending the site visit must mail or e-mail a completed *Temporary Access Form* to the Agency Contact person indicated in PASSPort, to be received by one week before the site visit. This form should be completed fully and have a copy of the person's identification scanned with the form. (Acceptable forms of identification are: Driver's license, or Passport. Include as the e-mail subject "DD/MM/YY, HH/MM AM, Site Visit for Contract XXXXX") and include a contact name and phone number. Be advised that only approved attendees will be admitted to the facility and attendance will be limited to a maximum of two (2) persons per company. Attendees must present government-issued photo identification to gain entry. Expired identification will not be accepted. Prospective bidders who have not been pre-screened before the visit must show up at the site 30 minutes prior to the scheduled meeting with the requested information. Bidders are encouraged to be prompt and are hereby notified that there will be no admittance any time after 30 minutes of the scheduled meeting has elapsed.

All attendees should have their own personnel safety equipment (hard hat, boots, etc.) to enter the site area. All attendees will remain with the group and in designated areas during the visit. Wandering round the site is not permitted. Cameras, videos and bags are not permitted on-site.

**DEP POLICE USE ONLY**Access: ☐ Approved ☐ Denied

Date/Time:

Reviewing Officer: Initials:

Badge #:

**TEMPORARY ACCESS FORM****Type of Access Requested. Select one:**

- ☐ **DAY WORKER ACCESS** - For persons working on a day-to-day basis at a DEP facility and/or project site and who are not part of a contractor's regular staff. DEP Police will notify the employee, construction manager, and post officer if access is granted.
- ☐ **DAY TOUR ACCESS** - For persons attending tours of DEP critical infrastructure. DEP Police will notify the individual and sponsoring DEP entity if access is granted.
- ☐ **PRE-BID MEETING SITE ACCESS** - For prospective bidders attending pre-bid meetings at a DEP facility and/or project site. Any bidder who does not fax or e-mail this form to the appropriate DEP Project Manager at least one week prior to the scheduled visit will be required to bring the requested information to the site no less than 30 minutes prior to the scheduled meeting start time; there is no admittance of any bidder more than 30 minutes after the scheduled meeting start time.
- ☐ **DELIVERIES** - For persons delivering materials to a DEP site (other than UPS or FedEx).

**SUBMIT  
FORM TO:**East of Hudson - Eastview Command Center

T: (914) 593-7500 / F: (914) 345-1840

E: PoliceEastviewComm@dep.nyc.gov

West of Hudson - Ashokan Dispatch

T: (845) 657-8433 / F: (845) 657-6145

E: Ashokancomm@dep.nyc.gov

This form expires fifteen (15) days from the date of submission. Access beyond that date requires official DEP-issued identification or submission of a new Temporary Access Form.

<i>All fields are required. Please print clearly or type:</i>		Today's Date:	
Date(s) Access Requested: From:		To:	
Site Location (name and/or address):			
Company or Group Affiliation Name:			
Name:			
Security Point of Contact:		Telephone #:	
Work to be Performed:			
Name: _____, _____, _____ Last First M.I.			
Date of Birth (mm/dd/yyyy):		Social Security # (last 4 only):	
Contact Telephone Number(s):		or	
Driver License #:		, Issuing State	
If no driver license, other form of government issued photo identification and number:			

I hereby affirm that the above information is true and that I agree to comply with all DEP policies and rules while I am on DEP property. I understand that 1) I must bring my identification to the site for physical inspection, 2) expired identification will not be accepted, and 3) providing false or misleading information or identification may result in criminal charges, denial of access to DEP sites and facilities, or rejection of any bid submitted by the applicant's company.

*Place identification in this box  
if scanning or faxing this form.*

Signature

## **NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS**

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act (“WPEA”), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

**REPORT**  
***CORRUPTION, FRAUD, UNETHICAL CONDUCT***  
RELATING TO A NYC-FUNDED CONTRACT  
OR PROJECT  
CALL THE NYC DEPARTMENT OF INVESTIGATION  
**212-825-5959**



**DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:**

New York City Department of Investigation (DOI)  
80 Maiden Lane, 17th floor  
New York, New York 10038  
Attention: COMPLAINT BUREAU

**OR FILE A COMPLAINT ON-LINE AT:**

[www.nyc.gov/doi](http://www.nyc.gov/doi)

**All communications are confidential**

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages



← **Scan the QR Code at Left to File a Complaint**

## **SECTION B**

**See Bid Submission Form,  
Bid Sheet/Item Grid, and  
Bidder's Minimum  
Qualifications in PASSPort**

## **SECTION C**





# **CONSTRUCTION CONTRACT INFORMATION FOR BIDDERS**

**(Rev. 4/13/2018)**

**59-17 Junction Boulevard, Flushing, New York 11373**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**INFORMATION FOR BIDDERS - CONSTRUCTION CONTRACT**



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**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**INFORMATION FOR BIDDERS - CONSTRUCTION CONTRACT**

1. **GENERAL INFORMATION**

(A) PAGINATION OF INVITATION FOR BIDS (“IFB”) PACKAGE

The pages of this solicitation package are numbered consecutively. Prospective bidders must examine the documents carefully. Before bidding, prospective bidders must notify the Agency Chief Contracting Officer, in writing, if any pages are missing, and request that those missing pages be furnished to them.

(B) DESCRIPTION AND LOCATION OF WORK

The description and location of the work for which bids are requested are specified on the Cover Page located in the front of the Bid Booklet that is part of this IFB.

(C) PROCUREMENT POLICY BOARD RULES

This Invitation for Bids is subject to the Rules of the Procurement Policy Board of the City of New York (the “PPB Rules”). In the event of a conflict between the PPB Rules and a provision of this Invitation for Bids, the PPB Rules shall take precedence. A copy of the PPB Rules can be obtained on the City’s website at <http://www.nyc.gov/html/moc/ppb/html/home/home.shtml>.

(D) BID SUBMISSION REQUIREMENTS

**Certain bid forms, all of which are contained in the Bid Booklet for this Invitation for Bids if they are applicable to this Contract, that must be completed and submitted with the bid, or else it may be rejected as non-responsive.**

**In addition, it is recommended that the following forms, all of which are contained in the Bid Booklet, be completed and submitted with the bid, or within five days after the bid opening. Please be advised, however, that when requested to do so by DEP, the apparent low bidder must submit the following forms:**

- i. **Business Entity and Principal VENDEX Questionnaires** - See Section 26, below, for details.
- ii. **Employment Report** - See Section 32, below, for details.

**NON-COMPLIANCE WITH ANY BID SUBMISSION REQUIREMENTS MAY RESULT IN REJECTION OF THE BID.**

2. **TIME AND PLACE FOR RECEIPT OF BIDS**

Sealed bids will be received by the Department of Environmental Protection, Contract Management Office, 59-17 Junction Blvd. 17th Floor, Flushing, New York 11373, on the day and at the time specified on the Notice in PASSPort. Bids will be publicly opened and read aloud in the presence of the Commissioner, or his/her representatives, and any bidder who may desire to be present.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**INFORMATION FOR BIDDERS - CONSTRUCTION CONTRACT**

3. **DEFINITIONS**

The definitions set forth in the Procurement Policy Board Rules shall apply to this Invitation for Bids. Other capitalized terms used in this Invitation for Bidders are used as defined in the New York City Standard Construction Contract (the "Standard Construction Contract").

4. **INVITATION FOR BIDS DOCUMENTS**

(A) INCLUDED IN CONTRACT DOCUMENTS. Except for titles, subtitles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the contents of this Invitation for Bids package, except for such portions thereof as may be specifically excluded, shall be deemed to be part of the Contract, including the bid documents as completed and submitted by the successful bidder. For a further definition of the Contract Documents, see Article 1 of the Standard Construction Contract..

(B) GENERAL CONDITIONS AND SPECIFICATIONS. For particulars as to this procurement, including quantity and quality of the purchase, extent of the work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the General Conditions and Specification sections of the Invitation for Bids, including Schedule A to the General Conditions (highlighting key information specific to the bids for this Contract), as well as the Contract Drawings. A copy of such documents can be obtained at the DEP Contract Management Office, 59-17 Junction Blvd., 17th Floor, Flushing, 11373.

(C) DEPOSIT FOR COPY OF INVITATION FOR BIDS DOCUMENTS. Prospective bidders may obtain a copy of the Invitation for Bids documents by complying with the conditions set forth in the City Record Advertisement for Bids. The deposit required must be in the form of a money order or certified check, made payable to the order of the City of New York, and drawn upon a state or national bank or trust company, or of a check of such bank or trust company *signed by a duly authorized officer thereof*.

(D) RETURN OF INVITATION FOR BIDS DOCUMENTS. All Invitation for Bids documents must be returned to the Department upon request. If a prospective bidder elects not to submit a bid, the Invitation for Bids documents shall be returned to the Department along with a statement that no bid will be submitted.

(E) RETURN OF DEPOSIT. The Invitation for Bids documents deposit will be returned within 30 days after the award of the Contract or the rejection of all bids as set forth in the advertisement provided the Invitation for Bids documents are returned to the Contract Management Office in physical condition satisfactory to the Commissioner.

(F) ADDITIONAL COPIES. Additional copies of the Invitation for Bids may be obtained from the Agency Chief Contracting Officer, subject to any conditions set forth in the Advertisement for Bids.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**INFORMATION FOR BIDDERS - CONSTRUCTION CONTRACT**

5. **PRE-BID CONFERENCE**

A pre-bid conference, if required, as shown in the advertisement, shall be held as set forth on the Cover Page.

Nothing stated at the pre-bid conference shall change the terms and/or conditions of the Invitation for Bids unless a change is made by written amendment as provided in Section 9, below, and the Procurement Policy Board Rules, contained in an Addendum to the Invitation for Bids issued by the Agency Chief Contracting Officer.

*Failure to attend a mandatory pre-bid conference shall constitute grounds for the rejection of the bid.*

Please notify the Agency Contact Person for this IFB, listed on the Cover Page, of the number of representatives from your firm that will attend the conference. This should be done at least five City working days before the date of the pre-bid conference.

6. **AGENCY CONTACT**

Any questions or correspondence relating to this bid solicitation shall be addressed to the Agency Contact Person specified on the Cover Page.

7. **BIDDER'S OATH**

The bid shall be properly signed by an authorized representative of the bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true. A materially false statement willfully or fraudulently made in connection with the bid or any of the forms completed and submitted with the bid may result in the termination of any contract between the City and the bidder. As a result, the bidder may be declared non-responsible in connection with bids for future City contracts, as well as be subject to possible criminal prosecution.

8. [Intentionally Omitted]

9. **EXAMINATION OF PROPOSED CONTRACT**

(A) REQUEST FOR INTERPRETATION OR CORRECTION BEFORE BIDDING. Prospective bidders must examine the Invitation for Bids carefully and, before bidding, must make a request in writing to the Agency Contact Person to have the Agency Chief Contracting Officer ("ACCO") issue an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such interpretation or correction as well as any additional Contract provisions the ACCO may decide to include will be issued in writing by the ACCO as an Addendum to the Invitation for Bids, which will be sent to each person recorded as having received a copy of the Invitation for Bids, and which will also be posted at the place where Invitations for Bids are distributed. Upon such mailing or delivery and posting, such Addendum shall become a part of the Invitation for Bids and the Contract Documents, and binding on all bidders, whether or not actual notice of such Addendum is shown.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**INFORMATION FOR BIDDERS - CONSTRUCTION CONTRACT**

(B) ONLY THE ACCO'S INTERPRETATION OR CORRECTION BINDING. Only the written interpretation or correction so given by the ACCO shall be binding, and prospective bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the Invitation for Bids documents.

(C) SUBCONTRACTOR SOLICITATION. Documents given to a prospective subcontractor for the purpose of soliciting the subcontractor's bid shall include either a copy of the bid cover or a separate information sheet setting forth the project name, the Contract number (if available), the contracting agency, and the project's location.

10. **FORM OF BIDS**

Each bid must be submitted upon the prescribed Bid Form contained in Section B of the Bid Booklet, and must contain:

(A) The name, residence, and place of business of the person(s) or entity(ies) making the same.

(B) The names of all persons or entities interested therein, and if no other person or entity is so interested, such fact must be distinctly stated.

(C) A statement to the effect that it is made without any connection with any other person or entity making a bid for the same purpose and it is in all respects fair and without collusion or fraud.

(D) A statement that no Councilperson, or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof.

(E) A statement that the bidder is not in arrears to the City or to any agency upon a debt or contract, or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City or to any agency thereof, except as set forth in the bid.

**The bid shall be typewritten or written legibly in ink. The bid shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.**

11. [Intentionally Omitted]

12. **IRREVOCABILITY OF BID**

The prices set forth in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is withdrawn as provided for in Sections 16 and 19, below.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
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13. **ACKNOWLEDGMENT OF ADDENDA**

The receipt of any Addendum to the Contract Documents shall be acknowledged by the bidder on or before the submission of the bid.

14. **BID SAMPLES AND DESCRIPTIVE LITERATURE**

Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the Invitation for Bids or Contract Documents. Any unsolicited bid samples or descriptive literature that are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of this Contract. DEP may discard them, and they will not affect bid evaluation.

15. **PROPRIETARY INFORMATION / TRADE SECRETS**

The bidder shall clearly identify those portions of the bid which it deems to be confidential, proprietary information or trade secrets, and must provide justification as to why such materials should not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof with the word "Confidential." Such materials stamped "Confidential" must be easily separable from non-confidential sections of the bid.

All such materials stamped "Confidential" shall be reviewed by DEP and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder, with the exception of one copy that the City may retain and hold in a secure and confidential manner. Prices, makes, and model or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

16. **PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS**

Bids may be modified or withdrawn by written notice received by the Contract Management Office, 59-17 Junction Blvd. 17th Floor, Flushing, NY 11373 before the time and date set for the bid opening.

If a bid is withdrawn in accordance with this Section, the bid security, if any, shall be returned to the bidder.

17. **BID EVALUATION AND AWARD**

In accordance with the New York City Charter, the Procurement Policy Board Rules and the terms and conditions of this Invitation for Bids, this Contract shall be awarded, if at all, to the lowest responsible bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids, and whose bid price is either the lowest responsive bid price or, if the Invitation for Bids so states, the lowest evaluated responsive bid price. A bid



**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
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may not be evaluated for any requirement or criterion that is not disclosed in the Invitation for Bids.

(A) **RESTRICTIONS.** No negotiations with any bidder shall be allowed to take place except under circumstances and in the manner set forth in the PPB Rules and Section 17(B) of this Information for Bidders. Nothing in this Section shall be deemed to permit a Contract award to a bidder submitting a higher quality item than that designated in the Invitation for Bids if that bid is not also the most favorable bid.

(B) **NEGOTIATIONS WITH THE APPARENT LOWEST RESPONSIVE AND RESPONSIBLE BIDDER.** Upon determination of the apparent lowest responsive and responsible bidder and prior to award, the Contracting Officer may elect to open negotiations with such bidder in an effort to improve the bid to the City with respect to the price only. In the event the apparent lowest responsive and responsible bidder declines to negotiate, the Contracting Officer may elect to either award the Contract to the apparent lowest responsive and responsible bidder or may, upon written approval by the Agency Chief Contracting Officer, reject all bids in accordance with the PPB Rules.

18. **LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS**

Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Late bids and modifications shall not be opened until after registration of the Contract.

The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received and may be accepted upon written approval of the Agency Chief Contracting Officer.

19. **WITHDRAWAL OF BID**

Except as provided for in Section 16, above, a bidder may not withdraw its bid before the expiration of 45 days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.

20. **MISTAKES IN BIDS**

(A) **MISTAKES DISCOVERED BEFORE BID OPENING.** A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Section 16, above.

(B) **MISTAKES DISCOVERED AFTER BID OPENING**

i. **Mistakes Where Intended Correct Bid is Evident**

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If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

ii. **Mistakes Where Intended Correct Bid is Not Evident**

In accordance with General Municipal Law Section 103(11), mistakes may not be corrected after bid opening. Unless otherwise required by law, the sole remedy for a bid mistake discovered after bid opening in accordance with this Section shall be withdrawal of that bid, and return of the bid bond or other security, if any, to the bidder. Thereafter, DEP may, in its discretion, award the Contract to the next lowest bidder or rebid the Contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited. Where a unilateral error or mistake is discovered in a low bid, such bid may be withdrawn upon written approval of the Agency Chief Contracting Officer if the following conditions are met:

- (a) the mistake is known or made known to DEP prior to the awarding of the Contract or within three days after the opening of the bid, whichever period is shorter; and
- (b) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and
- (c) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and
- (d) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
- (e) it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

21. **LOW TIE BIDS**

(A) When two or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation for Bids, the Agency Chief Contracting Officer will break the tie in the following manner and order of priority:

- i. Award to a certified New York City minority-owned, woman-owned or emerging business entity bidder;
- ii. Award to a New York City bidder;

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- iii. Award to a certified New York State small, minority, or woman-owned business bidder;
- iv. Award to a New York State bidder.

(B) If two or more bidders still remain equally eligible after application of paragraph (A), above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

22. **REJECTION OF BIDS**

(A) REJECTION OF INDIVIDUAL BIDS. DEP may reject a bid if:

- i. the bidder fails to furnish any of the information required pursuant to Section 26 or 31, below; or if
- ii. the bidder is determined to be not responsible pursuant to the Procurement Policy Board Rules; or if
- iii. the bid is determined to be non-responsive pursuant to the Procurement Policy Board Rules; or if
- iv. the bid, in the opinion of the Agency Chief Contracting Officer, contains unbalanced bid prices and is thus non-responsive.

(B) REJECTION OF ALL BIDS. The ACCO may reject all bids and may elect to resolicit by bid or by other method authorized by the PPB Rules.

23. **RIGHT TO APPEAL DETERMINATIONS OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY AND RIGHT TO PROTEST SOLICITATIONS AND AWARD**

The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and any vendor has the right to protest a solicitation and award. For further information concerning these rights, the bidder is directed to the Procurement Policy Board Rules.

24. [Intentionally Omitted]

25. **AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY**

This Invitation for Bids is subject to applicable provisions of federal, state, and local laws and executive orders requiring affirmative action and equal employment opportunity.

26. **VENDEX QUESTIONNAIRES AND FEES**

Pursuant to New York City Administrative Code §6-116.2 and the PPB Rules (9 RCNY §5-02), bidders may be obligated to submit completed VENDEX Questionnaires in connection with this bid. Generally, if this bid is \$100,000 or more, or if this bid when added to the sum total of all contracts, concessions, and franchises the bidder has received from the City, and any subcontracts

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received from City contractors, over the past twelve months, equals or exceeds \$100,000 VENDEX Questionnaires must be completed and submitted. If completed VENDEX Questionnaires have been filed with the City within the previous 36 months, and there are no changes to any response contained in those VENDEX Questionnaires, the bidder may submit a Certification of No Change in lieu of completing additional VENDEX Questionnaires. If changes have occurred, the bidder is required to submit a Changed Questionnaire.

The VENDEX Questionnaires or the Certification of No Change must be completed and submitted directly to the Mayor's Office of Contract Services ("MOCS") before any award of the Contract may be made (or before an approval is given for a proposed subcontractor). Information provided on VENDEX Questionnaires is subject to review by the City's Department of Investigation. Detailed instructions regarding the completion of VENDEX Questionnaires are included in Section E of the Bid Booklet that is part of this IFB. The VENDEX Memorandum form included in the Bid Booklet must be completed by the apparent low bidder and submitted to the ACCO's office upon notification by DEP, certifying that the necessary questionnaires or a VENDEX Certification of No Change, as applicable, have been submitted to MOCS. Non-compliance with these submission requirements may result in the rejection of the bid, disapproval of a proposed subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the Contract after its award. Any questions concerning the VENDEX Questionnaires must be submitted to the ACCO.

Pursuant to PPB Rules Section 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX system, including the Vendor Name Check process, if a Vendor Name Check is required to be conducted by the City Department of Investigation. The contractor shall also be required to pay the applicable required fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the Contract. For contracts with an estimated value of less than or equal to one million dollars (\$1,000,000), the fee will be one hundred and seventy-five dollars (\$175). For contracts with an estimated value of greater than one million dollars (\$1,000,000), the fee will be three hundred and fifty dollars (\$350).

27. **AUDIT BY THE COMPTROLLER**

The New York City Comptroller is charged with the audit of City contracts. Any vendor who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, One Centre Street, Room 835, New York, NY; telephone number (212) 669-2797.

28. **BID, PERFORMANCE, AND PAYMENT SECURITY**

(A) **BID SECURITY.** The Mayor's Office of Contract Services or the Agency Chief Contracting Officer may require the submission of bid security in an amount and type specified in Schedule A to the General Conditions. **If bid security is required on Schedule A, no bid will be considered which is not accompanied by the bid security. The bid security shall assure the City and DEP of the adherence of the bidder to its bid, and the execution of the Contract, in form included in this IFB, if its bid is accepted.** The bidder is advised that submission of a bid bond where the surety on such bond fails to meet the criteria set forth herein shall result in the rejection of the bid as non-responsive.

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- i. If a bid bond is furnished to satisfy the bid security requirement, it shall be submitted in the form included in the Bid Booklet, issued by a surety company that is authorized to do business in the State of New York and approved by the City. The bid bond shall insure the City of New York to the extent of not less than amount stated in Schedule A.
- ii. If a bank certified check is submitted as bid security, it must be upon a state or national bank or trust company or a check of such bank or trust company signed by a duly authorized officer thereof, drawn to the City, which the Comptroller shall approve as of equal value with the sum so required in Schedule A.
- iii. The bid security, in whatever form, must not be enclosed in the envelope containing the bid, but must be submitted separately to the Commissioner's representative upon presentation of the bid.
- iv. Bid security will be returned to bidders as follows:
  - (a) Within ten days after the bid opening, the Comptroller will be notified to return the bid security of all but the three lowest bidders. Within five days after the award, the Comptroller will be notified to return the bid securities of the remaining two unsuccessful bidders.
  - (b) Within five days after the execution of the Contract and acceptance of the Contractor's performance and payment bonds, the Comptroller will be notified to return the bid security of the successful bidder or, if no performance and payment bonds are required, the Comptroller will be notified to return the bid security only after the sum retained under applicable provisions of the Contract equals the bid security.
  - (c) Where all bids are rejected, the Comptroller will be notified to return the bid security of all bidders at the time of rejection.

(B) PERFORMANCE SECURITY. The Agency Chief Contracting Officer or the Mayor's Office of Contract Services may require performance security, in the form set forth herein, in the amount specified in Schedule A. The performance security shall be delivered by the Contractor to the Contract Management Office *within ten days after the receipt of a Notice of Award*. If a Contractor fails to deliver the required performance security, the award shall be rescinded, its bid security shall be enforced and award of the Contract may be made to the next lowest responsive and responsible bidder or the Contract may be rebid.

(C) PAYMENT SECURITY. Payment security is required in the amount specified in Schedule A. The payment security, in the form set forth herein, shall be delivered by the Contractor to the Contract Management Office *within ten days after the receipt of a Notice of Award*. If a Contractor fails to deliver the required payment security, the award shall be rescinded, its bid security shall be enforced, and award of the Contract may be made to the next lowest responsive and responsible bidder, or the Contract may be rebid.

(D) ACCEPTABLE SECURITY. Acceptable security for bids, performance and payment shall be limited to:

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
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- i. A one-time bond in a form satisfactory to the City (the bidder must use the forms included in this IFB);
- ii. A bank-certified check or money order;
- iii. City bonds; or
- iv. Other financial instruments as determined by the Mayor's Office of Contract Services in consultation with the Comptroller.

When the successful bidder deposits obligations of the City of New York as performance and payment security, the Comptroller may sell and use the proceeds thereof for any purpose for which the principal or surety on such bond would be liable under the terms of the Contract. If money is deposited with the Comptroller, the successful bidder shall not be entitled to receive interest on such money from the City.

(E) Security provided in the form of bonds must be prepared on the form of bonds authorized by the City as included in the Invitation for Bids. Such bonds must have as surety thereunder such surety company or companies as are:

- i. Approved by the City of New York; and
- ii. Authorized to do business in the State of New York.

(F) Premiums for any required bonds must be included in the base bid.

29. **FAILURE TO EXECUTE CONTRACT AND FURNISH SECURITY OR INSURANCE**

In the event of failure of the successful bidder to execute the Contract and furnish the required security and insurance, or to make any other submission required hereunder, within ten days after Notice of Award of the Contract, the bid security of the successful bidder, or so much thereof as shall be applicable to the amount of the award made, shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay the City on demand the difference between the price bid and the price for which such Contract shall be subsequently relet, including the cost of such reletting less the amount of such bid security. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of such bid security or as a defense to any action based upon such accepted bid. Further, should the bidder's failure to comply with this Section cause any funding agency, body or group (federal, state, City, public, private, etc.) to terminate, cancel or reduce the funding on this project, the bidder in such event shall be liable also to the City for the amount of actual funding withdrawn by such agency, body or other entity on this project less the amount of the forfeited bid security.

30. **POWER OF ATTORNEY**

Attorneys-in-fact who sign bid bonds or performance and payment bonds must file with each bond a certified copy of their power of attorney to sign said bonds.

31. **BIDDER RESPONSIBILITY AND QUALIFICATIONS**

Bidders must include with their bids or upon demand by DEP all information necessary for a determination of bidder responsibility, as set forth in the Specifications.

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(A) **BIDDER'S RECORDS AND SWORN STATEMENTS.** DEP may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status for examination as may be required by the agency to ascertain the bidder's responsibility and capability to perform the Contract. If required, a bidder must also submit a sworn statement setting forth such information as the Agency may require concerning present and proposed plant and equipment, the personnel and qualifications of its working organization, prior experience and performance record.

(B) **ORAL EXAMINATION ON QUALIFICATIONS.** In addition thereto, and when directed by the agency, a responsible officer, agent, or employee of the bidder must submit to an oral examination to be conducted by the agency in relation to its proposed tentative plan and schedule of operations, and such other matters as the agency may deem necessary in order to determine the bidder's ability and responsibility to perform the Work in accordance with the Contract. Each person so examined must sign and verify a stenographic transcript of such examination noting thereon such corrections as such person may desire to make.

(C) **FAILURE TO SUPPLY INFORMATION.** If the bidder fails or refuses to supply any of the documents or information set forth in this Section or fails to comply with any of the requirements hereof, the agency may reject its bid.

32. **EMPLOYMENT REPORTS (DEPARTMENT OF SMALL BUSINESS SERVICES)**

In accordance with Executive Order No. 50 (1980) as modified by Executive Order No. 108 (1986), the filing of a complete Employment Report is a requirement of doing business with the City of New York for construction contractors with a contract valued at **\$1,000,000 or more** and subcontractors with construction **subcontracts of \$750,000 or more**. The required forms and information are included in the Bid Booklet.

Prior to the award of a Contract resulting from this Invitation for Bids, the apparent successful bidder will be required to submit the following documents:

(A) **Employment Report**

(B) **Subcontractor Employment Report** (if subcontract is equal to or in excess of \$750,000)

(C) **Less than \$750,000 Subcontractor Certificate** (for subcontracts valued at less than \$750,000)

In addition, if the apparent successful bidder will award a subcontract for non-construction services worth \$100,000 or more, a **Supply and Service Employment Report**, available from the City Department of Small Business Services, must be provided.

33. **LABOR LAW REQUIREMENTS**

The successful bidder will be required to comply strictly with all federal, state, and local labor laws and regulations, including, but not limited, to providing on-the-job training opportunities and payment of prevailing wages and supplements as required by New York State Labor Law Section 220. The successful bidder must post at the jobsite all signs and notices required by the Labor Law.

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All requests for clarification of the classification of trades to be employed in the performance of the work under this Contract shall be directed to the Agency Chief Contracting Officer, in writing, at least 48 hours prior to the bid opening date.

In the event that a trade not listed in the classification of trades required to be used at the time of the award of the Contract is in fact employed during the performance of this Contract, the Contractor shall be required to obtain from the City Comptroller the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this Contract at the price at which the Contract was awarded.

34. **INSURANCE**

Bidders are advised that the insurance requirements contained in this Invitation for Bids are regarded as a material term of this Contract.

Pursuant to Section 57 and Section 220(8) of the New York State Workers' Compensation Law, the successful bidder must submit proof of workers' compensation and disability benefits coverage to this Department prior to the execution of any Contract resulting from this solicitation.

ALL other required insurance documentation must also be submitted prior to commencement of the work of this Contract. During performance and up to the date of final acceptance, the Contractor must effect and maintain with insurance companies authorized to do business in the State of New York, the types and amounts of insurance specified in Schedule A, in accordance with the terms and conditions of Article 22 of the Standard Construction Contract.

35. **LUMP SUM CONTRACTS**

(A) COMPARISON OF BIDS. Bids on Lump Sum Contracts will be compared on the basis of the lump sum price bid, as adjusted for alternate prices bid, if any.

(B) LUMP SUM BIDS FOR "GENERAL CONSTRUCTION WORK" that includes excavation shall include all necessary excavation work defined in the Specifications as being included in the lump sum bid. The bidder shall also bid a unit price for the cost of excavating additional material that may need to be removed, where the Specifications identify an unknown and/or estimated amount of additional excavation for which additional payment will be made. The total estimated additional cost of removing such undefined material will be taken as the quantity set forth in the Engineer's Estimate of Quantities multiplied by the unit price bid. This total estimated cost of additional excavation shall be added to the lump sum bid for the General Construction Work solely for the purpose of comparing bids to determine the low bidder.

(C) VARIATIONS FROM ENGINEER'S ESTIMATE. The Engineer's estimate of the quantity of additional excavation for which additional payment will be made at the unit price bid is approximate only and is given solely for use as a uniform basis for the comparison of bids. This is not a promise to pay the successful bidder the total estimated cost of any such additional excavation, which will be paid for at the unit price bid for each unit of such additional material that the Contractor actually excavates and removes, which may be more or less than the quantity in the Engineer's Estimate and, if



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so, no action for damages or for loss of profits shall accrue to the Contractor by reason thereof.

36. **UNIT PRICE CONTRACTS**

(A) COMPARISON OF BIDS. Bids on Unit Price Contracts will be compared on the basis of a total estimated bid price, arrived at by taking the sum of the estimated quantities of each unit price item multiplied by the corresponding unit prices bid, and including any lump sum prices bid on designated items, in accordance with the Engineer's Estimate of Quantities set forth in the Bid Form.

(B) VARIATIONS FROM ENGINEER'S ESTIMATE. The total estimated bid price will be used solely to compare bids to determine the lowest bidder. DEP does not promise to pay the successful bidder this total estimated bid price, or to require any particular lump sum item or any of the unit price items. The terms and conditions applicable to overruns of unit price items are set forth in Article 26 of the Standard Construction Contract.

37. **CITY'S LIMITED TAX EXEMPTION**

Unless this Contract indicates otherwise, the City is exempt from the payment of federal, State and local taxes on tangible personal property sold to the City pursuant to the Contract. The bid price(s) must be exclusive of such taxes and shall be so construed. Bidders are referred to Article 62 of the Standard Construction Contract.

38. **LICENSES AND PERMITS**

At the time the bid is submitted, the bidder must have all licenses that are required by New York State and/or New York City, or any other authority with jurisdiction, for a contractor that will perform the type of work required by the Contract. The successful bidder will also be required to obtain all other necessary licenses and permits to perform the work, at its own expense.

39. **MULTIPLE PRIME CONTRACTORS**

If more than one prime contractor will be involved on this project, all bidders are required to examine the IFBs for all other parts of the project.

40. **LOCALLY BASED ENTERPRISE ("LBE") REQUIREMENTS**

This Contract is subject to the LBE requirements of New York City Administrative Code § 6-108.1 and the regulations promulgated thereunder, **unless** either: (a) the Subcontractor Utilization Plan (included in this IFB as Schedule B, if applicable) contains minority- and women-owned business enterprise ("M/WBE") requirements that the successful bidder must meet, or (b) New York State Revolving Fund M/WBE requirements apply, as indicated on the Cover Page/IFB Summary. The bidder is referred to the provisions set forth in Article 67 of the Standard Construction Contract for details of the LBE requirements.

41. **NO BLASTING**

Unless otherwise permitted in the Specifications or Contract Drawings, no blasting will be allowed under this Contract. The Contractor shall use line drilling or other acceptable methods.

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42. **COMPTROLLER'S CERTIFICATE**

This Contract shall not be binding or of any force unless the Comptroller of the City shall endorse hereon his/her certificate that there remains unexpended and unapplied, as provided in Section 6-101 of the Administrative Code of the City of New York, a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of executing this Contract. This Contract shall continue in force only after annual appropriation of funds by the City of New York and certification as hereinabove set forth.

43. **CERTIFICATION BY NON-GOVERNMENTAL ENTITY OR MEMBERSHIP IN NON-GOVERNMENTAL ORGANIZATION**

In the Specifications included in this Contract, wherever certification or training by a non- governmental entity, or membership in a non-governmental organization is required, this shall be deemed to require such certification, training or membership or possession of equivalent qualifications or characteristics as determined by the Engineer. The previous sentence shall not be construed to be a waiver of any legally required Federal, State or local certification, training or licensing requirement, nor shall it apply where certification by the manufacturer of materials or equipment is called for.

44. [Intentionally Omitted]

45. **PROMPT PAYMENT**

The Prompt Payment provisions set forth in the Procurement Policy Board Rules are applicable to payments made under a Contract resulting from this solicitation. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in the PPB Rules. The Contractor must submit a proper invoice to receive payment, except where the Contract provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determinations of interest due will be made in accordance with the provisions of the Procurement Policy Board Rules.

**END OF INFORMATION FOR BIDDERS**

## **SECTION D**

**See Manufacturers  
List in PASSPort**

## **SECTION E**

***Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)***

All organizations intending to do business with the City of New York must complete the disclosure process in order to be considered for award of a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. The City of New York has now moved collection of vendor disclosure information online. In anticipation of awards, potential bidders must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. **Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings.**

Any reference to VENDEX in the Information for Bidders should be deemed to be a reference to PASSPort; the VENDEX questionnaire included herein no longer applies and will not be accepted by the Mayor's Office of Contract Services.

**For more information about PASSPort, please visit [nyc.gov/passport](https://nyc.gov/passport).**

## **SECTION F**

**See Bid Bond/Security  
Form in PASSPort**

## **SECTION G**



## Division of Labor Services

### FREQUENTLY ASKED QUESTIONS

#### General

**Q. My approval status is expiring; can I submit an employment report directly to DLS for recertification?**

A. No. You must submit your employment report with all supporting documentation to the City agency where you are bidding for the contract. Only participants of the Industrial and Commercial Abatement Program (ICAP) can submit employment reports directly to DLS.

**Q. My company has a valid Certificate of Approval and I was just awarded another contract; can I use this approval for the new contract?**

A. Although you have a valid approval you must submit a copy of the Certificate of Approval and the following sections of the employment report:

- General Information
- Part I – Contractor and Subcontractor Information
- Part II, Form B – Projected Workforce (Construction contractors only)
- Signature Page

#### Supply & Service

**Q: I am a prime contractor with less than 50 employees; do my subcontractors have to fill out an employment report?**

- If the value of the subcontract is in excess of \$100,000 and the subcontractor has more than 50 employees, they must fill out an employment report. However, if the value of the subcontract is in excess of \$100,000 and the subcontractor has less than 50 employees, then they must fill out a "Less than 50" certificate.
- **Where can I find my industry code?**
- A list of the [industry codes](#) can be accessed through the website.

#### Industrial and Commercial Abatement Program (ICAP)

**Q. I am a developer without a construction workforce applying for ICAP benefits; do I have to fill out an employment report?**

A. Yes. In order for you to receive the tax benefits, you must provide documentation that you are an Equal Employment Opportunity (EEO) employer pursuant to the rules of the ICAP.

**Q. I am a tenant in a building that qualifies for ICAP and am planning to apply for tax benefits; do I have to file an employment report?**

A. Yes. In order for you to receive tax benefits on the construction work you perform on the property, you must provide documentation that you are an EEO employer pursuant to the rules of the ICAP.



The City of New York  
Department of Small Business Services  
Division of Labor Services  
Contract Compliance Unit  
1 Liberty Plaza  
New York, New York 10006  
Phone: (212) 513-6323  
Fax: (212) 618-8879

**CONSTRUCTION EMPLOYMENT REPORT  
INSTRUCTIONS**

## WHO MUST FILE A CONSTRUCTION EMPLOYMENT REPORT

A Construction Employment Report (ER) must be filed if you meet the following conditions:

CONTRACT FUNDING SOURCE	CONTRACTOR	CONTRACT VALUE	SUBMISSION REQUIREMENT
Federal/Federally assisted	Prime and subcontractors	\$10,000 or greater	Construction Employment Report
City and state funded	Prime contractor	\$1,000,000 or greater	
	Subcontractor	\$750,000 or greater	
		Less than \$750,000	Less than \$750,000 Certificate (City/State Only)

Prime Contractor:

- A general contractor or construction manager selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of \$10,000 or more.
- A general contractor or construction manager selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of \$1,000,000 or more.

Subcontractor:

- A subcontractor selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of \$10,000 or more.
- A subcontractor selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of \$750,000 or more.
- A subcontractor selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of less than \$750,000 must submit a "Less than \$750,000" certificate.

## WHERE TO FILE

Employment Reports must be filed with the City agency awarding the contract. If you are a contractor or subcontractor who will be working for a private developer in receipt of funding or assistance from the City, the ER must be filed with the City agency with jurisdiction over the developer's project.

## DLS REVIEW PROCESS

In accordance with Executive Order 50 (EO 50), upon receipt by DLS of a completed ER, DLS conducts a review of the contractor's current employment policies, practices and procedures, as well as perform a statistical analysis of the contractor's workforce, if necessary. The process is as follows:

1. Within five (5) business days, DLS will review the ER for completeness and accuracy. If any information is omitted or incorrect, or if necessary documents are not submitted, the submission shall be deemed incomplete and DLS will inform the contractor. The substantive compliance review does not commence until the submission is complete. **An incomplete submission will delay the review process and may preclude or interrupt the contract approval.**
2. If the ER submission is complete, the compliance review will proceed, resulting in one of the following:

### **Certificate of Approval**

The contractor is found to be in compliance with all applicable laws and regulations. The approval is valid for 36 months.

### **Continued Approval Certificate**

The contractor has been issued a Certificate of Approval in the previous 36 months which is good for the applicable contract.

### **Conditional Certificate of Approval**

The contractor is required to take corrective actions in order to be in compliance with EO 50. The contractor must meet the conditions within one month of the issue of the Conditional Certificate.

### **Determination of Nonperformance**

The contractor has failed to take the required corrective actions stipulated in the Conditional Certificate. A determination of nonperformance may prevent a contractor from receiving an award of a contract.

## HOW TO COMPLETE THE EMPLOYMENT REPORT

### **Contents**

**General Information**

**Part I: Contractor/Subcontractor Information**

**Part II: Employment Policies and Practices**

**Part III: Contract Bid Information and Projected and Current Workforce**

**Forms Signature Page**

### **PART I: CONTRACTOR/SUBCONTRACTOR INFORMATION**

Questions 7 – 11: Please provide the required contact information for your company. All contracts must have a designated Equal Employment Officer.

Question 12: If you are a subcontractor, you must state the name of the contractor for whom you are providing the construction services.

Question 13: Please provide the number of permanent employees in your company.

Question 14a-g: The Project Identification Number (PIN) and the Contract Registration ID Number (CT#) can be obtained from the City agency. Provide a description of the trade work you will perform on this project and the address where the work will be performed. Subcontractors can obtain this information from the contract they have with the prime contractor.

Questions 15 – 18: If your company has received a valid Certificate of Approval within the past 36 months, been audited by the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), or if your company has submitted an ER for a different contract for which you have not yet received a compliance certificate, then you only need to complete and submit the following:

- General Information section
- Part I - Contractor/Subcontractor Information
- Form B - Projected Workforce
- Signature Page

If your company is currently waiting for an approval on another contract previously submitted, be certain to identify the date on which you submitted the completed Employment Report, the name of the City contracting agency with which the contract was made, and the name and telephone number of the person to whom the Employment Report was submitted.

If your company was issued a Conditional Certificate of Approval, all required corrective actions must have been taken or DLS will not issue a Continued Certificate.

Question 18: If the company was audited by the OFCCP, also provide the following:

- Identify the reviewing OFCCP office by its name and address
- If an unconditional certificate of compliance was issued by the OFCCP, attach a copy of the certificate in lieu of completing Parts II and III;
- Include copies of all corrective actions and documentation of OFCCP's performance; and • Provide a copy of all stated OFCCP findings.

Question 19: Please provide a copy of any Collective Bargaining Agreement(s) which is negotiated through an employer trade association on behalf of your organization or any of its affiliates.

## **PART II: EMPLOYMENT POLICIES AND PRACTICES**

*Remember to label all documents with the question number for which they are submitted.*

Questions 20a – k: You must respond to the questions as to whether or not your firm has documents reflecting written policies, benefits and procedures. If so, then you must identify by name each document in which the policy(ies), procedure(s) and benefit(s) is located and submit copies of all of the document(s). If your firm follows unwritten practices or procedures, include an explanation of how they operate. Please submit the most current document(s), including all applicable amendments. Label each document and/or unwritten practice according to the question to which it corresponds (e.g. 20a, 20b, etc.)

Questions 21a – h: Inquires about the manner/methods by which you comply with the requirements of the Immigration Reform and Control Act of 1986 (IRCA).

Question 22: Inquires into where and how I-9 forms are maintained and stored.

Questions 23a – e: Inquires into whether or not there is a requirement that an applicant or employee be subjected to a medical examination at any given time. Copies of the

medical information questionnaire and instructions must be submitted with the Employment Report.

Question 24: Indicate the existence and location of all statements of your firm's Equal Employment Opportunity policy and attach a copy of each statement.

Question 25: Submit any current Affirmative Action Plan(s) created pursuant to Executive Order

11246.

Question 26: If your firm or collective bargaining agreement has an internal grievance procedure, indicate this and submit a copy of the policy and procedure. If unwritten, explain its nature and operation. Explain how your firm's procedure addresses EEO complaints.

Question 27: If your employees have used the procedure in the last three (3) years, please submit an explanation in the format indicated below:

1. Number of complaint(s)	2. Nature of the complaint(s)	3. Position(s) of the complainant(s)	4. Was an investigation conducted? Y/N	5. Current status of the disposition
---------------------------	-------------------------------	--------------------------------------	---	--------------------------------------

Question 28: Indicate whether in the past three (3) years complaints have been filed with a court of law or administrative agency, naming your company as a defendant (or respondent) in a complaint alleging violation of any anti-discrimination or affirmative action laws. If yes, develop and submit a log to show, for each administrative/and or judicial action filed, the following information:

1. Name(s) of complainant(s)	2. Administrative agency or court in which action was filed	3. Nature of the complaint(s)	4. Current status	5. If not pending, the complaint's disposition
------------------------------	---	-------------------------------	-------------------	--

Question 29: Identify each job for which a physical qualification exists. Identify and explain the physical qualification(s) for each stated job. Submit job descriptions for each job and the reasons for the qualifications.

Question 30: Identify each job for which there exists any qualification related to age, race, color, national origin, sex, creed, disability, marital status, sexual orientation or citizenship status. Identify and explain the specific related qualification for each job stated. Submit job descriptions for each job and the reasons for the qualifications.

### **PART III: CONTRACT BID INFORMATION AND PROJECTED AND CURRENT WORKFORCE FORMS**

#### **FORM A: CONTRACT BID INFORMATION – USE OF SUBCONTRACTORS/TRADES**

Your projections for the utilization of subcontractors on the proposed contract are to be provided in this section. A chart has been provided for the identification of subcontractors. Information is to be provided to the extent known at the time the ER is filed for review by DLS. If the subcontractor's name is unknown, then write "unknown". Under "ownership", enter the appropriate race/ethnic and gender code. If the contract is federally funded or assisted and the subcontractor is being utilized in accordance with applicable federal requirements with respect to Minority Business Enterprise or Woman Business Enterprise requirements, enter the appropriate

code. This will also apply to state funded contracts with similar requirements for minority and female owned businesses.

**FORM B: PROJECTED WORKFORCE FOR WORK TO BE PERFORMED ON THIS PROJECT**

For each trade to be engaged by your company for this project, enter the projected workforce for Males and Females by trade classification in the charts provided.

**FORM C: CURRENT WORKFORCE FOR WORK TO BE PERFORMED ON THIS PROJECT**

For each trade *currently* engaged by your company for all work performed in NYC, enter the current workforce for Males and Females by trade classification in the charts provided.

**SIGNATURE PAGE**

The signatory of this Employment Report and all other documents submitted to DLS must be an official authorized to enter into a binding legal agreement. The signature page must be completed in its entirety and notarized. Only original signatures will be accepted.

The City of New York Department of Small Business Services  
Division of Labor Services Contract Compliance Unit  
1 Liberty Plaza, New York, New York 10006  
Phone: (212) 513 – 6323  
Fax: (212) 618-8879

**CONSTRUCTION EMPLOYMENT REPORT**

**GENERAL INFORMATION**

1. Your contractual relationship in this contract is: Prime contractor\_\_\_\_ Subcontractor\_\_\_\_
- 1a. Are M/WBE goals attached to this project? Yes \_\_\_\_ No \_\_\_\_
2. Please check one of the following if your firm would like information on how to certify with the City of New York as a:  

____Minority Owned Business Enterprise	____Locally Based Business Enterprise
____Women Owned Business Enterprise	____Emerging Business Enterprise
____Disadvantaged Business Enterprise	
- 2a. If you are certified as an **MBE, WBE, LBE, EBE** or **DBE**, what city/state agency are you certified with? \_\_\_\_\_ Are you DBE certified? Yes \_\_\_\_ No \_\_\_\_
3. Please indicate if you would like assistance from SBS in identifying certified M/WBEs for contracting opportunities: Yes\_\_\_\_ No\_\_\_\_
4. Is this project subject to a project labor agreement? Yes \_\_\_\_ No \_\_\_\_
5. Are you a Union contractor? Yes \_\_\_\_ No \_\_\_\_ If yes, please list which local(s) you affiliated with \_\_\_\_\_
6. Are you a Veteran owned company? Yes \_\_\_\_ No \_\_\_\_

**PART I: CONTRACTOR/SUBCONTRACTOR INFORMATION**

7. \_\_\_\_\_  
Employer Identification Number or Federal Tax I.D. \_\_\_\_\_ Email Address \_\_\_\_\_
8. \_\_\_\_\_  
Company Name \_\_\_\_\_
9. \_\_\_\_\_  
Company Address and Zip Code \_\_\_\_\_
10. \_\_\_\_\_  
Chief Operating Officer \_\_\_\_\_ Telephone Number \_\_\_\_\_
11. \_\_\_\_\_  
Designated Equal Opportunity Compliance Officer \_\_\_\_\_ Telephone Number \_\_\_\_\_  
(If same as Item #10, write "same")
12. \_\_\_\_\_  
Name of Prime Contractor and Contact Person \_\_\_\_\_  
(If same as Item #8, write "same")

13. Number of employees in your company: \_\_\_\_\_

14. Contract information:

(a) \_\_\_\_\_ (b) \_\_\_\_\_  
Contracting Agency (City Agency) Contract Amount

(c) \_\_\_\_\_ (d) \_\_\_\_\_  
Procurement Identification Number (PIN) Contract Registration Number (CT#)

(e) \_\_\_\_\_ (f) \_\_\_\_\_  
Projected Commencement Date Projected Completion Date

(g) Description and location of proposed contract:

\_\_\_\_\_  
\_\_\_\_\_

15. Has your firm been reviewed by the Division of Labor Services (DLS) within the past 36 months and issued a Certificate of Approval? Yes\_\_\_ No\_\_\_

If yes, attach a copy of certificate.

16. Has DLS within the past month reviewed an Employment Report submission for your company and issued a Conditional Certificate of Approval? Yes\_\_\_ No\_\_\_

If yes, attach a copy of certificate.

**NOTE: DLS WILL NOT ISSUE A CONTINUED CERTIFICATE OF APPROVAL IN CONNECTION WITH THIS CONTRACT UNLESS THE REQUIRED CORRECTIVE ACTIONS IN PRIOR CONDITIONAL CERTIFICATES OF APPROVAL HAVE BEEN TAKEN.**

17. Has an Employment Report already been submitted for a different contract (not covered by this Employment Report) for which you have not yet received compliance certificate?

Yes\_\_\_ No\_\_\_ If yes,

Date submitted: \_\_\_\_\_

Agency to which submitted: \_\_\_\_\_

Name of Agency Person: \_\_\_\_\_

Contract No: \_\_\_\_\_

Telephone: \_\_\_\_\_

18. Has your company in the past 36 months been audited by the United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP)? Yes\_\_\_ No\_\_\_

If yes,

(a) Name and address of OFCCP office.

---

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(b) Was a Certificate of Equal Employment Compliance issued within the past 36 months?

Yes\_\_\_ No\_\_\_

If yes, attach a copy of such certificate.

(c) Were any corrective actions required or agreed to? Yes\_\_\_ No\_\_\_

If yes, attach a copy of such requirements or agreements.

(d) Were any deficiencies found? Yes\_\_\_ No\_\_\_

If yes, attach a copy of such findings.

19. Is your company or its affiliates a member or members of an employers' trade association which is responsible for negotiating collective bargaining agreements (CBA) which affect construction site hiring? Yes\_\_\_ No\_\_\_

If yes, attach a list of such associations and all applicable CBA's.

## **PART II: DOCUMENTS REQUIRED**

20. For the following policies or practices, attach the relevant documents (e.g., printed booklets, brochures, manuals, memoranda, etc.). If the policy(ies) are unwritten, attach a full explanation of the practices. See instructions.

- \_\_\_ (a) Health benefit coverage/description(s) for all management, nonunion and union employees (whether company or union administered)
- \_\_\_ (b) Disability, life, other insurance coverage/description
- \_\_\_ (c) Employee Policy/Handbook
- \_\_\_ (d) Personnel Policy/Manual
- \_\_\_ (e) Supervisor's Policy/Manual
- \_\_\_ (f) Pension plan or 401k coverage/description for all management, nonunion and union employees, whether company or union administered
- \_\_\_ (g) Collective bargaining agreement(s).
- \_\_\_ (h) Employment Application(s)
- \_\_\_ (i) Employee evaluation policy/form(s).
- \_\_\_ (j) Does your firm have medical and/or non-medical (i.e. education, military, personal, pregnancy, child care) leave policy?
- \_\_\_ (k) Sexual Harassment Policy



21. To comply with the Immigration Reform and Control Act of 1986 when and of whom does your firm require the completion of an I-9 Form?

- |  |              |
|--|--------------|
| (a) Prior to job offer                     | Yes___ No___ |
| (b) After a conditional job offer          | Yes___ No___ |
| (c) After a job offer                      | Yes___ No___ |
| (d) Within the first three days on the job | Yes___ No___ |
| (e) To some applicants                     | Yes___ No___ |
| (f) To all applicants                      | Yes___ No___ |
| (g) To some employees                      | Yes___ No___ |
| (h) To all employees                       | Yes___ No___ |

22. Explain where and how completed I-9 Forms, with their supportive documentation, are maintained and made accessible.

\_\_\_\_\_  
\_\_\_\_\_

23. Does your firm or any of its collective bargaining agreements require job applicants to take a medical examination? Yes\_\_\_ No\_\_\_

If yes, is the medical examination given:

- |                                   |              |
|-----------------------------------|--------------|
| (a) Prior to a job offer          | Yes___ No___ |
| (b) After a conditional job offer | Yes___ No___ |
| (c) After a job offer             | Yes___ No___ |
| (d) To all applicants             | Yes___ No___ |
| (e) Only to some applicants       | Yes___ No___ |

If yes, list for which applicants below and attach copies of all medical examination or questionnaire forms and instructions utilized for these examinations.

\_\_\_\_\_  
\_\_\_\_\_

24. Do you have a written equal employment opportunity (EEO) policy? Yes\_\_\_ No\_\_\_

If yes, list the document(s) and page number(s) where these written policies are located.

\_\_\_\_\_  
\_\_\_\_\_

25. Does the company have a current affirmative action plan(s) (AAP)

\_\_\_\_\_  
Minorities and Women

\_\_\_\_\_  
Individuals with handicaps

\_\_\_\_\_  
Other. Please specify \_\_\_\_\_

26. Does your firm or collective bargaining agreement(s) have an internal grievance procedure with respect to EEO complaints? Yes\_\_\_ No\_\_\_

If yes, please attach a copy of this policy.

If no, attach a report detailing your firm's unwritten procedure for handling EEO complaints.

27. Has any employee, within the past three years, filed a complaint pursuant to an internal grievance procedure or with any official of your firm with respect to equal employment opportunity? Yes\_\_\_ No\_\_\_

If yes, attach an internal complaint log. See instructions.

28. Has your firm, within the past three years, been named as a defendant (or respondent) in any administrative or judicial action where the complainant (plaintiff) alleged violation of any anti-discrimination or affirmative action laws? Yes\_\_\_ No\_\_\_

If yes, attach a log. See instructions.

29. Are there any jobs for which there are physical qualifications? Yes\_\_\_ No\_\_\_

If yes, list the job(s), submit a job description and state the reason(s) for the qualification(s).

---

30. Are there any jobs for which there are age, race, color, national origin, sex, creed, disability, marital status, sexual orientation, or citizenship qualifications? Yes\_\_\_ No\_\_\_

If yes, list the job(s), submit a job description and state the reason(s) for the qualification(s).

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## SIGNATURE PAGE

I, (print name of authorized official signing) \_\_\_\_\_ hereby certify that the information submitted herewith is true and complete to the best of my knowledge and belief and submitted with the understanding that compliance with New York City's equal employment requirements, as contained in Chapter 56 of the City Charter, Executive Order No. 50 (1980), as amended, and the implementing Rules and Regulations, is a contractual obligation. I also agree on behalf of the company to submit a certified copy of payroll records to the Division of Labor Services on a monthly basis.

\_\_\_\_\_  
Contractor's Name

\_\_\_\_\_  
Name of person who prepared this Employment Report

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of official authorized to sign on behalf of the contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature of authorized official

\_\_\_\_\_  
Date

If contractors are found to be underutilizing minorities and females in any given trade based on Chapter 56 Section 3H, the Division of Labor Services reserves the right to request the contractor's workforce data and to implement an employment program.

Contractors who fail to comply with the above mentioned requirements or are found to be in noncompliance may be subject to the withholding of final payment.

Willful or fraudulent falsifications of any data or information submitted herewith may result in the termination of the contract between the City and the bidder or contractor and in disapproval of future contracts for a period of up to five years. Further, such falsification may result in civil and/or criminal prosecution.

To the extent permitted by law and consistent with the proper discharge of DLS' responsibilities under Charter Chapter 56 of the City Charter and Executive Order No. 50 (1980) and the implementing Rules and Regulations, all information provided by a contractor to DLS shall be confidential.

**Only original signatures accepted.**

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**FORM A. CONTRACT BID INFORMATION: USE OF SUBCONTRACTORS/TRADES**

1. Do you plan to subcontractor work on this contract? Yes\_\_\_ No\_\_\_
2. If yes, complete the chart below.

**NOTE: All proposed subcontractors with a subcontract in excess of \$750,000 must complete an Employment Report for review and approval before the contract may be awarded and work commences.**

SUBCONTRACTOR'S NAME*	OWNERSHIP (ENTER APPROPRIATE CODE LETTERS BELOW)	WORK TO BE PERFORMED BY SUBCONTRACTOR	TRADE PROJECTED FOR USE BY SUBCONTRACTOR	PROJECTED DOLLAR VALUE OF SUBCONTRACT

**\*If subcontractor is presently unknown, please enter the trade (craft name).**

**OWNERSHIP CODES**

W: White  
B: Black  
H: Hispanic  
A: Asian  
N: Native American  
F: Female

FORM B: PROJECTED WORKFORCE

TRADE CLASSIFICATION CODES

- (J) Journeylevel Workers
- (H) Helper
- (TOT) Total by Column
- (A) Apprentice
- (TRN) Trainee

For each trade to be engaged by your company for this project, enter the projected workforce for Males and Females by trade classification on the charts below.

Trade:

Union Affiliation, if applicable

Total (Col. #1-10):

Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10):

Total Female (Col. #6 – 10):

MALES

(1)  
White  
Non  
Hisp.

(2)  
Black  
Non  
Hisp.

(3)  
Hisp.

(4)  
Asian

(5)  
Native  
Amer.

J					
H					
A					
TRN					
TOT		T			

FEMALES

(6)  
White  
Non  
Hisp.

(7)  
Black  
Non  
Hisp.

(8)  
Hisp.

(9)  
Asian

(10)  
Native  
Amer.


What are the recruitment sources for you projected hires (i.e., unions, government employment office, job tap center, community outreach)?

FORM B: PROJECTED WORKFORCE

Trade:  
\_\_\_\_\_  
  
Union Affiliation, if applicable  
\_\_\_\_\_  
  
Total (Col. #1-10):  
\_\_\_\_\_  
  
Total Minority, Male & Female  
(Col. #2,3,4,5,7,8,9, & 10):  
\_\_\_\_\_  
  
Total Female  
(Col. #6 – 10):  
\_\_\_\_\_

MALES					FEMALES					
	(1) White Non Hisp.	(2) Black Non Hisp.	(3) Hisp.	(4) Asian	(5) Native Amer.	(6) White Non Hisp.	(7) Black Non Hisp.	(8) Hisp.	(9) Asian	(10) Native Amer.
J										
H										
A										
TRN										
TOT		T								

What are the recruitment sources for you projected hires (i.e., unions, government employment office, job tap center, community outreach)?

\_\_\_\_\_

\_\_\_\_\_

FORM C: CURRENT WORKFORCE

TRADE CLASSIFICATION CODES

- (J) Journeylevel Workers
- (H) Helper
- (TOT) Total by Column
- (A) Apprentice
- (TRN) Trainee

For each trade currently engaged by your company for all work performed in New York City, enter the current workforce for Males and Females by trade classification on the charts below.

Trade:

Union Affiliation, if applicable

Total (Col. #1-10):

Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10):

Total Female (Col. #6 – 10):

MALES

(1)  
White  
Non  
Hisp.

(2)  
Black  
Non  
Hisp.

(3)  
Hisp.

(4)  
Asian

(5)  
Native  
Amer.

J					
H					
A					
TRN					
TOT		T			

FEMALES

(6)  
White  
Non  
Hisp.

(7)  
Black  
Non  
Hisp.

(8)  
Hisp.

(9)  
Asian

(10)  
Native  
Amer.


What are the recruitment sources for you projected hires (i.e., unions, government employment office, job tap center, community outreach)?

FORM C: CURRENT WORKFORCE

Trade:  
\_\_\_\_\_  
  
Union Affiliation, if applicable  
\_\_\_\_\_  
  
Total (Col. #1-10):  
\_\_\_\_\_  
  
Total Minority, Male & Female  
(Col. #2,3,4,5,7,8,9, & 10):  
\_\_\_\_\_  
  
Total Female  
(Col. #6 – 10):  
\_\_\_\_\_

MALES					FEMALES					
	(1) White Non Hisp.	(2) Black Non Hisp.	(3) Hisp.	(4) Asian	(5) Native Amer.	(6) White Non Hisp.	(7) Black Non Hisp.	(8) Hisp.	(9) Asian	(10) Native Amer.
J										
H										
A										
TRN										
TOT		T								

What are the recruitment sources for you projected hires (i.e., unions, government employment office, job tap center, community outreach)?



## **SECTION H**

**CITY OF NEW YORK  
SUBCONTRACTOR APPROVAL FORM**

For subcontracts to be approved AFTER contract registration  
Column on left indicates whom that section is to be completed by

**PRIME CONTRACT INFORMATION**

AGENCY

Agency: <b>NYC DEP</b>	Unit/Div:	Registration #
		Registration Date:
Contract No.:	PIN:	
Contract Description:		
Contract Subject to a Project Labor Agreement (PLA) YES <input type="radio"/> NO <input type="radio"/>		

**PRIME CONTRACTOR IDENTIFICATION**

Name:	EIN/SSN:
-------	----------

**SUBCONTRACTOR INFORMATION**

PRIME CONTRACTOR

Company Name:	PIP Vendor #:	
Contact (please print):	Title:	
Phone:	Fax:	
Address:	City:	State/Zip:
EIN/SSN:	E-Mail:	
Subcontract Description:		
Subcontract Value:	Start Date: / /	End Date:
Subcontractor Signed Letter of Assent <input type="checkbox"/> (if Prime Contract is subject to a Project Labor Agreement)		
Subcontractor is <input type="checkbox"/> SBS <input type="checkbox"/> ESD Certified as: M/WBE <input type="checkbox"/> EBE <input type="checkbox"/> or LBE <input type="checkbox"/> (check all that apply & note status below)		
YES <input type="checkbox"/>	Application Pending <input type="checkbox"/>	Intends to Apply <input type="checkbox"/> NO <input type="checkbox"/>
Subcontractor Prevailing Wage or Living Wage Statement (if applicable) <input type="checkbox"/>		
Primary Trades to be used for Construction Services (list all):		
Subcontractor's Experience Modification Rating (EMR): _____ (Letter from insurance carrier to verify rating must be included).		
Prime Contractor Certification: I hereby affirm that the information supplied is true and correct.		
Signature _____	Title _____	
Print Name _____	Date _____	
Email _____	Phone _____	

**AGENCY PRELIMINARY REVIEW  
PLEASE SEE PAGE 2 FOR INSTRUCTIONS**

AGENCY

Agency Preliminary Review Completed By: _____	Date: _____
PASSPort <input type="checkbox"/> Employment <input type="checkbox"/> References <input type="checkbox"/> PLA <input type="checkbox"/> Apprenticeship <input type="checkbox"/> Licenses <input type="checkbox"/> Sub Agreement <input type="checkbox"/> PIP <input type="checkbox"/>	

**PRIME CONTRACTOR RESPONSE**

PRIME

For each of the boxes checked in the agency preliminary response above, I have informed the Subcontractor of all relevant requirements and provided all requested documentation. <input type="checkbox"/>
---

**AGENCY FINAL RESPONSE**

AGENCY

Final Agency Approval: _____	Granted <input type="checkbox"/> Denied <input type="checkbox"/>
Signature: _____	Date: _____
If Subcontracted Amount Has Changed, Please Enter The Revised Amount And Resubmit:	

**CITY OF NEW YORK  
SUBCONTRACTOR APPROVAL FORM**

Page 2  
Prime Vendor Preliminary Review Follow-up Instructions

After completing the Preliminary Review, the agency will mark, on Page 1, the box for any item requiring follow-up and return the form to the Prime Vendor. The Prime Vendor should follow the instructions below for each of the boxes checked in the Agency Preliminary Review on Page 1, and return the form to the agency with any required documentation.

**1. VENDEX**

If Box 1 (VENDEX) is checked, the agency has granted preliminary approval, and determined that the subcontractor is required to file VENDEX Questionnaires with the Mayor's Office of Contract Services. A VENDEX Vendor Questionnaire and Principal Questionnaire must be filed where the subcontract dollar amount is  $\geq$  \$100,000 or where the aggregate business with the City is  $\geq$  \$100,000 during the preceding twelve months. The VENDEX Questionnaires and Guide can be downloaded from <http://www.nyc.gov/html/selltonyc/html/tocvendex.html>.

**2. Employment**

If Box 2 (Employment) is checked, the subcontractor must complete a Division of Labor Services (DLS) Construction Employment Report. A subcontractor selected to perform work on a construction project funded or assisted by the City of New York must complete a DLS Construction Employment Report if the subcontract dollar amount  $>$  \$750,000. For construction projects funded in whole or in part by the federal government, a DLS Construction Employment Report must be completed if the proposed subcontract value  $>$  \$10,000. For non-construction goods/services subcontracts  $>$  \$100,000, employment reports are required for any subcontractor with  $>$  50 employees, and a certificate is required for those with fewer employees.

**3. References**

If Box 3 (References) is checked, you as the prime contractor must provide references with respect to the subcontractor's ability to perform, consisting of a list of three completed comparable projects. References shall include a full description/location of each project, scope of work, value of project, and the names and phone numbers of owners, architect or engineer who supervised the work. Please attach your documentation to your response.

**4. PLA**

If Box 4 (PLA) is checked, you as the prime contractor must obtain signed Letter of Assent from the subcontractor which demonstrates that the subcontractor agrees to the terms of the PLA. Please attach the subcontractor's signed Letter of Assent to your response.

**5. Apprenticeship**

If Box 5 (Apprenticeship) is checked, you as the prime contractor must provide the agency with proof that the subcontractor maintains an apprenticeship agreement appropriate for the scope of work to be performed, that the apprenticeship agreement has been registered with and approved by the New York State Commission of Labor, and that the program has three years of current, successful experience in providing career opportunities.

**6. Licenses**

If Box 6 (Licenses) is checked, you as the prime contractor must document that the subcontractor has all required licenses. Please attach your documentation to your response.

The City of New York Department of Small Business Services  
Division of Labor Services Contract Compliance Unit  
1 Liberty Plaza, New York, New York 10006  
Phone: (212) 513 – 6323 Fax: (212) 618-8879

Date \_\_\_\_\_

File Number \_\_\_\_\_

**LESS THAN \$750,000 SUBCONTRACT CERTIFICATE  
(CITY, STATE AND ICIP ONLY)**

Are you currently certified as one of the following? Please check yes or no:

MBE Yes \_\_\_ No \_\_\_ WBE Yes \_\_\_ No \_\_\_ LBE Yes \_\_\_ No \_\_\_

DBE Yes \_\_\_ No \_\_\_ EBE Yes \_\_\_ No \_\_\_

If you are certified as an MBE, WBE, LBE, EBE or DBE, what city/state agency are you certified with?

\_\_\_\_\_

Please check one of the following if your firm would like information on how to certify with the City of New York as a:

\_\_\_ Minority Owned Business Enterprise

\_\_\_ Locally Based Business Enterprise

\_\_\_ Women Owned Business Enterprise

\_\_\_ Emerging Business Enterprise

\_\_\_ Disadvantaged Business Enterprise

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Employer Identification Number or Federal Tax I.D

\_\_\_\_\_  
Company Address and Zip Code

\_\_\_\_\_  
Contact Person (First Name, Last Name)

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-mail Address

Description and location of proposed subcontract: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you a Union contractor? Yes \_\_\_ No \_\_\_ If yes, please list which local(s) you affiliated with  
\_\_\_\_\_  
\_\_\_\_\_

Are you a Veteran owned company? Yes \_\_\_ No \_\_\_

\_\_\_\_\_  
Procurement Identification Number (PIN)  
(City contracts only)

\_\_\_\_\_  
Contract Registration Number (CT#)  
(City contracts only)

Block and Lot Number  
(ICIP projects only)

Contract Amount

I, (print name of authorized official signing) \_\_\_\_\_ hereby certify that I am authorized by the above-named subcontractor to certify that said subcontractor's proposed contract with the above named owner or City agency is less than \$750,000. This affirmation is made in accordance with NYC Charter Chapter 56, Executive Order No. 50 (1980) and the implementing Rules.

Willful or fraudulent falsifications of any data or information submitted herewith may result in the termination of the contract between the City and the bidder or contractor and in disapproval of future contracts for a period of up to five years. Further, such falsification may result in civil and/or criminal prosecution.

Signature of authorized official

Date

**Only original signatures accepted.**

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Notary Public

Authorized Signature

Date

**Subcontractor Pre-Approval Statement – Prevailing Wage Contracts**

Agency: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Subcontractor: \_\_\_\_\_

Contract #: \_\_\_\_\_

On behalf of the subcontractor and contract shown above, I affirm that I have reviewed the following information with the prime contractor:

- The work to be done or the trades that will be employed on the subcontract;
- The Comptroller's prevailing wage schedules for each trade;
- The requirement to pay the prevailing wage and supplement rates in effect at the time the work is done, and the dates of likely changes in such rates (July 1 and January 1);
- The registration, ratio and payment guidelines for apprentices, and whether their use is optional or required under this contract;
- The requirement to use City-approved certified payroll forms, the need to fill those forms out completely, and to submit such original payrolls within thirty (30) days of issuance of the first payroll and every thirty (30) days thereafter;
- The requirement to use standard sign-in and sign-out logs or an agency-approved electronic or biometric system, and that such logs must be submitted to the resident engineer or agency representative daily;
- The requirement that all workers on job sites shall wear laminated photo identification badges;
- The prohibition on cash payments to workers and subcontractors; all workers must be paid by check or direct deposit weekly (bi-weekly, where permitted by law [certain non-construction workers only]), and that for contracts over \$1,000,000 and subcontracts over \$750,000 such checks must be generated by either a payroll service or an agency-approved automated system; and

I further affirm that the subcontractor will comply with these and all other relevant requirements of the New York State Labor Law and City of New York laws and regulations concerning payment of prevailing wages and supplements.

Subcontractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Prime Contractor Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

*Rev 5/14*



## **SECTION I**



**Environmental  
Facilities Corporation**

**KATHY HOCHUL**  
Governor

**MAUREEN A. COLEMAN**  
President and CEO

# **Mandatory State Revolving Fund Equivalency Projects Terms and Conditions**

*For Treatment Works and Drinking Water Equivalency  
Projects funded with NYS Clean Water State Revolving  
Fund or Drinking Water State Revolving Fund*

Effective November 15, 2021

**New York State Environmental Facilities Corporation**  
625 Broadway, Albany, NY 12207-2997  
P: (518) 402-6924 F: (518) 402-7456  
[www.efc.ny.gov](http://www.efc.ny.gov)



# REQUIRED CONTRACT LANGUAGE

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## Recipient to Identify Contract Type:

☐ **Construction**

☐ **Non-Construction**

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## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

**“Contract”** means an agreement between a Recipient and a Contractor.

**“Contractor”** means all bidders, prime contractors, Service Providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

**“Service Provider”** means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

**“Subcontract”** means an agreement between a Contractor and a Subcontractor.

**“Subcontractor”** means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

**“Recipient”** means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part.

**“State”** means the State of New York.

**“Treatment Works”** is defined in Clean Water Act (CWA) Section 212.

**“Nonpoint Source Projects”** and **“Green Infrastructure Projects”** are defined in CWA Section 319.

**“Estuary Management Program Project”** is defined in CWA Section 320.

## SECTION 1 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

The Equal Employment Opportunities requirements of this section apply to all Contracts and Subcontracts, with the exception of: (1) the requirements under Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A which apply only to construction Contracts and Subcontracts; and (2) the Federal Affirmative Action Regulations requirements which apply only to construction Contracts and Subcontracts greater than \$10,000.

*The Disadvantaged Business Enterprises (“DBE”) requirements of this section apply to construction, equipment, services, and/or supplies Contracts.*

### I. General Provisions

A. Contractors and Subcontractors are required to comply with the following provisions:

1. 40 CFR Part 33 (“Federal DBE Regulations”) for contracts under EPA financial assistance agreements, as those terms are defined therein.
2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 (“Title VI”) for any program or activity receiving federal financial assistance, as those terms are defined therein.
3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A (“Title VII”) for construction contracts related to any government programs providing federal financial assistance, as those terms are defined therein.

4. 41 CFR Part 60-4 ("Federal Affirmative Action Regulations") for federal or federally assisted construction contracts in excess of \$10,000, as those terms are defined therein.
  5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.
- B. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.
- C. If any terms or provisions herein conflict with Federal DBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.
- D. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all DBE and EEO records available within a reasonable time.

## **II. Equal Employment Opportunities (EEO)**

- A. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, age, disability, or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.
- B. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
- C. For federally assisted construction Contracts, the Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- D. Pursuant to 41 CFR Section 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at <https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet>, if Contractor or Subcontractor:
1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
  2. Has 50 or more employees;
  3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
  4. Has a Contract, Subcontract, or purchase order amounting to \$50,000 or more.

- E. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. A copy of the EEO notice (“EEO Poster”) can be found at:  
<https://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>.
- F. For federal or federally assisted construction contracts in excess of \$10,000, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. Affirmative action goals for minorities and women by geographic region can be found here:  
<https://www.dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf>

### **III. Good Faith Efforts and Fair Share Objectives for DBEs**

#### **A. Good Faith Efforts**

Pursuant to 40 CFR § 33.301, the Contractor must demonstrate and document “good faith efforts” to provide meaningful participation by DBEs as Subcontractors or Suppliers in the performance of the Contract.

1. For purposes of demonstrating good faith efforts and achieving the fair share objectives established herein, the Contractor should seek out the participation of the following certified entities:
2. DBEs certified by the Small Business Administration (SBA), directory available at:  
[https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm)
  - a. DBEs certified by state DOTs on behalf of the United States Department of Transportation (USDOT), directories by state available at  
<https://www.transportation.gov/DBE%20State%20Websites>, including:
  - b. DBEs certified in New York State: <https://nysucp.newnycontracts.com/>
    - i. DBEs certified in New Jersey: <https://njucp.dbesystem.com/>
    - ii. DBEs certified in Connecticut:  
[https://biznet.ct.gov/DOT\\_DBE/dbesearch.aspx](https://biznet.ct.gov/DOT_DBE/dbesearch.aspx)
    - iii. Participation of Brokers and Truckers/Haulers
3. Contractors cannot count the participation of a DBE who acts as a broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE’s prime contract or subcontract is subcontracted to a non-DBE, the DBE prime contractor or subcontractor will be presumed to be a broker.
  - a. Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a “commercially useful function,” according to the following factors:
  - b. The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
    - i. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

#### **B. Fair Share Objectives**

For purposes of this Contract, New York State has established a 20% fair share objective based on the current availability of DBEs.

#### **C. DBE Utilization Plan**

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the EFC DBE Utilization Plan to the Recipient no later than the execution date of this Contract.
2. The Contractor agrees to use such DBE Utilization Plan for the performance of DBEs on the Contract.
3. The Contractor further agrees that a failure to submit and/or use such DBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Recipient shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is not responsive.
4. Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the Recipient. Contractor shall indicate the changes to the Recipient in the next Quarterly Report after the changes occurred. See Section III(E), *Quarterly Report*. At EFC's discretion, an updated DBE Utilization Plan form and good faith effort documentation may be required to be submitted. When a Utilization Plan is revised due to execution of a change order, the change order should be submitted to the Recipient with the revised Utilization Plan.
5. The Contractor shall submit copies of all fully executed subcontracts, agreements, and purchase orders that are referred to in the DBE Utilization Plan to the Recipient within 30 days of their execution.

#### D. Submission of Good Faith Effort Documentation

1. If the Contractor, after making good faith efforts, is unable to meet the DBE fair share objectives, the Contractor must submit documentation showing good faith efforts made by the Contractor to meet such fair share objectives. Such documentation should be submitted to the Recipient in accordance with the instructions on the DBE Utilization Plan. If the good faith effort documentation is insufficient, the Recipient will work with the Contractor to address deficiencies before submitting to EFC for review.
2. If the Recipient, upon review of the DBE Utilization Plan and updated Quarterly Reports determines that the Contractor is failing or refusing to comply with the good faith effort requirements or that the good faith efforts are not in the requested format, the Recipient may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within a reasonable time and provide documentation showing good faith efforts as requested.

#### E. Quarterly Report

1. The Contractor agrees to submit a Quarterly Report to the Recipient by the fifteenth business day following the end of each calendar quarter over the term of this Contract documenting the payments made and the progress towards achievement of the DBE fair share objectives of the Contract. The Quarterly Report must be supplemented with proof of payment by the Contractor to its Subcontractors (e.g., copies of both sides of a cancelled check) and proof that Subcontractors have been paid within 30 days of receipt of payment from the Recipient. The final Quarterly Report must reflect all Utilization Plan revisions, full payments to subcontractors, and all change orders and be marked as "final".
2. The Contractor agrees to submit any other information as may be requested by the Recipient or EFC during the term of the Contract as needed to assist EFC in completion of EPA Form 5700-52A.

## SECTION 2 AMERICAN IRON AND STEEL (AIS) REQUIREMENT

*The requirements of this section apply to (1) all construction Contracts and Subcontracts for DWSRF projects and CWSRF treatment works projects and (2) all contracts for the purchase of iron and steel products for a DWSRF project or CWSRF treatment works project. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor acknowledges to and for the benefit of the Recipient of the Clean Water State Revolving Fund ("CWSRF") or the Drinking Water State Revolving Fund ("DWSRF") financial assistance that the

Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation ("EFC") through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the American Iron and Steel Requirement,
- (b) all of the iron and steel products covered by the American Iron and Steel Requirement used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Recipient.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Recipient resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EFC or any damages owed to the EFC by the Recipient). While the Contractor has no direct contractual privity with the EFC, as a lender to the Recipient for the funding of this project, the Recipient and the Contractor agree that the EFC is a third-party beneficiary and neither this paragraph, nor any other provision of this Agreement necessary to give this paragraph force or effect, shall be amended or waived without the prior written consent of the EFC.

### **SECTION 3                      DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS**

*The requirements of this section apply to all construction Contracts and Subcontracts greater than \$2000 for either DWSRF projects or CWSRF treatment works projects. Disregard this section if it does not apply to this Contract or Subcontract.*

#### **For Contracts in Excess of \$2,000:**

##### **1. Minimum Wages**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place

where it can be easily seen by the workers. The Davis-Bacon poster (WH-1321) can be found at <https://www.dol.gov/whd/regs/compliance/posters/davis.htm>. Wage determinations may be obtained from the US Department of Labor's website, <http://www.beta.sam.gov/>.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination;
2. The classification is utilized in the area by the construction industry; and,
3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1) (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program *provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

2. Withholding. The Recipient shall upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any



laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the Recipient may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of EFC or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to EFC indicating whether or not the project is in compliance with the requirements of 29 CFR § 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient, for transmission to EFC, EPA if requested by EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;



(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or Subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Recipient, EFC, or EPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to

journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Compliance with Copeland Act Requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

6. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (10) and such other clauses as the Recipient may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR § 5.5.

7. Contract Termination: Debarment. A breach of the contract clauses in 29 CFR § 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR § 5.12.

8. Compliance with Davis–Bacon and Related Act requirements. All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Recipient, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

***For Contracts in Excess of \$100,000:***

1. Overtime requirements. No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. Withholding for unpaid wages and liquidated damages. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. The Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
5. In any Contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, the Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Recipient and the Department of Labor, and the Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

**SECTION 4                      REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

*The requirements of this section apply to all Contracts and Subcontracts.*

Contractor and any Subcontractors shall comply with, Subpart C of 2 CFR Part 180 as implemented and supplemented by 2 CFR Part 1532. The Contractor is not a debarred or suspended party under 2 CFR Part 180 or 2 CFR Part 1532, or 29 CFR § 5.12. Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations.

In addition, the Contractor and any Subcontractors have not been debarred from or deemed ineligible for Government contracts or federally assisted construction contracts pursuant to Executive Order 11246.

## SECTION 5 RESTRICTIONS ON LOBBYING

*The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000. Disregard this section if it does not apply to this Contract or Subcontract.*

The Contractor and any Subcontractor executing a Contract or Subcontract in excess of \$100,000 agree to provide to the Recipient an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 3, consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

## SECTION 6 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

*The requirements of this section apply to all Contracts and Subcontracts.*

This prohibition is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligor or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
  - (1) Procure or obtain, extend or renew a contract to procure or obtain;
  - (2) Enter into a contract (or extend or renew a contract) to procure; or
  - (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list located at <https://sam.gov/SAM/>.



# **Guidance on Mandatory State Revolving Fund Equivalency Projects Terms and Conditions**

*For Treatment Works and Drinking Water Equivalency  
Projects Funded with NYS Clean Water State Revolving  
Fund or Drinking Water State Revolving Fund*

Effective November 15, 2021

**New York State Environmental Facilities Corporation**  
625 Broadway, Albany, NY 12207-2997  
P: (518) 402-6924 F: (518) 402-7456  
[www.efc.ny.gov](http://www.efc.ny.gov)

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# Introduction

The New York State Environmental Facilities Corporation (“EFC”) implements the New York State Revolving Fund (“SRF”) for both Clean Water and Drinking Water projects.

This Guidance on Mandatory SRF Equivalency Projects Terms and Conditions contains a brief description of federal program requirements for Contracts and Subcontracts funded in whole or part by the New York State Clean Water and Drinking Water SRFs and guidance materials to assist entities in complying with these requirements. It sets forth Guidance Materials Intended to assist SRF Recipients, Contractors, and Subcontractors in complying with the SRF program requirements as applicable.

**The Guidance Materials are for information purposes only and are not intended to be used as contractual language. Please do not incorporate the Guidance Materials into any contracts or subcontracts.**

## PROGRAM REQUIREMENTS SUMMARY

The following requirements apply to Treatment Works and Drinking Water equivalency projects funded with the NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund:

- Participation by Disadvantaged Business Enterprises (“DBE”) in United States Environmental Protection Agency (“EPA”) Programs pursuant to 40 Code of Federal Regulations (CFR) Part 33;
- Equal Employment Opportunities pursuant to Titles VI and VII of the Civil Rights Act of 1964, 40 CFR Part 7, and 41 CFR Part 60-1 Subpart A;
- Affirmative Action requirements pursuant to 41 CFR Part 60-4;
- Non-discrimination requirements pursuant to Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972;
- American Iron and Steel (“AIS”) pursuant to P.L. 113-76, Consolidated Appropriates Act, 2014; WRRDA Section 608 of the Federal Water Pollution Control Act, as revised;
- Davis Bacon Related Acts (“DBRA”) consisting of the following: The Davis Bacon Act; Copeland Act (40 U.S.C. § 3145); Reorganization Plan No. 14; Department of Labor 29 CFR Parts 1, 3, and 5; Contract Work Hours and Safety Standards Act;
- Requirements regarding suspension and debarment pursuant to 2 CFR Part 180, 2 CFR Part 1532, 29 CFR § 5.12, and Executive Order 11246; and,
- Restrictions on Lobbying pursuant to 40 CFR Part 34.

EFC or its authorized representatives, and other governmental entities as applicable, reserve the right to conduct occasional site visits to monitor compliance with SRF program requirements.

**This document is not intended to be inclusive of all applicable legal requirements and there may be other legal requirements that need to be included in a particular Contract or Subcontract that are not set forth here. Accordingly, EFC recommends that Recipients, Contractors, Subcontractors, and any other involved entities consult their legal counsel for advice on compliance with all applicable laws, including but not limited to local laws. This document is not intended to be legal advice.**

## COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

**“Contract”** means an agreement between a Recipient and a Contractor.

**“Contractor”** means all bidders, prime contractors, Service Providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

**“Service Provider”** means any individual or business enterprise that provides one or more of the following: legal, engineering, financial advisory, technical, or other professional services, supplies, commodities, equipment, materials, or travel.

**“Subcontract”** means an agreement between a Contractor and a Subcontractor.

**“Subcontractor”** means any individual or business enterprise that has an agreement, purchase order, or any other contractual arrangement with a Contractor.

**“Recipient”** means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part.

**“State”** means the State of New York.

**“Treatment Works”** is defined in Clean Water Act (CWA) Section 212.

**“Nonpoint Source Projects”** and **“Green Infrastructure Projects”** are defined in CWA Section 319.

**“Estuary Management Program Project”** is defined in CWA Section 320.



# GUIDANCE MATERIALS

## APPLICABILITY OF PROGRAM REQUIREMENTS

This table contains a breakdown of the applicable program requirements based on contract type and its value. For further details pertaining to each requirement, refer to the section identified in the heading. The relevant section number is the same in both Part 2 and Part 3 of this document.

Type of Contract	DBE <a href="#">Section 1</a>	EEO <sup>1</sup> <a href="#">Section 1</a>	Title VII <a href="#">Section 1</a>	AIS <a href="#">Section 2</a>	Davis Bacon <a href="#">Section 3</a>	FAAR <sup>2</sup> <a href="#">Section 1</a>	Suspension & Debarment <a href="#">Section 4</a>	Restrictions on Lobbying <a href="#">Section 5</a>	Prohibition on Telecommunications <a href="#">Section 6</a>
<b>Construction</b>									
All	X	X	X	X			X		X
If greater than:									
\$2,000	X	X	X	X	X		X		X
\$10,000	X	X	X	X	X	X	X		X
\$100,000	X	X	X	X	X	X	X	X	X
<b>Non-Construction</b>									
All	X	X					X		X
If greater than \$100,000	X	X					X	X	X

<sup>1</sup> For purposes of this table, "EEO" includes the following: EEO requirements under 40 CFR Part 33, Title VI, Section 504, Age Discrimination Act, and Section 13.

<sup>2</sup> For purposes of this table, "FAAR" means the Federal Affirmative Action Regulations.

# SECTION 1 GUIDANCE FOR THE REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

## I. Summary of DBE Forms

### A. Forms to be Submitted Prior to Contract Execution

#### 1. DBE Utilization Plan

To be submitted by the Contractor to the Minority Business Officer (MBO) after the bid opening, but in no case later than the execution date of the contract. For purposes of this document, MBO means the duly authorized representative of the SRF Recipient for DBE and EEO purposes.

### B. Forms to be Submitted During the Term of the Contract

#### 1. EEO-1 Report

To be submitted by the Contractor and Subcontractor, as applicable, annually during the term of the Contract or Subcontract. A sample EEO-1 Report can be found here:

[https://www.eeoc.gov/sites/default/files/migrated\\_files/employers/eeo1survey/eeo1-2-2.pdf](https://www.eeoc.gov/sites/default/files/migrated_files/employers/eeo1survey/eeo1-2-2.pdf).

Instructions for how to submit the EEO-1 Report online can be found here:

<https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet>. See Section 1(II)(D), *Required Contract Language*.

#### 2. Good Faith Effort Documentation

If Contractor's good faith efforts do not result in obtaining DBE participation that meets the fair share objectives, Contractor will need to submit good faith effort documentation to the Recipient's MBO. The DBE Utilization Plan form contains a list of the required documentation. See Section III(B), *Good Faith Efforts*, for details.

#### 3. Quarterly Report

To be submitted by the Contractor to the MBO by the fifteenth business day following the end of each calendar quarter over the term of the Contract. This form is emailed to the MBO from EFC prior to the end of the quarter and then passed on to the Contractor. The Contractor must then complete the form and transmit it via email to the MBO.

## II. Equal Employment Opportunities (EEO)

### A. EEO Poster

Attachment 1, *EEO Poster*, is the notice provided by the United States Department of Labor, with a place added to identify the employee responsible for EEO compliance, as required by 40 CFR § 7.95.

### B. EEO Goals

Pursuant to 41 CFR Part 60-4, the United States Department of Labor has established EEO goals for the employment of minorities and women. For federal and federally assisted construction Contractors, goals for minorities and females are established as a percentage participation rate. These goals are applicable to all of a Contractor's construction work sites (whether or not these sites are also the result of a federal Contract or are federally assisted). The goals are applicable to each nonexempt Contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a federal, federally assisted or non-federally related project Contract or Subcontract. Contractors should apply to each work site the goal for the geographical area that each particular work site is located in.

These goals are available at:

<https://www.dol.gov/sites/dolgov/files/ofccp/ParticipationGoals.pdf>.

For further information, visit:

<https://www.dol.gov/agencies/ofccp>

### III. Good Faith Efforts and Fair Share Objectives for DBEs

#### A. Fair Share Objectives

The fair share objectives (also referred to as “goals”) provided herein are effective as of October 1, 2020. See Section 1(III)(A), *Required Contract Language*. DBE fair share objectives for a contract will be based on the fair share objectives in place at the time of the execution date of each respective contract, unless otherwise specified.

Please contact EFC if you have any questions about the applicable DBE fair share objectives for your contract.

#### B. Good Faith Efforts

The Contractor must make good faith efforts to develop an adequate DBE Utilization Plan and must continue such good faith efforts in order to meet applicable DBE fair share objectives. The Contractor shall maintain documentation of good faith efforts to solicit participation of DBE firms for SRF-funded equivalency projects. If a Contractor is unable to meet contract DBE fair share objectives, documentation of such good faith efforts must accompany the Utilization Plan. See Section 1(III)(D), *Required Contract Language*. The Contractor should also continue good faith efforts to seek opportunities for DBE participation during the life of the contract even if proposed fair share objectives have been achieved.

Examples of documentation of good faith efforts are set forth below:

- Information on the scope of work related to the contract, such as a copy of the schedule of values from the bid submission, and specific steps taken to reasonably structure the scope of work to break out tasks or equipment needs for the purpose of providing opportunities for subcontracting with, or obtaining supplies or services from, DBEs.
- Printed screenshots of the applicable directory of Certified Disadvantaged Business Enterprises (“DBE directory”) for DBEs that provide the services or equipment necessary for the contract. Contact the MBO for assistance in performing a proper search including identifying a sufficient number of solicitations to show that good faith effort was made.
- Copies of timely solicitations and documentation (e.g., faxes and emails) that the Contractor offered relevant plans, specifications, or other related materials to DBE firms to participate in the work, with the responses.
- A log prepared by the Contractor in a sortable spreadsheet documenting the Contractor’s solicitation of DBEs for participation as Subcontractors or suppliers. The log should consist of the list of DBE firms solicited, the type of work they were solicited to perform (or equipment to provide), how the solicitation was made (fax, phone, email), the date of the solicitation, and the outcome. See a sample log format below:

DBE Company Name	Scope of work	Location	Date Contact	Solicitation Format	DBE Response	Selected? If not, Explain

If no response was received to an initial solicitation, at least one follow-up solicitation should be made in a different format than the first, e.g. fax followed by phone call, and entered in additional columns on the log.

- Any bids or quotes received from non-DBE firms that were more competitive than a bid or quote from DBEs, along with the DBE's bid or quote for comparison.
- Copies of any advertisements of sufficient duration to effectively seek participation of certified DBEs timely published in appropriate general circulation, trade and DBE oriented publications, together with listing and dates of publication of such advertisements. A log should be kept of the responses to the ads, similar to the log for DBE firm solicitation and should include the non-DBE firms that responded and the bid prices.
- Documents demonstrating that insufficient DBEs are reasonably available to perform the work.
- The date of pre-bid, pre-award, or other meetings scheduled by the Recipient, if any, and the contact information of any DBEs who attended and are capable of performing work on the project.
- Any other information or documentation that demonstrates the Contractor conducted good faith efforts to provide opportunities for DBE participation in their work. For instance, Prime Contractors and MBOs should develop a list of DBE firms that have expressed interest in working on SRF-funded projects

#### C. DBE Utilization Plan

1. The DBE Utilization Plan must be submitted to the Recipient's MBO after the bid opening, but in no case later than the execution date of the contract.
2. The MBO will evaluate a completed DBE Utilization Plan and the good faith effort documentation. If the MBO finds the Utilization Plan sufficient, it will be forwarded to EFC for review. If the MBO finds the Utilization Plan or good faith effort insufficient, the MBO will work with the Contractor to address deficiencies before submitting to EFC for review.
3. In coordination with the MBO, EFC will accept a DBE Utilization Plan upon consideration of many factors, including the following:
  - a. The DBE Utilization Plan indicates that the proposed fair share objectives for the project will be achieved;
    - i. A Contractor, who is a certified DBE, will be credited for up to 100% of their certification but should deduct any subcontracting by non-DBE subcontractors from their own DBE credit; and,
  - b. Adequate documentation to demonstrate good faith efforts and/or support a specialty equipment/services exclusion as described below in Section III(E).
4. EFC reserves the right to request additional information and/or documentation to support the adequacy of the Utilization Plan.

#### D. Eligibility for DBE Participation Credit

1. To receive DBE participation credit, Contractors or Subcontractors performing work that have been identified in an approved DBE Utilization Plan must be certified DBEs pursuant to 40 CFR Part 33 by an authorized certifying entity such as SBA or a state DOT on behalf of US DOT.
2. Prime Contractors may also include second tier Subcontractors (Subcontractors hired by Subcontractors) on their Utilization Plan.

3. Participation of Brokers and Truckers/Haulers
  - a. Contractors cannot count the participation of a DBE who acts as a broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE's prime Contract or Subcontract is subcontracted to a non-DBE, the DBE prime contractor or subcontractor will be presumed to be a broker.
  - b. Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a "commercially useful function," according to the following factors:
    - i. The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
    - ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

#### E. Submission of Good Faith Effort Documentation

1. If the Contractor's application of good faith efforts does not result in the utilization of DBE firms to achieve the aforementioned fair share objectives or a specialty equipment/service exclusion is requested, the Contractor may attach appropriate documentation of good faith efforts as noted in Section III(B) above, and submit same to the MBO. See also Section 1(III)(D), *Required Contract Language*.
2. The MBO and EFC will review each Utilization Plan that does not meet the fair share objectives based on the good faith effort criteria presented above and the documentation submitted with the Utilization Plan.
3. Specialty Equipment/Service Exclusion: A specialty equipment/service exclusion may be granted in cases where:
  - a. equipment is made by only one non-DBE manufacturer,
  - b. the technical specifications call for equipment that is not available through a DBE supplier;
  - c. the equipment is constructed on site by specially trained non-DBE labor;
  - d. the service is not available through an DBE (such as work done by Consolidated Edison);
  - e. the service is proprietary in nature (such as use of certain computer software necessary for control systems); or,
  - f. the service cannot be subcontracted (such as litigation services).

If the contract includes specialty equipment or services, and documentation is submitted demonstrating that there are no DBE firms capable of completing this portion of the contract, the specialty amount of the contract may be deducted from the total contract amount to determine the DBE Eligible Amount and the fair share objectives will be applied to the DBE Eligible Amount. This determination is made at the discretion of the MBO and EFC.

Example:

\$2,000,000	-	\$500,000	=	\$1,500,000
(Contract)		(Specialty equipment/service)		(DBE Eligible Amount)

The DBE fair share objectives are applied to the DBE Eligible Amount.

A request for this specialty equipment/service exclusion can be completed by noting it on the Utilization Plan form and submitting it to the MBO. The request must include: a copy of the page from the contract where the equipment/ service is described; if a manufactured item, an email or screenshot of the manufacturer's website showing their representatives; a DBE search result for the representative; and documentation of the cost of each item. Additional documentation may be requested by the MBO or EFC.

#### **IV. Subcontractor's Responsibilities**

Subcontractors should:

1. Maintain their DBE certifications, and notify the Contractor and MBO of any change in their certification status.
2. Notify the Contractor of any DBE Subcontractors they hire so they may be included on the Contractor's Utilization Plan as a second-tier subcontractor.
3. Respond promptly to solicitation requests by completing and submitting bid information in a timely manner.
4. Maintain business records that should include, but not be limited to, contracts/agreements, records of receipts, correspondence, purchase orders, and canceled checks.
5. Ensure that required bid packet language is included in each subcontract.
6. Notify the MBO and EFC when contract problems arise, such as non-payment for services or when the Subcontractor is not employed as described in the DBE Utilization Plan.

#### **V. Protests/Complaints**

Contractors or Subcontractors who have any concerns, issues, or complaints regarding the implementation of EFC's DBE & EEO Program or wish to protest should do so in writing to the MBO and EFC. The MBO, in consultation with EFC, will review the circumstances described in the submission, investigate to develop additional information, if warranted, and determine whether action is required. If the Contractor or Subcontractor believes the issue has not been resolved to their satisfaction, they may appeal in writing to EFC for consideration.

#### **VI. Waste, Fraud and Abuse**

Subcontractors, Contractors, or Recipients who know of or suspect any instances of waste, fraud, or abuse within the DBE & EEO Program should notify the project MBO and EFC immediately. Additionally, suspected fraud activity should be reported to the USEPA – Office of Inspector General Hotline at (888) 546-8740, or the New York State Office of Inspector General at (800) 367-4448

## **SECTION 2      GUIDANCE FOR AMERICAN IRON AND STEEL ("AIS") REQUIREMENT**

Since 2014, if a Recipient uses CWSRF or DWSRF financial assistance to fund all or a part of the construction, alteration, maintenance or repair a public water system or treatment works, the Recipient must use iron and steel products that are produced in the United States for the whole project.

The AIS requirement does not apply to:

1. a project for which engineering plans and specifications were submitted for review by the responsible State agency before January 17, 2014 and approved by that agency before April 15, 2014; or
2. a project funded by a financial assistance agreement with EFC that was signed before January 17, 2014.

The term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials. For one of the listed products to be considered subject to the AIS requirement, it must be made of greater than 50% iron and steel, measured by material cost (with the exception of reinforced precast concrete products).

The term “produced in the United States” means that all manufacturing processes of the iron or steel, including application of coatings, take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

The EPA may waive the AIS requirement for a treatment works project if:

1. applying the requirement would be inconsistent with the public interest;
2. iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

A request for a waiver to use foreign iron or steel products must include adequate information for EPA's evaluation of the request, including:

1. A description of the foreign and domestic iron, steel, and/or manufactured goods;
2. Unit of measure;
3. Quantity;
4. Cost;
5. Time of delivery or availability;
6. Location of the project;
7. Name and address of the proposed supplier; and,
8. A detailed justification for use of foreign iron or steel products.

Requests for AIS waivers are to be submitted to EFC. Upon review, EFC will submit AIS waiver requests to EPA. When EPA receives a request for a waiver, EPA will publish the request and any accompanying material on EPA's official public Internet site, allowing informal public input on the request for at least 15 days before granting or denying the waiver request.

Additionally, EPA has the authority to issue waivers that are national in scope. National waivers may be for specific products or in the public's interest. These waivers can be found at EPA's website at: <https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-approved-national-waivers-0>  
The “De Minimis Waiver” is noteworthy. The waiver permits the use of iron and steel products when they occur in de minimis incidental components of DWSRF or CWSRF projects, as long as:

1. the funds used for the de minimis incidental components cumulatively comprise no more than 5% of the total cost of the materials used in a project; and,
2. the cost of an individual item does not exceed 1% of the total cost of the materials used in the project.

Items covered by the de minimis waiver are:

1. essential, but incidental to the construction;
2. incorporated into the physical structure of the project; and,
3. often low-cost and bought in bulk.

Examples of “de minimis” items include: washers, screws, nuts, bolts, fasteners, miscellaneous wire, corner bead, ancillary tubing, etc.

Examples of items that are NOT incidental and therefore are not considered “de minimis” include: process fittings, tees, elbows, flanges, brackets, valves, sewer or water pipes for distribution, treatment or storage tanks, large structural support systems, etc.

To use the de minimis waiver, Contractors should prepare a record in spreadsheet form that tracks the cost of all materials incorporated into the project. This spreadsheet can be either project specific or contract specific. If it is contract specific, a material tracking record for each construction contract should be prepared and items that are subject to the AIS de minimis waiver should be highlighted. There should be a clear calculation available to indicate that the cost of the de minimis iron and steel items is 5% or less of the total cost of all materials.

Additional information, guidance and Questions and Answers about the State Revolving Fund American Iron and Steel (AIS) requirement can be found at EPA's website: <https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

## **SECTION 3 GUIDANCE FOR APPLICABLE LABOR STANDARDS**

### **I. Davis-Bacon Act**

The Davis-Bacon Act requires Contractors and Subcontractors performing construction, alteration and repair work under Contracts in excess of \$2,000 funded from SRF monies, to pay their laborers and mechanics not less than the prevailing wage and fringe benefits for the geographic location.

For purposes of this section, "State Recipient" means EFC.

#### **A. Requirements for Recipients.**

This guidance describes how Recipients assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Water Resources Reform and Development Act of 2014 (WRRDA) with respect to State Recipients and Recipients. Recipients with questions about when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring should contact the State Recipient. Recipients can also obtain guidance from DOL's web site at <http://www.dol.gov/whd/>

##### **1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.**

Under the Water Resources Reform and Development Act of 2014 (WRRDA), DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund. If a Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with the State Recipient before authorizing work on that site.

##### **2. Obtaining Wage Determinations.**

(a) Recipients must obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations must be incorporated into solicitations and any subsequent Contracts. Prime Contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime Contract.

(i) While the solicitation remains open, the Recipient must monitor <https://beta.sam.gov/> weekly to ensure that the wage determination contained in the solicitation remains current. Recipients must amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipient may request a finding from the State Recipient that there is not a reasonable time to notify interested Contractors of the modification of the wage determination. The State Recipient will provide a report of its findings to the Recipient.



(ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersessions DOL makes to the wage determination contained in the solicitation shall be effective unless the State Recipient, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the Contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the Recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing Contractor (ordering instrument) rather than by publishing a solicitation, the Recipient must insert the appropriate DOL wage determination from <https://beta.sam.gov/> into the ordering instrument.

(c) Recipients must review all Subcontracts subject to DB entered into by prime Contractors to verify that the prime Contractor has required its Subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's Contract after the award of a Contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the Contract or ordering instrument. If this occurs, the Recipient must either terminate the Contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the Contract or ordering instrument by change order. The Recipient's Contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

#### B. Additional requirements for Recipients that are not governmental entities

Recipients that are not governmental entities must submit their proposed DB wage determinations to the State Recipient for approval prior to including the wage determinations in any solicitation, Contract or issuing task orders, work assignments, or similar instruments to existing Contractors, as well as ordering instruments unless subsequently directed otherwise by the State Recipient award official as identified below.

Recipients must obtain proposed wage determinations for specific localities at <https://beta.sam.gov/>. After the Recipient obtains its proposed wage determination, it must submit the wage determination to the State Recipient award official at: Timothy Burns, P.E., Director, Engineering and Program Management, New York State Environmental Facilities Corporation, at 518-402-7396 or at the following email address: Timothy.Burns@efc.ny.gov.

#### C. Compliance Verification

(a) The Recipient must periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that Contractors or Subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The Recipient must establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the Contract or Subcontract. Recipients must increase the frequency of the interviews if the initial interviews or other information indicates that there is a risk that the Contractor or Subcontractor is not complying with DB. Recipients must immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews must be conducted in confidence.

(c) The Recipient must periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or Subcontractors are paying the appropriate wage rates. The Recipient must establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or Subcontractors and the duration of the Contract or Subcontract. At a minimum, the Recipient must spot check payroll data within two weeks of each Contractor or Subcontractor's submission of its initial payroll data and two weeks prior to the completion date the Contract or Subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the Contractor or Subcontractor is not complying with DB. In addition, during the examinations the Recipient must verify evidence of fringe benefit plans and payments thereunder by Contractors and Subcontractors who claim credit for fringe benefit contributions.

(d) The Recipient must periodically review Contractors' and Subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that Contractors and Subcontractors are not using disproportionate numbers of laborers, trainees and apprentices. These reviews must be conducted in accordance with the schedules for spot checks and interviews described in Item (b) and (c) immediately above.

(e) Upon the request of EFC, the Recipient must provide EFC with a written certification indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies from Contractors/Subcontractors for the specified week.

(f) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://beta.sam.gov/>.

## **II. Applicable State and Local Labor Standards**

Contractors and Subcontractors working under a public works contract subject to DBRA may also be subject to additional labor standards, including but not limited to prevailing wage requirements, under State and local laws. When preparing the bid for SRF project, the Contractor, and any Subcontractors, must use the higher of the prevailing federal, state, or applicable local wage rates paid to each trade.

## **III. Responsibilities of Contractors and Subcontractors**

After execution of any SRF eligible Contracts, the Contractor and Subcontractor have the following responsibilities:

1. Post Davis Bacon Wage Poster and applicable federal, state, and local wages in a visible area at the construction site. This poster may be found on the EFC website under the Resource Library. (Refer to the attached required forms)
2. Make your employees available for wage interviews if necessary. Wage interviews must be conducted confidentially and using Labor Standard Interview Form (SF-1445). (Refer to the attached required forms)
3. Use federal payroll form WH-347 and complete the certifications on the back. If another form is being used, inform the Recipient and obtain a determination that the form is equivalent to the federal form. (Refer to the attached required forms)
4. Pay the higher of applicable prevailing federal, state, or local wages, including benefits (fringe & holidays), to each trade and overtime not less than one and one-half times the basic rate of pay for hours in excess of forty hours on Contracts in excess of \$100,000. The wage rates apply to Subcontractor trades as well.
5. Maintain proof of apprentice and trainee ratios for both Contractor and Subcontractor and certifications onsite.
6. Pay wages to your employees and your Subcontractors on a weekly basis. Ensure that your Subcontractors are paying their employees weekly.

7. Ensure that the Subcontracts contain the Davis Bacon contract language, the applicable federal, state, or local wage determinations and equal employment opportunity language. This language is provided in the Part 2: Required Contract Language. Federal wage determinations are available at <https://beta.sam.gov/>.
8. Provide payroll forms and apprentice and trainee certifications to the Recipient for their records.
9. Report potential waste, fraud and abuse violations to the EPA Davis Bacon Contact and DOL Wages and Hours District Office found on their website. <https://beta.sam.gov/>. Any violations in payroll reporting or unpaid wages are subject to a daily monetary penalty.

## **SECTION 4            GUIDANCE FOR REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

A list of debarred and suspended contractors, pursuant to 2 CFR Parts 180 and 1532, 29 CFR § 5.12, and Executive Order 11246, is available on the US Department of Labor's website at <https://www.sam.gov/portal/public/SAM/>.

## **SECTION 5            GUIDANCE FOR RESTRICTIONS ON LOBBYING**

Each Contractor and any Subcontractor that has a Contract or Subcontract exceeding \$100,000 shall provide to the Recipient a completed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as Attachment 9 consistent with the prescribed form provided in Appendix A to 40 CFR Part 34. The form provides a certification that the Contractor or Subcontractor will not expend appropriated federal funds to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, officer or employee of Congress or any employee of any Member of Congress in accordance with the provisions of 40 CFR Part 34, and to maintain such certification for their own records.

## **SECTION 6            GUIDANCE ON PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

Effective August 13, 2020, Recipients of SRF funding must comply with regulations at [2 CFR 200.216](#), *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of [Public Law 115-232](#). The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use "covered telecommunications equipment or services" identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that "uses any equipment, system, or service that uses covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the [System for Award Management](#) exclusion list.

There is no exhaustive list of components and services that fall under the prohibition. Recipients should exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, Recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

## SECTION 7 SUMMARY OF CONTRACTOR REQUIREMENTS FOR SRF-FUNDED PROJECTS

Forms can be found as attachments to this document or online at [www.efc.ny.gov](http://www.efc.ny.gov)

Forms should be submitted electronically via email or through EFC's [drop+box](#)

### To be submitted with this bid:

- ☐ Lobbying Certification
- ☐ AIS Contractor's Certification

#### Refer to Part 3 Guidance Section

Section 5  
Section 2

### To be submitted prior to or upon Contract award:

- ☐ Executed Contracts, Subcontracts, agreements, and purchase orders
- ☐ Utilization Plan and/or Good Faith Effort Documentation

Section 1

### Tasks for construction start:

- ☐ Ensure that all Subcontracts contain Part 2: Required Contract Language
- ☐ Post EEO Poster
- ☐ Pay the higher of prevailing federal, state, or local wages including benefits
- ☐ Post Davis Bacon Wage Poster AND Wage Rates
- ☐ Use Federal Payroll Form (WH-347)
- ☐ Obtain apprentice and trainee certifications
- ☐ Obtain AIS Manufacturer's Certifications for all iron & steel products

Section 1

Section 3

Section 3

Section 3

Section 3

Section 2

### Ongoing documentation & tasks:

- ☐ Submit Quarterly Reports to MBO
- ☐ Maintain weekly certified payrolls for all Prime & Subcontractors
- ☐ Maintain proof of payments for DBE Subcontractors
- ☐ Maintain AIS Manufacturer's Certifications

Section 1

Section 3

Section 1

Section 2

# ATTACHMENTS (Required Forms)

## Attachment 1 – EEO Poster

**Employee Contact  
For EEO Compliance:**

# Equal Employment Opportunity is **THE LAW**

## **Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations**

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

### **DISABILITY**

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

### **AGE**

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

### **SEX (WAGES)**

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

### **GENETICS**

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

### **RETALIATION**

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

### **WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED**

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov) or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at [www.eeoc.gov](http://www.eeoc.gov).



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## Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### **INDIVIDUALS WITH DISABILITIES**

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

### **DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS**

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

### **RETALIATION**

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at [OFCCP-Public@dol.gov](mailto:OFCCP-Public@dol.gov), or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

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## Programs or Activities Receiving Federal Financial Assistance

### **RACE, COLOR, NATIONAL ORIGIN, SEX**

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

### **INDIVIDUALS WITH DISABILITIES**

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.



## Attachment 2 – EFC DBE Utilization Plan



# Environmental Facilities Corporation

## NYS Environmental Facilities Corporation Disadvantaged Business Enterprise (DBE) Utilization Plan

### Instructions for Contractors & Service Providers:

Contractors and Service Providers must complete Sections 2 and 3. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format to the Recipient's designated Minority Business Officer (MBO) no later than the date of contract execution.** Incomplete forms will be found deficient. If more than 10 subcontractors are used, additional pages for Section 3 can be obtained from EFC.

**If the prime contract is being performed by the parties to a Joint Venture, Teaming Agreement, or Mentor-Protégé Agreement that includes a certified DBE, please contact EFC for assistance.**

DBEs on this form may include disadvantaged firms certified by USDOT, and disadvantaged firms certified by the Small Business Administration. In addition, the participation of DBEs will be credited according to the following requirements:

- Contractors cannot count the participation of a DBE who acts as a broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE's prime contract or subcontract is subcontracted to a non-DBE, the DBE prime contractor or subcontractor will be presumed to be a broker.
- Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a "commercially useful function," according to the following factors:
  - The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.
  - The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

You may consult your designated MBO for further guidance.

### Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. The MBO may designate an Authorized Representative to complete and submit quarterly payment reports on its behalf, and, if so designated, the MBO's Authorized Representative must also complete Section 1. The Authorized Representative may only submit quarterly payment reports on behalf of the MBO and may not submit any other required forms or reports for the MBO. The MBO must complete Section 1 even if designating an Authorized Representative. **Submit the completed, signed (electronic signature box checked and dated) form in Microsoft Word format via e-mail to your EFC MWBE Representative.**

The subject heading of the e-mail to the EFC MWBE Representative should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and notify the MBO via e-mail of its acceptance or denial.

If the Utilization Plan will not meet or exceed the DBE fair share objective, then the good faith effort documentation noted in Section 4 must be submitted with this form.

**NYS Environmental Facilities Corporation  
Disadvantaged Business Enterprise (DBE) Utilization Plan**

SECTION 1: MUNICIPAL INFORMATION				
Recipient/Municipality:			County:	
Project No.:		Contract ID:		Registration No. (NYC only):
Minority Business Officer:		Email:		Phone #:
Address of MBO:				
<b>Electronic Signature of MBO:</b> <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.				<b>Date:</b>
<b>Complete if applicable:</b>				
Authorized Representative:			Title:	
Authorized Rep. Company:			Email: <span style="margin-left: 50px;">Phone #:</span>	
<b>Electronic Signature of Authorized Rep.:</b> <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.				<b>Date:</b>

  

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION				
Firm Name:			Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
<b>Is the Prime Firm certified as a DBE?:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please complete information in the Utilization Plan below (Section 3).				
Address:		Phone #:		Fed. Employer ID #:
Description of Work:				
Award Date:	Start Date:	Completion Date:	DBE Fair Share Objective	PROPOSED DBE Participation
			Total: 20%   \$	Total:   %   \$
<b>If fair share objectives are not met, documentation must be attached:</b> <input type="checkbox"/> No Participation <input type="checkbox"/> Short of the DBE Fair Share Objective				
<input type="checkbox"/> <b>Specialty Equipment/Services:</b> must be of SIGNIFICANT cost - list of equipment and cost & good faith effort documentation must be attached)				

**NYS Environmental Facilities Corporation  
Disadvantaged Business Enterprise (DBE) Utilization Plan**

SECTION 3: DBE SUBCONTRACTOR INFORMATION			
<b>This Submittal is:</b>	<input type="checkbox"/> The First/Original Utilization Plan <input type="checkbox"/> Revised Utilization Plan #:		
DBE Subcontractor Information		Contract Amount	For EFC Use:
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			

**SECTION 3: DBE SUBCONTRACTOR INFORMATION continued**

**NYS Environmental Facilities Corporation  
Disadvantaged Business Enterprise (DBE) Utilization Plan**

<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		

**NYS Environmental Facilities Corporation  
Disadvantaged Business Enterprise (DBE) Utilization Plan**

SECTION 3: DBE SUBCONTRACTOR INFORMATION continued			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			
<b>Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____			

**NYS Environmental Facilities Corporation  
Disadvantaged Business Enterprise (DBE) Utilization Plan**

**SECTION 4: GOOD FAITH EFFORT DOCUMENTATION**

Utilization Plans that do not meet the Fair Share Objective must be accompanied by the documentation requested in numbers 1 – 8, as listed below. If a Specialty Equipment Exclusion is requested, it must be accompanied by all the documentation requested in numbers 1 - 12. If a Specialty Services Exclusion is requested, it must be accompanied by the items requested in number 1 – 9 and 14. Please contact the Recipient and/or EFC for assistance, including sample documentation.

1. A letter of explanation detailing the scope of work, DBE search results, and results of good faith efforts that were made.
2. Copies of advertisements in any general circulation, trade association, and minority- and women-oriented publications in which you solicited DBEs for the purposes of complying with your fair share objective, with the dates of publication.
3. Screenshots of search results (by business description or commodity code) from DBE Directories of all certified DBEs that were solicited for purposes of complying with your DBE fair share objective.
4. Copies of faxes, letters, or e-mails sent to DBE firms to solicit participation and their responses.
5. A log of solicitation results, consisting of the list of DBE firms solicited for the contract and the outcome of the solicitations. The log should be broken out into separate areas for each task that is solicited (e.g., trucking, materials, electricians) and clearly provide a rationale for firms included on the completed Utilization Plan as well as for those not chosen. The log should show: that each firm was contacted twice by two different methods (e.g., fax and phone); who was spoken to; what was said; and the final outcome of the solicitation.
6. A description of any contract documents, plans, or specifications made available to DBEs for purposes of soliciting their bids and the date and manner in which these documents were made available. Specifically, include information on the scope of work in the contract and a breakout of tasks or equipment, such as a schedule of values for a construction contract or a proposal or excerpt from a professional services agreement.
7. Any other information you deem relevant which may help us in evaluating your request for a waiver. Examples may include sign-in sheets from any pre-bid meetings where DBE firms were invited, attendance at DBE forums, etc.
8. EFC and the MBO reserve the right to request additional information and/or documentation.

**Additional Documentation for Requests for Specialty Equipment Exclusions:**

9. Copies of the appropriate pages of the technical specification related to the equipment showing the choices for manufacturers or other information that limits the choice of vendor.
10. Letter, e-mail or screenshot of website from the manufacturer listing their distributors in NYS and the locations.
11. Screenshots of DBE Directory searches for the manufacturer and distributor showing that they are not found in the Directory.
12. An invoice or executed purchase order showing the value of the equipment.

**NYS Environmental Facilities Corporation  
Disadvantaged Business Enterprise (DBE) Utilization Plan**

**Additional Documentation for Requests for Specialty Service Exclusions:**

13. A letter of explanation containing information about the scope of work and why no DBE firms could be subcontracted to provide that service.

**Note:** Unless there is no participation on the utilization plan, firms will be required to submit all reports and documents pursuant to the provisions set forth in the procurement and/or contract, as deemed appropriate by EFC, to determine DBE compliance

**SIGNATURE**

**Electronic Signature of Contractor:** ☐ I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and that all DBE subcontractors will participate in subcontracts in accordance with the requirements of 40 CFR Part 33.

**Date:**

**Name** (Please Type):



## **Attachment 3 – Lobbying Certification**



# Environmental Facilities Corporation

**New York State Environmental Facilities Corporation  
CERTIFICATION REGARDING LOBBYING  
FOR  
CONTRACTS, GRANTS, LOANS, AND  
COOPERATIVE AGREEMENTS  
40 CFR Part 34**

**SRF Project No.:** \_\_\_\_\_

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

Contract ID: \_\_\_\_\_

## **Attachment 4 – AIS Contractor’s Certification**



# Environmental Facilities Corporation

AIS CONTRACTOR CERTIFICATION  
FOR CONSTRUCTION CONTRACTS PAID FOR WITH FUNDS FROM  
THE NYS CLEAN WATER STATE REVOLVING FUND OR  
THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE  
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Contract ID: \_\_\_\_\_

SRF Project #: \_\_\_\_\_

SRF Recipient Name: \_\_\_\_\_

I certify that the iron and steel products that will be permanently incorporated into the public water system or wastewater treatment works project under this construction contract will have been produced in the United States, in accordance with the requirements of the US Environmental Protection Agency. I will also develop and maintain at the project location the necessary documentation to demonstrate that the iron and steel products incorporated into the project were produced in the United States, and make such documentation available to The NYS Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment 5 – AIS Sample Manufacturer’s Certification**

1. The following information is provided as a manufacturer's sample letter of **step** certification for AIS compliance. Documentation must be provided on company letterhead.

*Date*

*Company Name*

*Company Address*

*City, State Zip*

*Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)*

*I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.*

*Item, Products and/or Materials:*

*1. Xxx*

*2. Xxx*

*3. Xxx*

*Such process took place at the following location: \_\_\_\_\_*

*If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.*

*[Signed by company representative]*

2. The following information is provided as a manufacturer's sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.

*Date*

*Company Name*

*Company Address*

*City, State Zip*

*Subject: American Iron and Steel Certification for Project (XXXXXXXXXX)*

*I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.*

*Item, Products and/or Materials:*

*1. Xxx*

*2. Xxx*

*3. Xxx*

*Such process took place at the following location: \_\_\_\_\_*

*If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.*

*[Signed by company representative]*

## Attachment 6 – Federal Payroll Form (WH-347)



PAYROLL  
(For Contractor's Optional Use; See Instructions at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm))



Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rev. Dec. 2008

OMB No.: 1235-0008  
Expires: 02/28/2018

NAME OF CONTRACTOR				OR SUBCONTRACTOR				ADDRESS												
PAYROLL NO.				FOR WEEK ENDING				PROJECT AND LOCATION						PROJECT OR CONTRACT NO.						
(1)	(2)	(3)	OT OR ST	(4) DAY AND DATE							(5)	(6)	(7)	(8) DEDUCTIONS					(9)	
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	NO. OF WITHHOLDING EXEMPTIONS	WORK CLASSIFICATION									TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX			OTHER	TOTAL DEDUCTIONS	NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY																
			O																	
			S																	
			O																	
			S																	
			O																	
			S																	
			O																	
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			S																	

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ on the \_\_\_\_\_  
(Contractor or Subcontractor)  
\_\_\_\_\_ ; that during the payroll period commencing on the \_\_\_\_\_  
(Building or Work)  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
all persons employed on said project have been paid the full weekly wages earned, that no rebates have  
been or will be made either directly or indirectly to or on behalf of said  
\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly  
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part  
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,  
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are  
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the  
applicable wage rates contained in any wage determination incorporated into the contract; that the classifications  
set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship  
program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and  
Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered  
with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:  
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in  
the above referenced payroll, payments of fringe benefits as listed in the contract  
have been or will be made to appropriate programs for the benefit of such employees,  
except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid,  
as indicated on the payroll, an amount not less than the sum of the applicable  
basic hourly wage rate plus the amount of the required fringe benefits as listed  
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR  
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE  
31 OF THE UNITED STATES CODE.

## **SECTION J**

**Prime Contractor Pre-Award Statement – Prevailing Wage Contracts**

Agency: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Contract #: \_\_\_\_\_

On behalf of the prime contractor and contract shown above, I affirm that I have reviewed the following information with the contracting agency:

- The work to be done or the trades that will be employed on the contract;
- The Comptroller's prevailing wage schedules for each trade;
- The requirement to pay the prevailing wage and supplement rates in effect at the time the work is done, and the dates of likely changes in such rates (July 1 and January 1);
- The requirement for written agreements with all subcontractors, which include prevailing wage and supplement requirements;
- The registration, ratio and payment guidelines for apprentices, and whether their use is optional or required under this contract;
- The requirement to use City-approved certified payroll forms, the need to fill those forms out completely, and to submit such original payrolls within thirty (30) days of issuance of the first payroll and every thirty (30) days thereafter;
- The requirement to use standard sign-in and sign-out logs or an agency-approved electronic or biometric system, and that such logs must be submitted to the resident engineer or agency representative daily;
- The requirement that all workers on job sites shall wear laminated photo identification badges;
- The prohibition on cash payments to workers and subcontractors; all workers must be paid by check or direct deposit weekly (bi-weekly, where permitted by law [certain non-construction workers only]), and that for contracts over \$1,000,000 and subcontracts over \$750,000 such checks must be generated by either a payroll service or an agency-approved automated system; and
- That the prime contractor shall be liable to the City for the cost of enforcement in the event the prime contractor or any subcontractor is found in violation of these requirements.

I further affirm that the prime contractor will comply with these and all other relevant requirements of the New York State Labor Law and City of New York laws and regulations concerning payment of prevailing wages and supplements, and that violation of such laws may subject the prime contractor to various administrative, civil and criminal penalties.

Prime Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Position: \_\_\_\_\_

Agency Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

*Rev 5/14*





### **SPECIAL NOTICE**

## **NEW YORK STATE LABOR LAW WAGE REQUIREMENTS**

This contract is subject to New York State Labor Law Section 220 which requires that construction workers on the site be paid prevailing wages and supplements.

Contractor is reminded that all wage provisions of this contract will be enforced strictly, and failure to comply will be considered when evaluating performance. Noncompliance may result in the contractor being debarred by the City from future contracts. Complaints filed with the Comptroller may result in decisions which may debar a contractor from bidding contracts with any state governmental entity and other political subdivisions.

Contractor is expected to submit accurate payroll reports and other required documents and verify attendance and job classification being utilized in compliance with the law, contract provisions and agency procedures. Also see **Information for Bidders and Contract** for additional information on prevailing wage requirements.

#### **Notes:**

1. If this Contract is subject to a Project Labor Agreement (PLA), refer to the PLA language in the Contract Documents as to how it impacts the Prevailing Wage Rate conditions (i.e. overtime, holidays, etc.).
2. If this Contract is funded under the New York State Revolving Loan Program (SRF), it shall be subject to the prevailing wages under NYS Labor Law Section 220 and the prevailing wages under United States Davis-Bacon Act. If there is a conflict between the wage rate set forth by the Davis Bacon Act or the wage rate established pursuant to §220 of the NYS Labor Law, the contractor shall pay the higher rate.



**VERIFICATION OF PAYMENT TO SUBCONTRACTOR(S)**  
**(TO BE ATTACHED TO EACH REQUEST FOR PAYMENT)**

IN ACCORDANCE WITH ARTICLES 17.11 AND 43.5, OF THE CONTRACT, IT IS HEREBY CERTIFIED THAT THE FOLLOWING IS A TRUE, ACCURATE AND COMPLETE REPRESENTATION OF THE SUBCONTRACTOR WORK UNDER THIS CONTRACT, THAT PAYMENT TO SUBCONTRACTOR(S) FOR PRIOR WORK HAS BEEN MADE, AND THAT PAYMENT TO SUBCONTRACTOR(S) FOR WORK PERFORMED PURSUANT TO THIS PAYMENT REQUEST SHALL BE PAID TO THE NAMED SUBCONTRACTOR(S) NOT LATER THAN 7 DAYS AFTER PAYMENT HAS BEEN RECEIVED BY THE CONTRACTOR. IF THERE ARE NO PERFORMANCE AND PAYMENT BONDS FOR THIS CONTRACT, SEE ARTICLE 17.12 OF THE CONTRACT.

DEP CONTRACT DESIGNATION: \_\_\_\_\_ REGISTRATION NUMBER \_\_\_\_\_

PARTIAL PAYMENT NUMBER: \_\_\_\_\_

PAYMENT FOR WORK FROM: \_\_\_\_\_ THROUGH \_\_\_\_\_

NAME OF SUBCONTRACTOR, SUPPLIER OR SERVICE PROVIDER	VALUE OF SUBCONTRACT \$	AMOUNT PREVIOUSLY PAID TO SUBCONTRACTOR FOR WORK IN PRIOR PAYMENT REQUESTS	AMOUNT INCLUDING RETAINAGE TO BE PAID FOR WORK INCLUDED IN THIS PAYMENT REQUEST

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
PERCENT WORK COMPLETED

\_\_\_\_\_  
PRINT NAME OF REPRESENTATIVE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
DATE



## Certificate of Contractor to the Comptroller or Financial Officer of The City of New York

Under the provisions of Section 220-a of the Labor Law of the State of New York, and the terms and conditions of Contract.....with the Department of Environmental Protection of The City of New York, the undersigned CONTRACTOR hereby certifies to the Comptroller and the Director of Finance of The City of New York that the following is a true and correct statement of the amounts now due from the said CONTRACTOR to laborers for daily or weekly wages on account of labor performed upon the work under the aforementioned Contract, and for material and/or supplies delivered for use on the work, and for which payment is due, to wit:

<u>NAMES</u>	<u>AMOUNTS DUE FOR</u>	<u>LABOR</u>	<u>MATERIALS &amp; SUPPLIES</u>
--------------	------------------------	--------------	---------------------------------

(Note: If no money is due to any laborers, state above "None due to laborers." If no money is due to other persons for material and/or supplies delivered for use on the work, state above "None due to materialmen and supply men.")

That the following is a true and correct list of all subcontractors who have employed laborers and/or used materials and/or supplies for work performed under said contract:

<u>NAMES OF SUBCONTRACTORS</u>	<u>WORK SUBCONTRACTED</u>
--------------------------------	---------------------------

(I) or (we) have complied with all provisions of Section 220 of the New York State Labor Law.  
(Note: If no subcontractors are employed, state above "None")

.....  
Contractor

By.....  
President

STATE OF NEW YORK,

COUNTY OF..... } ss:

....., deposes and says that he/she is the  
(name) .....of  
(title) .....  
(firm's name)

the CONTRACTOR named herein, and who executed the foregoing, that he/she has read the foregoing statement subscribed by him/her, and knows the contents thereof, and that the same is true of his/her own knowledge and is executed under the provisions of Section 220-a of the Labor Law of the State of New York, and the terms and conditions of Contract.....with the Department of Environmental Protection of The City of New York.

.....  
President

Sworn/Affirmed to before me this .....day of.....

.....Notary Public, County of.....

**Note:** A County Clerk's notarial certificate must accompany this document if it is executed outside the State of New York.



## Certificate of Subcontractor to the Comptroller or Financial Officer of The City of New York

Under the provisions of Section 220-a of the Labor Law of the State of New York, and the terms and conditions of Contract.....with the Department of Environmental Protection of The City of New York, the undersigned CONTRACTOR hereby certifies to the Comptroller and the Director of Finance of The City of New York that the following is a true and correct statement of the amounts now due from the said CONTRACTOR to laborers for daily or weekly wages on account of labor performed upon the work under the aforementioned Contract, and for material and/or supplies delivered for use on the work, and for which payment is due, to wit:

<u>NAMES</u>	<u>AMOUNTS DUE FOR</u>	
	<u>LABOR</u>	<u>MATERIALS &amp; SUPPLIES</u>

(Note: If no money is due to any laborers, state above "None due to laborers." If no money is due to other persons for material and/or supplies delivered for use on the work, state above "None due to materialmen and supply men.")

That the following is a true and correct list of all subcontractors who have employed laborers and/or used materials and/or supplies for work performed under said contract:

<u>NAMES OF SUBCONTRACTORS</u>	<u>WORK SUBCONTRACTED</u>
--------------------------------	---------------------------

(I) or (we) have complied with all provisions of Section 220 of the New York State Labor Law.  
(Note: If no subcontractors are employed, state above "None")

.....  
*Contractor*

By.....  
*President*

STATE OF NEW YORK,

COUNTY OF..... } ss:

....., deposes and says that he/she is the  
(name)  
.....of  
(title)  
.....  
(firm's name)

the CONTRACTOR named herein, and who executed the foregoing, that he/she has read the foregoing statement subscribed by him/her, and knows the contents thereof, and that the same is true of his/her own knowledge and is executed under the provisions of Section 220-a of the Labor Law of the State of New York, and the terms and conditions of Contract.....with the Department of Environmental Protection of The City of New York.

.....  
*President*

Sworn/Affirmed to before me this .....day of.....

.....Notary Public, County of.....

Note: A County Clerk's notarial certificate must accompany this document if it is executed outside the State of New York.



## **SECTION K**

# ELECTRONIC FUNDS TRANSFER

**DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)  
VENDOR PAYMENT ENROLLMENT FORM**

**Mail to:** NYC Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, NY 10038 - Attention: EFT, or  
**Fax to:** EFT at 212-487-3027 or 212-487-3026

☐

ENROLLMENT

☐

MODIFICATION

**INSTRUCTIONS:** Please check only one of the two boxes above. Check the Enrollment box to sign up for EFT. Check the Modification box if you are currently enrolled and are making changes to the Vendor and/or Financial Institution information you have already submitted.

The person completing this form must be an individual who can authorize changes related to SECTION II - FINANCIAL INSTITUTION INFORMATION. **The Person signing this form in Section III must be the same Contact Person in Section I.**

Please complete all sections of this Enrollment Form and attach a voided check, a copy of an encoded deposit slip that includes an imprinted vendor's name, the first page of a bank statement OR a letter signed by your bank representative, confirming account name, account number, and ABA routing number for ACH payments.

**Note:** Your application cannot be processed without this documentation. See the reverse side for more information and instructions.

**SECTION I - VENDOR INFORMATION**

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER:  
(AS IT APPEARS ON W-9 FORM)

2. VENDOR NAME (AS IT APPEARS ON W-9 FORM):

3. VENDOR'S ADDRESS (FOR EFT ENROLLMENT PURPOSES):

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON'S NAME:

6. CONTACT TELEPHONE NUMBER:

**SECTION II - FINANCIAL INSTITUTION INFORMATION**

1. BANK ACCOUNT NUMBER:

2. ACCOUNT NAME:

3. BANK NAME:

4. BANK BRANCH ADDRESS:

5. BANK 9-DIGIT ROUTING NUMBER:  
(LOCATED AT THE BOTTOM OF CHECK)

6. ACCOUNT TYPE - MUST BE EITHER CHECKING OR SAVINGS:  
(CHECK ONE BOX ONLY)

☐

CHECKING

☐

SAVINGS

7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:

8. TELEPHONE NUMBER:

**SECTION III - VENDOR SIGNATURE AND AUTHORIZATION**

I, hereby confirm my authority, as an authorized signer of the above-referenced bank account, to issue these instructions to credit and/or debit the bank account. I authorize the City of New York to Direct Deposit all entitled payments to the account specified above and to initiate (if necessary) debit entries or adjustments for any credit (i) made in error, (ii) of an incorrect amount, (iii) that were duplicates of a correct payment. I understand that this authorization will remain in effect until a written authorization requesting cancellation is submitted to the fax number(s) above.

1. VENDOR SIGNATURE - MUST BE THE SAME CONTACT PERSON FROM SECTION I

2. DATE - MM/DD/YYYY

# **DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM**

## **GENERAL INSTRUCTIONS**

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to:

NYC Department of Finance  
Treasury Division  
66 John Street, 12th Floor  
New York, NY 10038  
Attention: EFT

or Fax to: EFT at 212-487-3027 or 212-487-3026.

**This completed form can be saved to your computer. Please retain a copy for your records.**

## **SECTION I - VENDOR INFORMATION**

1. Enter the vendor's social security number or taxpayer ID, the 9-digit number reported on the W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's email address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. The contact person must be authorized to make changes in the Financial Institution Information below in Section II. (If you are enrolling yourself individually, you are the contact person.)

## **SECTION II - FINANCIAL INSTITUTION INFORMATION**

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Bank name
4. Bank address
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account. Account must be designated as either checking or savings. (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

## **SECTION III - VENDOR SIGNATURE AND AUTHORIZATION**

Sign and date where indicated. **Note: The person signing this form must be the same contact person as stated in Section I.**



# ANSWERS TO FREQUENTLY ASKED QUESTIONS ABOUT THE NEW YORK CITY DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) FOR CITY VENDORS

## 1. WHAT ARE THE BENEFITS OF DIRECT DEPOSIT?

There are several advantages to direct deposit:

- Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your account is more secure.
- Payments arrive sooner – You don't have to wait for a check to arrive in the mail. Electronic payments are deposited directly into your bank account, saving days of waiting for checks to clear.
- You save time – Money deposited into your bank account is automatic. You save the time you used to spend at the bank depositing the check.

## 2. AM I REQUIRED TO ENROLL?

In accordance of Local Law 43 enacted by City Council in 2007, all vendors with City contracts over \$25,000, and human service providers are required to enroll in the payment Direct Deposit program. All vendors are encouraged to enroll in the program.

## 3. CAN FOREIGN COMPANIES ENROLL?

Foreign vendors *must enroll with a bank domiciled within the continental United States*. For a foreign vendor to do business with the City of New York, they are required to follow the following steps:

### Step 1:

- The foreign vendor needs to complete a W8 and a foreign vendor questionnaire (1st page).
- Please note that the vendor will need to determine which of the 3 types of W8s they will need to complete.
- The W8s and the Foreign Vendor Questionnaire can be accessed at <http://comptroller.nyc.gov/forms-n-rfps/w9substitute-w8/>.

### Step 2:

- The foreign vendor has to submit the original W8 and the Foreign Vendor Questionnaire to the paying agency.
- The paying agency has to fill out the 2nd page of the Foreign Vendor Questionnaire.
- Both documents (once completed) have to be sent (in Adobe.pdf format) by the paying agency to [1042vendor@comptroller.nyc.gov](mailto:1042vendor@comptroller.nyc.gov) to begin the validation process.
- Please note that the Comptroller's Office will need the original forms to meet IRS compliance.

If you have any questions about the foreign vendor validation process, you may contact the Comptroller's Office via email at [1042vendor@comptroller.nyc.gov](mailto:1042vendor@comptroller.nyc.gov)

## 4. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE DIRECT DEPOSIT/EFT?

Yes.

## 5. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?

Payments are deposited two business days after the date of issuance. Saturdays, Sundays, and legal holidays are not considered business days. In addition to not having to wait for mail delivery, with direct deposit, vendors save additional time by not having to travel to the bank to wait in line to deposit checks or worry about lost, misplaced or stolen checks.

## 6. HOW WILL I KNOW WHEN THE PAYMENT IS IN OUR BANK ACCOUNT?

Once you are enrolled in direct deposit, the Department of Finance will email you a link that will allow you to enroll in the Payee Information Portal, or PIP. The Payee Information Portal is a service that allows you, as a payee/vendor for the City of New York, to manage your own account information, view your financial transactions with the City of New York and much more.

In addition, you may contact your bank directly or use online banking, mobile applications, and regular bank statements to confirm the deposit.

**7. HOW WILL I KNOW WHAT THE PAYMENT IS FOR?**

All payment information is transferred electronically to your bank account from Citibank. The City of New York now offers vendor access to the Payee Information Portal (PIP), which permits them, if they enroll in this program, to track up to three years of issued payments, as well as all scheduled payments. Direct deposits may reflect several invoices from one or more agencies, but the Payee Information Portal will provide information about each and every payment.

**8. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT WE REQUESTED AND THE AMOUNT WE RECEIVED?**

Please contact your agency representative.

**9. CAN DIRECT DEPOSITS BE CREDITED TO THE WRONG ACCOUNT? IF THAT HAPPENS, WHO IS RESPONSIBLE?**

The vendor is responsible for submitting to the Department of Finance correct information for the proper bank account to which it wishes to receive payments. The Department of Finance will not be able to ascertain if the vendor has supplied information for the wrong bank account.

However, if the bank account information that has been submitted is inconsistent and/or incorrect, the receiving bank will reject the payment and the Department of Finance will be notified. Finance will notify the agency and/or vendor and together we will do whatever is necessary to correct the problem. In order not to delay your payment, we will issue check(s) for your payment until the problem is resolved.

**10. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?**

Whenever you change any information or close your account, you must notify the Finance Treasury Division, in writing, indicating the type of change you are requesting (i.e. change in bank, change in bank account number). A copy of an imprinted voided check or imprinted, encoded deposit slip with the new account information must be included with your letter. Mail correspondence to: Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, New York 10038, Att: Direct Deposit/EFT.

It is important that you do not close the account that is linked to your direct deposits until the new account has been established and payments are being credited to your new account. When the change is complete, you may then close the old account. If, however the account is closed and direct deposit payments are returned, you must provide the Department of Finance with new account information, including a copy of an imprinted voided check or imprinted encoded deposit slip. The new account data will be verified with your bank ("prenote"), for a period of approximately 10 calendar days, during which only paper checks are available. At the conclusion of a successful "pre-note," you will again be activated for EFT, and future deposits will be made to the new account.

**11. CAN I CANCEL MY DIRECT DEPOSIT ENROLLMENT?**

If you have a contract with the City for more than \$25,000, or if you are a human service provider, the law requires that you receive your payments by direct deposit. Other vendors may cancel their participation in the program by sending a letter indicating the effective date of cancellation enrollment. Mail Correspondence to Department of Finance, Treasury Division, 66 John Street, 12th Floor, New York, New York 10038, Att: Direct Deposit/EFT

**12. HOW DO I KNOW IF I AM A HUMAN SERVICE PROVIDER?**

Human service providers are defined as those vendors such as health care organizations, educational institutions, and religious institutions who provide services to people. If you have a question about whether you are a human service provider please call: 212-487-2592.

**13. DO I NEED TO SEND SEPARATE DIRECT DEPOSIT ENROLLMENT FORMS FOR EACH CITY AGENCY WITH WHICH I DO BUSINESS?**

No. One enrollment form is sufficient.

**14. WHAT IF MY NAME OR TAX ID # CHANGES (OR BOTH)? HOW DOES THIS AFFECT MY DIRECT DEPOSIT? WHO SHOULD BE NOTIFIED?**

**NON PIP VENDORS**

If your name or Tax ID # changes (or both), the Comptroller's Office must validate a new Vendor Code. If you do not use the Payee Information Portal (PIP), you must complete and send to the agency you are doing business with the necessary supporting documents from the state in which you were incorporated justifying the changes e.g., a Certificate of Amendment, a new Substitute Form W-9 and a 147-C IRS letter. If you do not have the letter, you can call the IRS Main Business Line at 1-800-829-4933 (option 1 for Employer Identification Number questions) between 7a.m.-7p.m. Monday-Friday, except holidays, for assistance.

Once the Comptroller has validated the change, you must notify the Department of Finance and submit a new EFT Vendor Enrollment Form.

**PIP VENDORS**

If your name or Tax ID change (or both) the Comptroller's Office must validate a new Vendor Code. If you are enrolled in the Payee Information Portal (PIP), you must make the changes in PIP. In addition you must complete and send a new PIP Substitute Form W-9 and 147-C IRS letter to the PIP Unit of the Comptroller's Office, One Centre Street, New York, NY 10007, or by FAX: 212-815-8555. Once the Comptroller has registered the change, you must notify the Department of Finance and submit a new direct deposit enrollment form.

**15. WHAT IF MY ADDRESS CHANGES? HOW DOES THIS AFFECT MY DIRECT DEPOSIT? WHO SHOULD BE NOTIFIED?**

If your address changes, the Comptroller's Office does NOT validate a new Vendor Code. The vendor should follow the procedures above regarding Forms W-9, but does not have to submit to the Department of Finance new enrollment paperwork.





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**NEW YORK CITY  
ENVIRONMENTAL PROTECTION**

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**INVITATION FOR BIDS**

FOR FURNISHING ALL  
LABOR AND MATERIAL NECESSARY  
AND REQUIRED FOR:

**KENS-EAST-2**

**KENSICO-EASTVIEW CONNECTION**

**KENSICO SITE PREPARATION**

**BID BOOKLET**

(with additional volumes of Contract Terms, Specifications and  
Drawings)

April 2023

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