

DEPARTMENT OF GENERAL SERVICES, PURCHASING DIVISION

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Paul Brennan, FNIGP, NIGP-CPP, CPPO
Director of Purchasing

ADDENDUM # 2

RFB #: RFB-RC-SWR-2023-06
Screening Improvements Project

The information in this addendum supersedes any contradictory information set forth in the contract documents. Acknowledge receipt of this addendum in the space provided on the signature page of the bid proposal. Failure to do so, may subject the bidder to disqualification. This addendum forms a part of the contract documents.

See below for Addendum #2.

SIGNED:

Paul J. Brennan

PAUL J. BRENNAN, FNIGP, NIGP-CPP, CPPO
DIRECTOR OF PURCHASING

ADDENDUM

8/12/24

ADDENDUM 02

To All Bidders:

This Addendum 02 is issued for the purpose of amending the requirements of the Contract Documents for the above-named project. Contractors submitting bids for the above-named project shall take note of the following changes, additions, deletions, clarifications, etc., in the Contract Documents, which shall become a part of and have precedence over anything contrarily shown or described in the Contract Documents, and all such shall be taken into consideration and be included in the Contractor's bid proposal.

(Please see attached pages.)



Plan holders wishing to submit bids should acknowledge receipt of this and all Addenda by listing the Addendum Numbers on the appropriate line of Item 7 of the Proposal.

- Item 1. Table of Contents, DELETE page TOC-ii and REPLACE with revised page TOC-ii attached as **Attachment No. 1.**
- Item 2. Table of Contents, DELETE page TOC-ix and REPLACE with revised page TOC-ix attached as **Attachment No. 2.**
- Item 3. Instructions to Bidders, Article 27 “USE OF MBE/WBE BUSINESSES AND EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS,” DELETE the last sentence and REPLACE with: “Appendix D, Mandatory State Revolving Fund Equivalency Project Terms and Conditions lists the terms for this project receiving SRF financial assistance.”
- Item 4. Instructions to Bidders, Article 31 “EQUAL EMPLOYMENT OPPORTUNITY,” DELETE paragraph A.9 and REPLACE with the following:
9. Reference Appendix D, Mandatory State Revolving Fund Equivalency Project Terms and Conditions, and Appendix E, Guidance for Mandatory State Revolving Fund Equivalency Project Terms and Conditions and New York State Revolving Fund Equivalency Guidance Packet. If information in this section conflicts with Appendix D or Appendix E, the information in Appendix D and Appendix E shall govern.
- Item 5. Proposal, DELETE page P-4 in its entirety and REPLACE with page P-4A attached as **Attachment No. 3.**
- Item 6. Proposal, DELETE page P-20 in its entirety and REPLACE with page P-20A attached as **Attachment No. 4.**
- Item 7. Special Contract Conditions, ADD new Special Contract Condition 28 as follows:
28. MBE/WBE requirements shall be superseded by the DBE requirements included in Appendix D and Appendix E.
- Item 8. DELETE Appendix D in its entirety, including Cover Page, and REPLACE with Appendix D, attached as **Attachment No. 5.**
- Item 9. DELETE Appendix E in its entirety, including Cover Page, and REPLACE with Appendix E, attached as **Attachment No. 6.**

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- Attachment No. 1: Table of Contents, Revised Page TOC-ii
Attachment No. 2: Table of Contents, Revised Page TOC-ix
Attachment No. 3: Proposal, Page P-4A
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Attachment No. 5: Appendix D: Mandatory State Revolving Fund Equivalency Project Terms and Conditions
Attachment No. 6: Appendix E: Guidance for Mandatory State Revolving Fund Equivalency Project Terms and Conditions & New York State Revolving Fund Equivalency Guidance Packet

Addendum 02
August 12, 2024

Screening Improvements Project
Contract No. RFB-RC-SWR-2023-06
SRF Project No. C3-5368-35-00
Rockland County Sewer District No. 1

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² Addendum No. 02

Addendum 02
August 12, 2024

Screening Improvements Project
Contract No. RFB-RC-SWR-2023-06
SRF Project No. C3-5368-35-00
Rockland County Sewer District No. 1

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¹ Addendum No. 01

² Addendum No. 02

Addendum 02
August 12, 2024

Screening Improvements Project
Contract No. RFB-RC-SWR-2023-06
SRF Project No. C3-5368-35-00
Rockland County Sewer District No. 1

Attachment No. 3:
Proposal, Page P-4A

ATTACHMENTS

Attached to this Bid, duly executed by the undersigned are the following:

Section A – Statement of Participation in Contracts Subject to the Nondiscrimination Clause.

Section B – Disclosure of Political Contributions Pursuant To Chapter 323 of the Rockland County Code.

Section C – Disclosure of Supplier Responsibility Statement.

Section D – Affirmative Action Plan Certification.

Section E – Business Dealings in Northern Ireland – MacBride Principles.

Section F – Certification of Compliance with the Iran Divestment Act.

Section G – Certification Regarding Boycott, Divest, and Sanctions (BDS) Activities.

Section H – Certificate of Non-Collusion.

Section I – Certification by Proposed Prime or Subcontractor.

Section J – References.

Section K – Consent of Surety.

Section L – Certificate of Workers' Compensation Experience Modification.

Section M – Contract Forms Required for SRF and Federal Funded Projects.²

² Addendum No. 02

Addendum 02
August 12, 2024

Screening Improvements Project
Contract No. RFB-RC-SWR-2023-06
SRF Project No. C3-5368-35-00
Rockland County Sewer District No. 1

Attachment No. 4:
Proposal, Page P-20A

SECTION M

CONTRACT FORMS REQUIRED FOR SRF AND FEDERAL FUNDED PROJECTS²

Contract No. RFB-RC-SWR-2023-06 will be made possible through financial assistance from the Clean Water State Revolving Fund (CWSRF) Program and from a Federal assistance agreement between EPA and the County of Rockland.² Thus, any funding requirements for construction of treatment works will be deemed requirements for this project.

The following must be submitted with the Bid:

1. Lobbying Certification
2. AIS Contractor's Certification
3. BABA Contractor's Certification²

Refer to Appendix D and Appendix E in regard to completing the required forms.²

Please note that the CWSRF AIS Contractor requirements and BABA Contractor requirements apply for this project.²

² Addendum No. 02

Addendum 02
August 12, 2024

Screening Improvements Project
Contract No. RFB-RC-SWR-2023-06
SRF Project No. C3-5368-35-00
Rockland County Sewer District No. 1

Attachment No. 5:
Appendix D: Mandatory State Revolving Fund Equivalency Project Terms and
Conditions

**Appendix D:
Mandatory State Revolving Fund Equivalency Project Terms
and Conditions ²**

² Addendum No. 02

NO TEXT ON THIS PAGE



Mandatory State Revolving Fund Equivalency Project Terms and Conditions

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

Identify Contract Type prior to Advertisement for Bid:

- Construction**
 - Treatment Works and Drinking Water Projects**
 - Non-Treatment Works**

 - Non-Construction**
-

Effective October 1, 2023

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

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INTRODUCTION

The terms and conditions below must be incorporated verbatim into contracts receiving SRF financial assistance. Additional information relating to each of the requirements is included in the companion guidance document.

REQUIRED CONTRACT LANGUAGE

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Construction means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

Contract means an agreement between a Recipient and a Contractor.

Contractor means all bidders, prime contractors, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

Equivalency means projects in the amount equal to the funds “directly made available” by an Environmental Protection Agency (EPA) Capitalization Grant and funding for those projects is considered federal funds, or federal financial assistance. The Equivalency designation is indicated in the Intended Use Plan.

Manufactured products means articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified under Build America, Buy America as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR § 184.4(e), then it is not a manufactured product.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

MBO is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

Non-Construction 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.

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. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

State means the State of New York.

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.

Supplier means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Treatment Works is defined in Clean Water Act (CWA) Section 212, this does not include nonpoint source projects as defined in CWA Section 319 and estuary management program projects as defined in CWA Section 320.

SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

Any Architectural and Engineering (A/E) services for all Clean Water State Revolving Fund (CWSRF) projects and for Drinking Water State Revolving Fund (DWSRF) projects receiving federal grant are required to be procured in compliance with 40 USC 1101 et. seq., and 48 CFR Part 36 Subpart 36.6. The Recipient must certify compliance to receive financing. Disregard this section if it does not apply to this Contract.

SECTION 2 REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

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. 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 or as otherwise determined by EFC.
 - C. 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.
 - D. 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.
 - E. 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.

II. Equal Employment Opportunities (EEO)

- A. 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.
- B. 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.
- C. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- D. Pursuant to 41 CFR § 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. See guidance document for sample notice.
- 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. See guidance document for goals.
- G. The Contractor will include the provisions of Subdivisions II(A) and II(B) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

III. Good Faith Efforts and Fair Share Objectives for DBEs

- A. Fair Share Objectives for this Contract are 20%
- B. 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:
 - a. DBEs certified by the Small Business Administration (SBA), directory available at: https://web.sba.gov/pro-net/search/dsp_dsbs.cfm
 - b. 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:
 - c. 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
2. 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.

C. DBE Utilization Plan

1. The Contractor represents and warrants that Contractor has submitted a completed copy of the EFC DBE Utilization Plan with all required bid forms to the MBO 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. The Contractor must report any changes to the Utilization Plan after Contract award and during the term of the Contract to the MBO. The Contractor shall indicate the changes to the Recipient in the Quarterly Report immediately following the change. 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 change order is executed the change order and supporting documentation should be submitted to the MBO and a revised Utilization Plan may be required at EFC's discretion.
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 MBO 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 the fair share objectives. Such documentation should be submitted to the MBO in accordance with the instructions on the DBE Utilization Plan.
2. If the MBO, 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 MBO 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, final adjusted 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 MBO or EFC during the term of the Contract as needed to assist EFC for completion of federal reporting to EPA.

F. Other Requirements

1. All contracts shall comply with the contract administration requirements outlined at 40 CFR 33.302.
2. Contractor and Subcontractors shall assist EFC and the Recipient as necessary with complying with the recordkeeping and reporting requirements outlined at 40 CFR Part 33 Subpart E.

SECTION 3 BUILD AMERICA, BUY AMERICA (BABA) ACT AND AMERICAN IRON AND STEEL (AIS) REQUIREMENTS

Applicable to all contracts for DWSRF or CWSRF Treatment Works projects.

I. BABA Requirements

The requirements of this subsection shall not apply to CWSRF or DWSRF Contracts or Subcontracts which have been notified by EFC they are waived pursuant to the Build America, Buy America Act, Pub .L. No. 117-58, section 70914, and 2 CFR Part 184, including, but not limited to, the Adjustment Period Waiver for CWSRF and DWSRF projects that initiated project design planning prior to May 14, 2022. Disregard this subsection if the Contract or Subcontract is eligible for such a waiver, however, note that Subsection II below on AIS Requirements still applies.

If such Contracts or Subcontracts are not eligible for such a waiver, then the DWSRF or CWSRF Contract or Subcontract shall be subject to the Build America, Buy America Act, and the regulations promulgated thereafter (Pub. L. No. 117-58, §§ 70901-70953, and 2 CFR Part 184), which requires, among other things, that no SRF funds “may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

The Contractor shall submit with their bid or proposal documents an executed BABA Contractor’s Certification on the form attached hereto as [Attachment 2](#) acknowledging 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, steel, manufactured products, and construction materials used in the project be produced in the United States (“BABA Requirement”) including iron, steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

- (a) the Contractor has reviewed and understands the BABA Requirement,
- (b) all of the iron, steel, manufactured products, and construction materials covered by the BABA Requirement incorporated in the project will be and/or have been produced in the United States in a manner that complies with the BABA 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 BABA 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.

II. AIS Requirements

The requirements of this section apply to (1) all contracts for which Part 1 of this section does not apply, (2) all Construction Contracts and Subcontracts for DWSRF projects and CWSRF Treatment Works projects and (3) 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 shall submit with their bid or proposal documents an executed AIS Contractors Certification on the form attached hereto as [Attachment 3](#) acknowledging 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 incorporated 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 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS

The requirements of this section apply to all Construction Contracts and Subcontracts greater than \$2,000 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, <https://sam.gov/content/wage-determinations>.

- (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 5 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 12549.

The Contractor and any Subcontractors have not been deemed ineligible to submit a bid on or be awarded a public contract or subcontract pursuant to Article 8 of the State Labor Law, specifically Labor Law § 220-b. In addition, neither the Contractor nor any Subcontractors have contracted with, or will contract with, any party that has been deemed ineligible to submit a bid on or be awarded a public contract or subcontract under Labor Law § 220-b.

In addition, the Contractor and any Subcontractors have not been deemed ineligible to submit a bid and have not contracted with and will not contract with any party that has been deemed ineligible to submit a bid under Executive Law § 316.

SECTION 6 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 bidding or proposing a Contract or Subcontract in excess of \$100,000 shall submit with their bid or proposal documents an executed Certification Regarding Lobbying pursuant to 40 CFR Part 34 ("Lobbying Certification") in the form attached hereto as [Attachment 4](#), consistent with the prescribed form provided in Appendix A to 40 CFR Part 34.

SECTION 7 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 (Recipients), 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). EPA funds may not be used 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. Obligating 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.

Contractors and Subcontractors shall not procure or install prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, that are recorded in the System for Award Management exclusion list located at <https://sam.gov/SAM/>.

SECTION 8 CONSTRUCTION SIGNS

The requirements of this section apply to all EFC projects. Specific federal Bipartisan Infrastructure Law (BIL) signage is required for projects receiving financing from BIL.

If Contractor is expected to provide and install an EFC or BIL Construction Sign, a specification will be included in the enclosed contract documents.

ATTACHMENTS (Required Forms)

Attachment 1 – 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 to the Recipient's 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 the [New York State Unified Certification Program \(NYSUCP\)](#), 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.

See the [Mandatory Equivalency Terms and Conditions](#) or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an 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:			
Electronic Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION				
Firm Name:			Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
Is the Prime Firm certified as a DBE? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please include Prime information in Section 3.				
Address:		Phone #:	Fed. Employer ID #:	
Description of Work:			Email:	
Award Date:	Start Date:	Completion Date:	DBE Fair Share Objective	PROPOSED DBE Participation
Total Contract Amount: \$			Total: 20% \$	Total: % \$
DBE Eligible Contract Amount: \$ (DBE Fair Share Objectives are applied to this amount and includes all change orders, amendments, & specialty waivers)				
If fair share objectives are not met, documentation must be attached: <input type="checkbox"/> No Participation <input type="checkbox"/> Short of the DBE Fair Share Objective				
<input type="checkbox"/> Specialty Equipment/Services: must be of SIGNIFICANT cost – attach list of cost and type of equipment and good faith effort documentation				

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

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

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

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

**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 – 7, as listed below. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in number 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in number 13, as listed below. Please contact the MBO and/or EFC for assistance or to request sample documentation.

Provide the following:

1. A letter of explanation detailing the scope of work, DBE search results, and results of good faith efforts that were made.
2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.
3. Screenshots of search results (using commodity codes) from [DBE Directories](#) of all certified DBEs that were solicited for purposes of complying with your DBE fair share objective. Each search should be saved as an individual file.
4. [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). The log should show that each firm was contacted twice by two different methods (e.g., email and phone); who was spoken to; what was said; and the final outcome of the solicitation.
5. List of the general circulation, trade association, and DBE oriented publications and dates of publication soliciting for certified DBE participation as a subcontractor/supplier and copies of such solicitations.
6. Description of the negotiations between the contractor and certified DBEs for the purposes of complying with the DBE goals of this contract.
7. Any other information deemed relevant to the request.

EFC and the MBO reserve the right to request additional information and/or documentation.

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no DBE firms could be utilized to provide the equipment.
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, email, 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**

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.

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.

Name (Please Type):

Date:

Attachment 2 – BABA Contractor’s Certification



Environmental Facilities Corporation

BABA CONTRACTOR CERTIFICATION

FOR EQUIVALENCY CONSTRUCTION CONTRACTS PAID FOR WITH FUNDS THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title:

Contractor's Name:

Contract ID:

SRF Project No.:

SRF Recipient Name:

I certify that all iron and steel, manufactured products and construction materials permanently incorporated into the project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and Pub. L. No. 117-58 and any regulations promulgated thereunder. I will develop and maintain the necessary documentation to demonstrate that the applicable products permanently incorporated into the project were produced in the United States and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: _____

Name (print):

Title:

Date:

Attachment 3 – AIS Contractor’s Certification



Environmental Facilities Corporation

AIS CONTRACTOR CERTIFICATION
FOR CONSTRUCTION CONTRACTS FUNDED THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR
THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title:

Contractor's Name:

Contract ID:

SRF Project No.: _____

SRF Recipient Name:

I certify that the iron and steel products permanently incorporated into the public water system or wastewater treatment works project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and 33 U.S.C. § 1388, 42 U.S.C. § 300j-12(a)(4) and any regulations promulgated thereunder. I will develop and maintain necessary documentation to demonstrate that the iron and steel products permanently incorporated into the project were produced in the United States, and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: _____

Name (print):

Title:

Date:

Attachment 4 – 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.:

Recipient:

Project Description:

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:

NO TEXT ON THIS PAGE

Addendum 02
August 12, 2024

Screening Improvements Project
Contract No. RFB-RC-SWR-2023-06
SRF Project No. C3-5368-35-00
Rockland County Sewer District No. 1

Attachment No. 6:

Appendix E: Guidance for Mandatory State Revolving Fund Equivalency Project
Terms and Conditions &
New York State Revolving Fund Equivalency Guidance Packet

**Appendix E:
Guidance for Mandatory State Revolving Fund Equivalency
Project Terms and Conditions &
New York State Revolving Fund Equivalency Guidance Packet ²**

² Addendum No. 02

NO TEXT ON THIS PAGE



Guidance For Mandatory State Revolving Fund Equivalency Project Terms and Conditions

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

Effective October 1, 2023

New York State Environmental Facilities Corporation
625 Broadway, Albany, NY 12207-2997
P: (518) 402-6924
www.efc.ny.gov

Guidance For Mandatory State Revolving Fund Equivalency Terms and Conditions for Equivalency Projects Funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

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Guidance For Mandatory State Revolving Fund Equivalency Terms and Conditions for Equivalency Projects Funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

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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. The SRF encompasses several funding programs, including, but not limited to, the SRF financial assistance loan programs, emerging contaminant grants, and the lead service line replacement program.

This Guidance on Mandatory SRF Terms and Conditions provides 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. Contracts that do not meet the required conditions may not be eligible, in whole or in-part, for financing.

The Guidance Materials are for informational 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 Equivalency projects funded with the NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund. Note some requirements do not apply to non-Treatment Works projects, as discussed within the relevant sections of this guidance:

- Architectural and Engineering (A/E) Procurement pursuant to 40 U.S.C. 1101 et seq. and 48 Code of Federal Regulations (CFR) Part 36 Subpart 36.6;
- Participation by Disadvantaged Business Enterprises (“DBE”) in United States Environmental Protection Agency (“EPA”) Programs pursuant to 40 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;
- Build America, Buy America Act (BABA) pursuant to P.L. 117-58 and 2 CFR Part 184;
- 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 (“DB”) 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 verify compliance with SRF program requirements and review recipients monitoring of 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.

Refer to the EFC website at www.efc.ny.gov for the latest version of the Mandatory State Revolving Fund Equivalency Terms and Conditions (Equivalency T&Cs) to ensure that the most recent contract language is being used.

GUIDANCE MATERIALS

COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Construction means the process by which a contractor or subcontractor builds, alters, repairs, remodels, improves or demolishes infrastructure.

Contract means an agreement between a Recipient and a Contractor.

Contractor means all bidders, prime contractors, non-construction service providers, and consultants as hereinafter defined, unless specifically referred to otherwise.

Equivalency means projects in the amount equal to the funds “directly made available” by an Environmental Protection Agency (EPA) Capitalization Grant and funding for those projects is considered federal funds, or federal financial assistance. The Equivalency designation is indicated in the Intended Use Plan.

Manufactured products means articles, materials, or supplies that have been processed into a specific form and shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified under Build America, Buy America as an iron or steel product, a construction material, or a section 70917(c) material under 2 CFR § 184.4(e), then it is not a manufactured product.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

MBO is designated and employed by the Recipient as a Minority Business or Compliance Officer responsible for MWBE/DBE/SDVOB/EEO reporting and compliance.

Non-Construction 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.

Guidance For Mandatory State Revolving Fund Equivalency Terms and Conditions for Equivalency Projects Funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

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. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

State means the State of New York.

State Recipient means Environmental Facilities Corporation

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.

Supplier means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Treatment Works is defined in Clean Water Act (CWA) Section 212. This does not include nonpoint source projects as defined in CWA Section 319 and estuary management program projects as defined in CWA Section 320.

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.

Type of Contract	A/E Procurement Section 1	DBE Section 2	EEO ¹ Section 2	Title VII Section 2	BABA & AIS Section 3	Davis Bacon Section 4	FAAR ² Section 2	Suspension & Debarment Section 5	Restrictions on Lobbying Section 6	Prohibition on Telecommunications Section 7
Construction: Treatment Works & Drinking Water Projects										
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
Construction: Non-Treatment Works										
All		X	X	X				X		X
If greater than:										
\$10,000		X	X	X			X	X		X
\$100,000		X	X	X			X	X	X	X
Non-Construction Provider										
All	X ³	X	X		X					X
If greater than:										
\$25,000		X	X		X					X
\$100,000		X	X		X				X	X

¹ 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.

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

³ Architectural and Engineering Services for federal CWSRF grants and financing and federal DWSRF grants only

Guidance For Mandatory State Revolving Fund Equivalency Terms and Conditions for Equivalency Projects Funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

SECTION 1 GUIDANCE FOR FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS

I. Federal A/E Requirements

A. Types of Services

The types of services covered are contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or A/E services as defined in 40 U.S.C. 1102(2)(A-C) below:

- (A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;
- (B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

B. Applicability

A/E services procured after October 1, 2022, must be procured pursuant to this guidance for such A/E services to be eligible for any Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) grant or CWSRF financing.

A/E services procured and entered into an agreement prior to October 1, 2022 that were not procured pursuant to this guidance (including any amendments thereto) will not be eligible for any new CWSRF or DWSRF grant or CWSRF financing after October 1, 2023.

C. Qualification Based Procurement

The requirements for qualification-based procurement are as follows:

1. Public announcement of the solicitation (e.g., a Request for Qualifications);
2. Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
3. Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
4. Selection of at least three firms considered to be the most highly qualified to provide the required services; and
5. Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

D. Compliance

Municipalities will be required to complete an EFC Certification for Architectural/Engineering Services Procurement for Federally Funded Projects. The Certification must be signed by an

authorized representative of the municipality. It cannot be signed by a hired contractor or consultant.

The Certification for Architectural/Engineering Services Procurement for Federally Funded Projects and documentation evidencing completion of the procurement steps outlined above is required to be kept on file by the municipality and be made available for inspection upon EFC's request.

E. Amendments

Significant contractual amendments are subject to this requirement. Significant contractual amendments are amendments to existing contracts that have a value greater than \$100,000 AND introduce a new scope of work or task.

II. Summary of A/E Procurement Forms

A. Forms to be Submitted

1. **Certification for Architectural/Engineering Services Procurement**

To be submitted by the Recipient with executed agreement for reimbursement of funds.

SECTION 2 GUIDANCE FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR FEDERAL DISADVANTAGED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN AND MINORITY GROUP MEMBERS

I. Equal Employment Opportunities (EEO)

A. EEO Poster

Applicable to all construction Contracts

[Attachment 1](#), *EEO Poster*, is the notice provided by the United States Department of Labor. Contractor must identify the employee responsible for EEO compliance in the designated area, as required by 40 CFR § 7.95. A copy of the EEO poster can be found at: https://www.dol.gov/sites/dolgov/files/OFCCP/regs/compliance/posters/pdf/22-088_EEOC_KnowYourRights.pdf

B. EEO Goals

Applicable to construction Contracts greater than \$10,000

Pursuant to 41 CFR Part 60-4, the United States Department of Labor has established EEO goals for the employment of minorities and women. Goals for Contractors on federal and designated federal assistance projects 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>

II. Good Faith Efforts and Fair Share Objectives for DBEs

A. Fair Share Objectives

The Terms & Conditions Section 2(III)(A) provide the applicable Fair Share Objectives for the contract. 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

Guidance For Mandatory State Revolving Fund Equivalency Terms and Conditions for Equivalency Projects Funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

specified. Please contact the MBO 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 try to meet or exceed applicable DBE fair share objectives. The Contractor shall maintain documentation of good faith efforts to solicit participation of DBE firms for identified 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 Terms & Conditions Section 2(III)(D). 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 at <https://efc.ny.gov/mwbe-forms>
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. email 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 public 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

Applicable to construction Contracts greater than \$100,000 and Non-Construction Provider Contracts greater than \$25,000

1. The DBE Utilization Plan must be submitted to the MBO after the bid opening, but in no case later than the execution date of the contract.
2. The MBO will evaluate the completed DBE Utilization Plan and the good faith effort documentation. When 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 Contractor should work with the MBO to address deficiencies before the MBO submits to EFC for final 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. Submittal of 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

Applicable to construction Contracts greater than \$100,000 and Non-Construction Provider Contracts greater than \$25,000

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 Terms & Conditions Section 2(III)(D).
2. The MBO 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. When the MBO deems the documentation acceptable, the MBO will submit the documentation to EFC for final review.
3. The Contractor may request a specialty equipment/service exclusion from the MBO 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 a 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 EFC.

Example:

\$2,000,000 - \$500,000 = \$1,500,000
Total Contract Value - Specialty equipment/service = DBE Eligible Amount
The DBE fair share objectives are applied to the DBE Eligible Amount.

A request for a specialty equipment/service deduction can be indicated on the Utilization Plan form and submitted to the MBO. The request must include: a copy of the page from the contract where the equipment or service is described; an email or screenshot of the manufacturer's website showing the manufacturer's representatives (if manufactured item); 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.

III. Subcontractor's Responsibilities

A. 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 EFC Terms & Conditions are included in each Subcontract.

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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.

IV. Summary of DBE and EEO Forms

A. Forms to be Submitted Prior to Contract Execution

1. DBE Utilization Plan

Applicable to construction Contracts greater than \$100,000 and Non-Construction Provider Contracts greater than \$25,000

To be submitted by the Contractor to the MBO with the bid documentation, but in no case later than the award date of the contract.

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

1. EEO-1 Report

Applicable to all construction Contracts

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. When the data collection period is open, an instruction booklet can be obtained from this website: <https://eeocdata.org/EEO1/home/index>. See Terms & Conditions Section 2(II).

2. Good Faith Effort Documentation

Applicable to construction Contracts greater than \$100,000 and Non-Construction Provider Contracts greater than \$25,000

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 MBO. The DBE Utilization Plan form contains a list of the required documentation.

3. Quarterly Report

Applicable to construction Contracts greater than \$100,000 and Non-Construction Provider Contracts greater than \$25,000

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 by EFC prior to the end of the quarter and will then be passed on to the Contractor. The Contractor must complete the form and email the completed form to the MBO.

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, 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 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.

A. Waste, Fraud and Abuse Poster
Applicable to all construction Contracts

[Attachment 10, Waste Fraud and Abuse Poster](https://www.epa.gov/system/files/documents/2022-08/2022_HOTLINEPOSTER_crc_85x11_aug2022.pdf), is the notice provided by the USEPA – Office of Inspector General. A copy of the poster can be found at:
https://www.epa.gov/system/files/documents/2022-08/2022_HOTLINEPOSTER_crc_85x11_aug2022.pdf

SECTION 3 GUIDANCE FOR BUILD AMERICA, BUY AMERICA (BABA) ACT AND AMERICAN IRON AND STEEL (“AIS”) REQUIREMENTS

Applicable to all contracts for DWSRF projects or CWSRF Treatment Works projects.

The Build America, Buy America Act was signed into law in 2021 creating a BABA requirement that expands upon and is broader in scope than the AIS requirement. BABA applies to iron, steel, manufactured products and construction materials on all DWSRF and CWSRF Equivalency projects, whereas, the AIS requirement applies to only iron and steel products on projects waived for BABA and Treatment Works projects funded with DWSRF or CWSRF. BABA and AIS will not apply to individual projects at the same time. Accordingly, all DWSRF or CWSRF Equivalency Contracts and Subcontracts are subject to the BABA requirement, unless an EPA waiver applies or can be obtained. If a BABA EPA waiver applies or is obtained, then the AIS requirement applies, unless an AIS EPA waiver is separately obtained.

I. BABA Requirements

If a Recipient uses CWSRF and DWSRF financial assistance to fund all or a part of the construction, alteration, maintenance or repair a public water system or Treatment Works, then all the iron, steel, manufactured products, and construction materials incorporated in the project must be produced in the United States.

Please consult Subsection II below for AIS requirements associated with iron and steel products.

Manufactured products must be manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. See 2 CFR § 184.2(a). The costs of components of a manufactured product are determined according to 2 CFR § 184.5. A letter from the manufacturer must be provided certifying compliance with BABA. At a minimum, the letter must (1) be on company letterhead and signed by a company representative; (2) reference the project; (3) contain a list of products used in the final manufactured product; (4) include the City and State where the final manufacturing takes place; (5) reference BABA; and (6) include statement that the product “meets the 55% component test” for manufactured products.

Construction materials must have all manufacturing processes for the construction material occur in the United States. Some examples of construction materials are non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood and drywall. Minor additions of articles, materials, supplies or binding agents to a construction material do not change the categorization of the

construction material. Produced in the United States is defined as followed for the materials listed below.

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

A. BABA Project Waivers

The EPA may waive the BABA requirement for a project if:

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

A request for a waiver must include adequate information for EPA's evaluation of the request, including:

1. Waiver type (nonavailability, unreasonable cost, or public interest)
2. Recipient name and Unique Entity Identifier (UEI)
3. Financial Assistance listing name and number
4. Total cost of expenditures, including Federal and non-Federal funds
5. Infrastructure project description and location
6. List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each
7. A certification that the Recipient made a good faith effort to solicit bids for domestic products supported by terms in RFPs, contracts and nonproprietary communications with the prime contractor.
8. A statement of waiver justification, including a description of efforts made by the Recipient in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation
9. Anticipated impact if no waiver is issued
10. Any relevant comments received through the public comment period

Recipients may request waivers from EPA if the recipient reasonably believes a waiver is justified. Requests for BABA waivers must be submitted through the Recipient to EFC. Upon review, EFC will submit BABA waiver requests to EPA. When EPA receives a request for a waiver, EPA will submit to OMB Made in America Office (MIAO) and publish the request and any accompanying material on the MIAO official public Internet site, allowing public input on the request for a period of not less than 15 calendar days before granting or denying the waiver request.

Additionally, OMB MIAO has the authority to issue waivers that are national in scope. National waivers may be for specific products or in the public's interest.

B. Adjustment Period Waiver

The Adjustment Period Waiver is noteworthy as it waives the BABA requirements for DWSRF and CWSRF projects that initiated project design planning prior to May 14, 2022. Any listed projects subject to the adjustment period waiver will be notified in writing from EFC.

C. De Minimis Waiver

The De Minimis General Applicability Waiver, "De Minimis" permits the use of miscellaneous materials subject to BABA as long as the funds used for the de minimis incidental components cumulatively comprise no more than 5% of the total project cost. Items covered by de minimis are miscellaneous in character and often low-cost and bought in bulk. This waiver is not additive with the existing American Iron and Steel national de minimis waiver.

D. Small Project Waiver

The small project waiver permits a municipality with a project in an assistance agreement with EFC totaling less than \$250,000 to be waived from the BABA requirements.

OMB continues to adopt additional waivers and issue further guidance on waivers. Additional information on waivers can be found at EPA's website at: <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>. All waivers will be posted on the OMB MIAO website at <https://www.madeinamerica.gov>.

Additional information and guidance about the BABA requirement can be found at EPA's website: <https://www.epa.gov/cwsrf/build-america-buy-america-baba#rfi>.

II. AIS Requirements

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 entire project.

The term "iron and steel products" means the following permanently installed 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, or 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, including potential impact to the overall project schedule.

EPA can assist with material availability research prior to a waiver request. Requests for EPA assistance must be submitted through EFC. EFC will request any necessary supporting documentation and submit to EPA for feedback.

Requests for AIS waivers must 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" 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. An AIS Compliance and De Minimis Worksheet is available for use on EFC’s website under Forms & Guidance: <https://efc.ny.gov/american-iron-and-steel-guidance>.

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 4 GUIDANCE FOR DAVIS BACON (DB) PREVAILING WAGE REQUIREMENTS

The requirements of this section apply to all construction Contracts and Subcontracts greater than \$2,000 for either DWSRF projects or CWSRF Treatment Works projects.

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.

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, Service Providers or Contractors 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 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

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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://sam.gov/content/wage-determinations> 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://sam.gov/content/wage-determinations> 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://sam.gov/content/wage-determinations> 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://sam.gov/content/wage-determinations>. After the Recipient obtains its proposed wage determination, it must submit the wage determination to the State Recipient award official at: William A. Brizzell, Jr., P.E., Director of Engineering, New York State Environmental Facilities Corporation, at 518-402-7396 or at the following email address:

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://www.dol.gov/agencies/whd/contact/complaints>.

II. Applicable State and Local Labor Standards

- A. Contractors and Subcontractors working under a public works contract subject to DB 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

- A. After execution of any SRF eligible Contracts, the Contractor and Subcontractor have the following responsibilities:
1. Display the 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 ([Attachment 8](#)) at <https://nysefc.app.box.com/s/d6sys8owtgzv4ndqjvqvpwr0htp20l9s>.
 2. Make your employees available for wage interviews if necessary. Wage interviews must be conducted confidentially and using Labor Standard Interview Form (SF-1445), included in [Attachment 9](#).
 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 EFC Terms & Conditions. Federal wage determinations are available at <https://sam.gov/content/wage-determinations>.
 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://sam.gov/>.
- B. Any violations in payroll reporting or unpaid wages are subject to a daily monetary penalty.

SECTION 5 GUIDANCE FOR REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT

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

Neither the Contractor nor any of its Subcontractors have contracted with, or will contract with, any debarred or suspended party under the following lists:

- A list of debarred and suspended contractors, pursuant to 2 CFR Parts 180 and 1532, 29 CFR § 5.12, and Executive Order 12549 is available on the US Department of Labor's website at www.sam.gov/SAM.
- A list of contractors and subcontractors deemed ineligible to submit a bid on or be awarded a public contract or subcontract, pursuant to Article 8 of the State Labor Law, is available on the New York State Department of Labor's website at <http://labor.ny.gov/workerprotection/publicwork/PDFs/debarred.pdf>
- A list of contractors deemed ineligible to submit a bid is maintained by Empire State Development's Division of Minority and Women's Business Development.

Guidance For Mandatory State Revolving Fund Equivalency Terms and Conditions for Equivalency Projects Funded with NYS Clean Water State Revolving Fund or Drinking Water State Revolving Fund

SECTION 6 GUIDANCE FOR RESTRICTIONS ON LOBBYING

The requirements of this section apply to all Contracts and Subcontracts greater than \$100,000.

With their bid or proposal submittal, 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”) on [Attachment 3](#) 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 7 GUIDANCE ON PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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

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. Contractors should exercise due diligence and be particularly mindful of procuring and installing project components with internet or cellular connections. Examples of common video and telecommunications equipment include, 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. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse Recipients for these costs.

SECTION 8 GUIDANCE FOR CONSTRUCTION SIGNS

The requirements of this section apply to all EFC projects. Specific signage is required for projects receiving financing from the federal Bipartisan Infrastructure Law (BIL).

All projects are expected to post a construction sign, the Recipient may determine the party required to provide and install the sign. Sample construction sign specifications can be found at www.efc.ny.gov for standard signage or BIL signage, as applicable.

SECTION 9 SUMMARY OF CONTRACTOR REQUIREMENTS FOR SRF-FUNDED EQUIVALENCY PROJECTS

Forms can be found as attachments to this document or online at www.efc.ny.gov

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

To be submitted with this bid:

- [Lobbying Certification](#)
- [BABA Contractor's Certification](#)
- [AIS Contractor's Certification](#)

Guidance Section

- [Section 6](#)
- [Section 3](#)
- [Section 3](#)

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 2](#)

Tasks for construction start:

- Ensure that all Subcontracts contain correct Required EFC Terms & Conditions
- [Display EEO Poster](#)
- [Display Waste, Fraud and Abuse Poster](#)
- Ensure Construction Sign is Posted
- Pay the higher of prevailing federal, state, or local wages including benefits
- Display [Davis Bacon Wage Poster](#) AND Federal Wage Rates
- Use [Federal Payroll Form \(WH-347\)](#) or equivalent
- Obtain apprentice and trainee certifications
- Obtain [BABA](#) or [AIS Manufacturer's Certs](#) for all applicable products

- [Section 2](#)
- [Section 2](#)
- [Section 8](#)
- [Section 4](#)
- [Section 4](#)
- [Section 4](#)
- [Section 4](#)
- [Section 3](#)

Ongoing documentation & tasks:

- Submit EEO-1 Report, online
- Submit Quarterly Reports to MBO
- Maintain weekly certified payrolls for all Prime & Subcontractors
- Maintain proof of payments for DBE Subcontractors
- Maintain BABA or AIS Manufacturer's Certifications

- [Section 2](#)
- [Section 2](#)
- [Section 4](#)
- [Section 2](#)
- [Section 3](#)

ATTACHMENTS (Required Forms)

Attachment 1 – EEO Poster



Know Your Rights: Workplace Discrimination is Illegal

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

Who is Protected?

- Employees (current and former), including managers and temporary employees
- Job applicants
- Union members and applicants for membership in a union

What Types of Employment Discrimination are Illegal?

Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the bases of:

- Race
- Color
- Religion
- National origin
- Sex (including pregnancy, childbirth, and related medical conditions, sexual orientation, or gender identity)
- Age (40 and older)
- Disability
- Genetic information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)
- Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding
- Interference, coercion, or threats related to exercising rights regarding disability discrimination or pregnancy accommodation

What Organizations are Covered?

- Most private employers
- State and local governments (as employers)
- Educational institutions (as employers)
- Unions
- Staffing agencies

What Employment Practices can be Challenged as Discriminatory?

All aspects of employment, including:

- Discharge, firing, or lay-off
- Harassment (including unwelcome verbal or physical conduct)
- Hiring or promotion
- Assignment
- Pay (unequal wages or compensation)
- Failure to provide reasonable accommodation for a disability; pregnancy, childbirth, or related medical condition; or a sincerely-held religious belief, observance or practice
- Benefits
- Job training
- Classification
- Referral
- Obtaining or disclosing genetic information of employees
- Requesting or disclosing medical information of employees
- Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, or participating in an investigation or proceeding
- Conduct that coerces, intimidates, threatens, or interferes with someone exercising their rights, or someone assisting or encouraging someone else to exercise rights, regarding disability discrimination (including accommodation) or pregnancy accommodation

What can You Do if You Believe Discrimination has Occurred?

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

Submit an inquiry through the [EEOC's public portal](https://publicportal.eeoc.gov/Portal/Login.aspx) (<https://publicportal.eeoc.gov/Portal/Login.aspx>)

Call 1-800-669-4000 (toll free)
1-800-669-6820 (TTY)
1-844-234-5122 (ASL video phone)

Visit an [EEOC field office](http://www.eeoc.gov/field-office) (www.eeoc.gov/field-office)

E-Mail info@eeoc.gov

Additional information about the EEOC, including information about filing a charge of discrimination, is available at www.eeoc.gov.



EMPLOYERS HOLDING FEDERAL CONTRACTS OR SUBCONTRACTS

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces the nondiscrimination and affirmative action commitments of companies doing business with the Federal Government. If you are applying for a job with, or are an employee of, a company with a Federal contract or subcontract, you are protected under Federal law from discrimination on the following bases:

Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, National Origin

Executive Order 11246, as amended, prohibits employment discrimination by Federal contractors based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

Asking About, Disclosing, or Discussing Pay

Executive Order 11246, as amended, protects applicants and employees of Federal contractors from discrimination based on inquiring about, disclosing, or discussing their compensation or the compensation of other applicants or employees.

Disability

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals with disabilities from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment by Federal contractors. 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 to the employer. 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.

Protected Veteran Status

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits employment discrimination against, and requires affirmative action to recruit, employ, and advance in employment, disabled veterans, recently separated veterans (i.e., within three years of discharge or release from active duty), active duty wartime or campaign badge veterans, or Armed Forces service medal veterans.

Retaliation

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

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under OFCCP's authorities 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)

If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services. OFCCP may also be contacted by submitting a question online to [OFCCP's Help Desk](https://ofccphelpdesk.dol.gov/s/) (<https://ofccphelpdesk.dol.gov/s/>), or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor and on [OFCCP's "Contact Us"](https://www.dol.gov/agencies/ofccp/contact) webpage (<https://www.dol.gov/agencies/ofccp/contact>).

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 to the Recipient's 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 the [New York State Unified Certification Program \(NYSUCP\)](#), 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.

See the [Mandatory Equivalency Terms and Conditions](#) or consult your designated MBO for further guidance.

Instructions for Minority Business Officers (MBO):

The MBO must complete Section 1. Email the completed, signed (electronic signature box checked and dated) form to your EFC Program Compliance Specialist.

The subject heading of the email to the EFC Program Compliance Specialist should follow the format "UP, Project Number, Contractor." EFC will review the Utilization Plan and email the MBO an 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:			
Electronic Signature of MBO: <input type="checkbox"/> I certify that the information submitted herein is true, accurate and complete to the best of my knowledge and belief.			Date:

SECTION 2: PRIME CONTRACTOR / SERVICE PROVIDER INFORMATION				
Firm Name:			Contract Type: <input type="checkbox"/> Construction <input type="checkbox"/> Other Services	
Is the Prime Firm certified as a DBE? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please include Prime information in Section 3.				
Address:		Phone #:	Fed. Employer ID #:	
Description of Work:			Email:	
Award Date:	Start Date:	Completion Date:	DBE Fair Share Objective	PROPOSED DBE Participation
Total Contract Amount: \$			Total: 20% \$	Total: % \$
DBE Eligible Contract Amount: \$ (DBE Fair Share Objectives are applied to this amount and includes all change orders, amendments, & specialty waivers)				
If fair share objectives are not met, documentation must be attached: <input type="checkbox"/> No Participation <input type="checkbox"/> Short of the DBE Fair Share Objective				
<input type="checkbox"/> Specialty Equipment/Services: must be of SIGNIFICANT cost – attach list of cost and type of equipment and good faith effort documentation				

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

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

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

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

**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 – 7, as listed below. Specialty Equipment Exclusion requests must be accompanied by the documentation requested in number 8 – 12, as listed below. Specialty Services Exclusion requests must be accompanied by the documentation requested in number 13, as listed below. Please contact the MBO and/or EFC for assistance or to request sample documentation.

Provide the following:

1. A letter of explanation detailing the scope of work, DBE search results, and results of good faith efforts that were made.
2. A scope of work that shows what subcontracting opportunities are in the contract. This could be an engineering proposal, schedule of values, or other similar documents.
3. Screenshots of search results (using commodity codes) from [DBE Directories](#) of all certified DBEs that were solicited for purposes of complying with your DBE fair share objective. Each search should be saved as an individual file.
4. [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). The log should show that each firm was contacted twice by two different methods (e.g., email and phone); who was spoken to; what was said; and the final outcome of the solicitation.
5. List of the general circulation, trade association, and DBE oriented publications and dates of publication soliciting for certified DBE participation as a subcontractor/supplier and copies of such solicitations.
6. Description of the negotiations between the contractor and certified DBEs for the purposes of complying with the DBE goals of this contract.
7. Any other information deemed relevant to the request.

EFC and the MBO reserve the right to request additional information and/or documentation.

Documentation for Requests for Specialty Equipment Exclusions:

8. A letter of explanation containing information about the equipment, why the equipment is specialty and why no DBE firms could be utilized to provide the equipment.
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, email, 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**

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.

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.

Name (Please Type):

Date:

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.:

Recipient:

Project Description:

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 – BABA Contractor’s Certification



Environmental Facilities Corporation

BABA CONTRACTOR CERTIFICATION

FOR EQUIVALENCY CONSTRUCTION CONTRACTS PAID FOR WITH FUNDS THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR

THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title:

Contractor's Name:

Contract ID:

SRF Project No.:

SRF Recipient Name:

I certify that all iron and steel, manufactured products and construction materials permanently incorporated into the project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and Pub. L. No. 117-58 and any regulations promulgated thereunder. I will develop and maintain the necessary documentation to demonstrate that the applicable products permanently incorporated into the project were produced in the United States and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: _____

Name (print):

Title:

Date:

Attachment 5 – AIS Contractor’s Certification



Environmental Facilities Corporation

AIS CONTRACTOR CERTIFICATION
FOR CONSTRUCTION CONTRACTS FUNDED THROUGH
THE NYS CLEAN WATER STATE REVOLVING FUND, OVERFLOW AND STORMWATER GRANTS
OR
THE NYS DRINKING WATER STATE REVOLVING FUND VIA THE
NYS ENVIRONMENTAL FACILITIES CORPORATION

Project Title:

Contractor's Name:

Contract ID:

SRF Project No.: _____

SRF Recipient Name:

I certify that the iron and steel products permanently incorporated into the public water system or wastewater treatment works project under this construction contract will be and/or have been produced in the United States, in accordance with the requirements of the United States Environmental Protection Agency and 33 U.S.C. § 1388, 42 U.S.C. § 300j-12(a)(4) and any regulations promulgated thereunder. I will develop and maintain necessary documentation to demonstrate that the iron and steel products permanently incorporated into the project were produced in the United States, and make such documentation available to The New York State Environmental Facilities Corporation or their authorized representatives, upon request.

Signature: _____

Name (print):

Title:

Date:

Attachment 6 – 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 (XXXXXXXXXXXX)

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 (XXXXXXXXXXXX)

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 7 – Federal Payroll Form (WH-347)

PAYROLL

For contractor's optional use; see instructions at dol.gov/agencies/whd/forms/wh347

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

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No. 1235-0008 Expires 09/30/2026
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
-------------	-----------------	----------------------	-------------------------

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX	OTHER	TOTAL DEDUCTIONS		
			o							0.00		\$0.00					\$0.00	\$0.00	
			s							0.00									
			o							0.00		\$0.00					\$0.00	\$0.00	
			s							0.00									
			o							0.00		\$0.00					\$0.00	\$0.00	
			s							0.00									
			o							0.00		\$0.00					\$0.00	\$0.00	
			s							0.00									
			o							0.00		\$0.00					\$0.00	\$0.00	
			s							0.00									
			o							0.00		\$0.00					\$0.00	\$0.00	
			s							0.00									
			o							0.00		\$0.00					\$0.00	\$0.00	
			s							0.00									

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

Attachment 8 – Davis Bacon Wage Poster

EMPLOYEE RIGHTS

UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

PREVAILING WAGES

You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT

Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/whd



Attachment 9 – Wage Interview Form (SF-1445)

LABOR STANDARDS INTERVIEW

CONTRACT NUMBER			EMPLOYEE INFORMATION		
NAME OF PRIME CONTRACTOR			LAST NAME		MI
			FIRST NAME		
NAME OF EMPLOYER			STREET ADDRESS		
			CITY		STATE
SUPERVISOR'S NAME			WORK CLASSIFICATION		
LAST NAME		FIRST NAME			

ACTION	CHECK BELOW	
	YES	NO
Do you work over 8 hours per day?		
Do you work over 40 hours per week?		
Are you paid at least time and a half for overtime hours?		
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?		
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?		

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?	TOOLS YOU USE	
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)		
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)		

THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE

EMPLOYEE'S SIGNATURE			DATE (YYMMDD)
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME	DATE (YYMMDD)

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED	ACTION <i>(If explanation is needed, use comments section)</i>	YES	NO
	IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?		
	ARE WAGE RATES AND POSTERS DISPLAYED?		

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?

YES NO

COMMENTS

CHECKER			
LAST NAME	FIRST NAME	MI	JOB TITLE
SIGNATURE			DATE (YYMMDD)

Attachment 10 – Waste, Fraud and Abuse Poster



OFFICE OF INSPECTOR GENERAL U.S. ENVIRONMENTAL PROTECTION AGENCY

To file a complaint, go to: epaoig.gov/epa-oig-hotline-information

THEFT AND MISUSE OF GOVERNMENT PROPERTY
MISMANAGEMENT AND WASTE OF FUNDS

REPORT **FRAUD WASTE & ABUSE**

PROGRAM FRAUD

HOTLINE COMPLAINT FORM



U.S. EPA OIG
HOTLINE
888.546.8740

LABORATORY FRAUD
CONFLICT OF INTEREST

EMPLOYEE MISCONDUCT
ABUSE OF AUTHORITY

CONTRACT, PROCUREMENT, AND GRANT FRAUD

COMPUTER CRIMES

Visit epaoig.gov for anonymity guidelines and whistleblower information.



**Environmental
Facilities Corporation**

**Department
of Health**

New York State Revolving Fund Equivalency Guidance Packet

Effective June 1, 2023

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

EQUIVALENCY GUIDANCE PACKET FOR STATE REVOLVING FUND (“SRF”) RECIPIENTS

NEW YORK CLEAN WATER and DRINKING WATER STATE REVOLVING FUNDS AND OVERFLOW and STORMWATER GRANTS

Administered by the New York State Environmental Facilities Corporation

Certain SRF recipients are selected by the Environmental Facilities Corporation (“EFC”) to comply with federal review standards. Such projects are classified in the SRF programs as “equivalency” projects. Sponsors of equivalency projects will be informed that their project is an equivalency project and are, therefore, required to demonstrate compliance with various federal laws, regulations, and executive orders relating to architectural and engineering (“A/E” procurement), surveillance services and equipment procurement, federal cross-cutting authorities, National Environmental Protection Act (“NEPA”) environmental review, disadvantaged business enterprises, and the Single Audit Act, as applicable. EFC has prepared this guidance and the attached forms and certifications to assist project sponsors in meeting the “equivalency” requirements.

Check EFC’s website (www.efc.ny.gov) for updates.

All certifications and fillable forms in this guidance should be submitted to the EFC or Department of Health (“DOH”) Engineer assigned to the project for review.

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ARCHITECTURAL/ENGINEERING SERVICES PROCUREMENT FOR SRF FUNDED PROJECTS

****Applies to CWSRF and DWSRF****

Municipalities requesting financing for A/E services must procure A/E services in accordance with certain qualifications-based requirements. This guidance document describes the types of services that are considered A/E services and how these A/E services must be procured.

Please Note: This guidance document applies to **all projects** financed by the Environmental Facilities Corporation (“EFC”) whose A/E services are procured *after* 10/1/2022.¹

If a municipality is seeking project financing for A/E services that were not procured pursuant to this guidance document, EFC will only finance such A/E services if:

1. The procurement occurred *before* 10/1/2022;
2. A financing application is submitted for the project prior to June 16, 2023; and
3. A project finance agreement is entered into for the financing of such project prior to October 1, 2024.

What types of services are covered A/E services?

Contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or A/E services as defined in 40 U.S.C. 1102(2)(A-C):

(A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

¹ A municipality that entered into a project finance agreement with EFC before October 1, 2022, should reach out to EFC to discuss any new procurement of A/E services.

How must A/E services be procured?

Municipalities must procure A/E services pursuant to the provisions of 40 U.S.C. 1101 *et seq.* In general, these require:

- (i) Public announcement of the solicitation (e.g., a Request for Qualifications);
- (ii) Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
- (iii) Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- (iv) Selection of at least three firms considered to be the most highly qualified to provide the required services; and
- (v) Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

How does the municipality show compliance with the federal A/E procurement requirements?

Municipalities will be required to execute an EFC Certification for Architectural/Engineering Services Procurement for Federally Funded Projects in the form attached to this guidance (“Certification”). The Certification must be signed by an authorized representative of the municipality. It cannot be signed by a hired contractor or consultant.

What if the municipality does not generate interest from at least three firms?

A procurement of A/E services shall be considered in compliance even when the municipality does not generate three responses so long as the municipality made a good faith effort to publicly advertise and directly solicit participation.

What A/E documentation does a municipality need to keep?

The Certification and documentation evidencing completion of the procurement steps outlined above are required to be kept on file by the municipality and be made available for inspection upon EFC’s request. These documents must be kept for the term of the EFC financing plus 6 years.

Are contract amendments subject to federal A/E procurement requirements?

Significant contractual amendments are subject to this requirement. Significant contractual amendments are amendments to existing contracts that have a value greater than \$100,000 AND introduce a new scope of work or task.



Environmental Facilities Corporation Certification for Architectural/Engineering Services Procurement for Federally Funded Projects

Municipality:

EFC Project Number:

Table with 3 columns: Contract ID, Contractor Name, Execution Date

I, , am an Authorized Representative of the Municipality.

I hereby certify that the Municipality has procured the Architectural and Engineering Services (as that term is defined in 40 U.S.C. 1102) for the contract(s) listed above in accordance with 40 U.S.C. 1101 et seq., as outlined below.

- (i) Public announcement of the solicitation (e.g., a Request for Qualifications);
(ii) Evaluation and ranking of the submitted qualifications statements was based on established, publicly available criteria (e.g., identified in the solicitation). Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
(iii) Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
(iv) Selection of at least three firms considered to be the most highly qualified to provide the services required; and
(v) Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered. In the event that a contract could not be negotiated with the most highly qualified firm, negotiation continued in order of qualification.

Authorized Representative

Title:

Date:

NEPA ENVIRONMENTAL AND EPA CROSS CUTTER REVIEW

****Applies to CWSRF, DWSRF and OSG****

This document supplements the State Environmental Review Process (“SERP”) guidance available in the New York State Revolving Fund Municipal Application Form Instructions and Guidance Appendix C, on the EFC website, available at: <https://efc.ny.gov/state-revolving-fund-application-instructions-pdf> (last visited June 1, 2023).

Sponsors of equivalency projects are required to perform the environmental review of their project in conformance with both the SERP guidance and this supplement, which requires a NEPA-like review.

Sponsors of equivalency projects are required to demonstrate compliance with various federal laws, regulations, and executive orders commonly referred to as the federal cross cutters which are presented below, in addition to state environmental review requirements.

The guidance references the specific steps indicated on the checklist below. The checklist and supporting documentation must be submitted to the EFC or DOH Engineer assigned to the project.



New York State Revolving Fund Environmental Review Equivalency Checklist

Please complete this form and provide all supporting documentation to EFC. Additional cross cutter references are presented below. Please refer to the SEQR Handbook for New York State Environmental Quality Review (SEQR) Requirements, available at: https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf. Please note that EFC requires a SHPO determination for all projects seeking SRF financing.

Municipality:

Project Number: Click or tap here to enter text.

Project Name:

Table with 3 columns: Yes, No, Screening Criteria. Contains 4 screening criteria rows with checkboxes and instructions.

2 References are to the Clean Water Act, as amended (33 U.S.C. §1251 et seq.)

<input type="checkbox"/>	<input type="checkbox"/>	<p>5. Project qualifies for NEPA exemption, non-discretionary action and is being undertaken because of a civil or criminal enforcement proceeding (e.g., consent order).</p> <p style="text-align: center;">DO NOT COMPLETE REMAINDER OF FORM IF YES IS CHECKED</p>
<input type="checkbox"/>		<p>6. Complete Full SEQR Environmental Assessment Form (“EAF”) & the following crosscutter review checklist.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Completed EAF attached, if prepared. <input type="checkbox"/> Copies of responses to substantive public comments attached, if applicable, and inform commenters.
<input type="checkbox"/>	<input type="checkbox"/>	<p>7. Project sponsor issued a Negative Declaration.</p> <p>If Yes, publish Negative Declaration in Environmental Notice Bulletin (“ENB”).</p> <ul style="list-style-type: none"> <input type="checkbox"/> Copy of Negative Declaration and ENB notice attached.
<input type="checkbox"/>	<input type="checkbox"/>	<p>8. Project sponsor issued a Positive Declaration.</p> <p>If Yes, a Public Hearing is required.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Copy of Positive Declaration attached. <input type="checkbox"/> Documentation, including hearing transcript, of the Public Hearing held attached. <input type="checkbox"/> Copy of Notice of Hearing published in ENB and local newspaper attached. <input type="checkbox"/> Copy of Final Environmental Impact Statement and written findings statement attached.

Crosscutter Review Checklist

Environmental Cross Cutter	Corresponding SEQR EAF Section	Affirm Review Complete	Additional action required if “yes” response to any corresponding EAF Part 1 and a moderate to large impact is indicated in EAF Part 2	Documentation Attached to Indicate Action Complete
National Historic Preservation Act (“NHPA”)	N/A	<input type="checkbox"/>	Notwithstanding the above instruction you must attach correspondence from the State Historic Preservation Office (“SHPO”) indicating a Section 106 Review has taken place	<input type="checkbox"/> SHPO response letter attached
Archeological and Historic Preservation Act	N/A	<input type="checkbox"/>	When discoveries are made on a project that require the involvement of SHPO during the early planning stages of the project, work with SHPO under procedures of the NHPA	N/A
Protection of Wetlands	Part 1: D.2(b), E.1(B), E.2(h) Part 2: § 3 *Consult USFWS Wetlands Mapper	<input type="checkbox"/>	If within zone on USFWS Wetlands Mapper (https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper), consult with United States Army Corps of Engineers (“USACE”)	<input type="checkbox"/> Wetlands Map and correspondence with USACE, if applicable
Farmland Protection Policy Act	Part 1: C.2(c), C.3, D.2(c) or (d), E.1(a) or (b), E.3(a) or (b) Part 2: § 8	<input type="checkbox"/>	Contact New York State Department of Agriculture and Markets (“NYSDAM”) & United States Department of Agriculture (“USDA”) National Resources Conservation Service Regional Office	<input type="checkbox"/> NYSDAM & USDA impact determination letters, if applicable
Endangered Species Act	Part 1: E.2(o) Part 2: § 7	<input type="checkbox"/>	Consult with United States Fish and Wildlife Service (“USFWS”) and/or National Marine Fisheries Service (“NMFS”)	<input type="checkbox"/> Correspondence with USFWS or NMFS, if applicable
Clean Air Act	Part 1: D.2(g) Part 2: § 6	<input type="checkbox"/>	No additional action	N/A
Wild and Scenic Rivers Act	Part 1: E.3(h) Part 2: § 9(a) *Consult federal Wild and Scenic River Map	<input type="checkbox"/>	If a federally designated wild and scenic river is identified on the maps https://www.rivers.gov/ , consult with National Park Service (“NPS”)	<input type="checkbox"/> Wild and Scenic River Map and correspondence with NPS, if applicable
Environmental Justice	Part 1: C.2, C.3, D.1(f), D.1(g) Part 2: § 18	<input type="checkbox"/>	No additional action	N/A

Environmental Cross Cutter	Corresponding SEQR EAF Section	Affirm Review Complete	Additional action required if “yes” response to any corresponding EAF Part 1 and a moderate to large impact is indicated in EAF Part 2	Documentation Attached to Indicate Action Complete
Safe Drinking Water Act (Sole Source Aquifer)	Part 1: E.2 (l) Part 2: § 4 *Consult Federal Sole Source Aquifer Map	<input type="checkbox"/>	Check EPA Sole Source Aquifer maps (https://www.epa.gov/dwssa); if within zone, contact EFC for CWSRF projects and DOH for DWSRF projects	<input type="checkbox"/> Sole Source Aquifer Letter from DEC, if applicable
Floodplain Management	Part 1: E.2 (i), (j) or (k) Part 2: § 5	<input type="checkbox"/>	Complete Floodplain Wetlands Assessment (See guidance section)	<input type="checkbox"/> Floodplain Wetlands Assessment, if applicable
Fish and Wildlife Coordination Act	Part 1: D.1(h), D.2(b), E.2(h) Part 2: § 3	<input type="checkbox"/>	If project is subject to federal permit or license, consult with USFWS, unless project is restricted to an impoundment of water less than 10 acres, then no additional action.	<input type="checkbox"/> Correspondence with USFWS, if applicable
Magnuson-Stevens Fishery Conservation and Management Act	Part 1: E.2(q) Part 2: § 7(d)	<input type="checkbox"/>	Contact NMFS for consultation	<input type="checkbox"/> Correspondence with NMFS, if applicable
Coastal Barrier Resources Act	Part 1: B(i), (ii), (iii), D.2(b), E.1(b), E.2(h) Part 2: § 1(g), 3 *Consult Federal Coastal Barrier Resources Map	<input type="checkbox"/>	If within zone on USFWS Coastal Barrier Resources Mapper (http://www.fws.gov/cbra/Maps/Mapper.html) contact USFWS	<input type="checkbox"/> Coastal Barrier Resources Map and Correspondence with USFWS, if applicable
Coastal Zone Management Act	Part 1: B(i), (ii), (iii) Part 2: § 1(g)	<input type="checkbox"/>	Contact EFC to determine whether consultation with New York State Department of State (“NYSDOS”) is required	<input type="checkbox"/> Correspondence with NYSDOS, if applicable
Migratory Bird Treaty Act	Part 1: E.2 (m), (o) or (p) Part 2: 7 (b), (c), (d) or (g)	<input type="checkbox"/>	Contact US Fish and Wildlife Services (“USFWS”) for consultation	<input type="checkbox"/> Correspondence with USFWS, if applicable

CERTIFICATION

I hereby certify, under penalty of perjury, on behalf of the entity named above in connection with its application to the New York State Environmental Facilities Corporation that the foregoing information is true and accurate, that I have reviewed and completed the New York State Revolving Fund Environmental Review Equivalency Checklist, and that I have attached the required supporting documentation.

(Signature of Authorized Representative)

(Print Name and Title)

(Date)

Guidance³

Item 1 - Federal environmental cross-cutting requirements apply to CWSRF recipients with a population greater than 10,000. Notwithstanding anything herein to the contrary, if your project is receiving CWSRF BIL emerging contaminants grant funding, this section is inapplicable and your project will be designated as an equivalency project.

Item 2 – Federal environmental cross-cutting requirements do not apply to projects categorized as non-point source projects (CWA Section 319) or estuary management program projects (CWA Section 320) unless the project involves a treatment works element. Refer to the current Intended Use Plan or your EFC or DOH Project Engineer for clarification.

Item 3 – Each project must be classified as a SEQR action by Type. Certain SEQR Type II actions are categorically excluded from NEPA review. If the project is classified as a SEQR Type II action pursuant to 6 NYCRR Part 617 in accordance with the regulatory citations listed in Checklist Item No. 2, do not complete the remainder of the form.

Item 4 – Certain emergency actions are categorically exempt from NEPA review pursuant to 40 CFR Section 6.210. If the project has a resolution declaring an emergency or other approved documentation, please submit along with the form.

Item 5 – Certain projects subject to consent orders are exempt from NEPA review as non-discretionary actions. If the project is part of a civil or criminal enforcement proceeding, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order per 6 NYCRR Section 617.5(c)(35), do not complete the rest of the form. Please submit a fully executed copy of the consent order with the form.

Item 6 – After the long form EAF has been completed; complete pages associated with crosscutter review from the attached checklist. A “yes” answer to any of the listed EAF questions requires consultation with other agencies or additional action. Documentation that the required consultations have been performed along with requirements imposed by these agencies have been addressed to the agencies satisfaction must be identified and submitted with the completed certified checklist.

SEQR Positive or Negative Declarations for an equivalency project need to (i) identify the relevant areas of environmental concern; (ii) thoroughly analyze such relevant areas of environmental concern to determine whether the project may have a significant adverse impact on the environment; and (iii) set forth a determination of significance containing a specific reasoned elaboration and providing reference to any supporting documents. SEQR Positive or Negative Declarations must be published in the ENB.

The lead agency must provide a written response to all substantive public comments received by responding to the commenters. Copies of such correspondence must be submitted to EFC or DOH.

Item 7 – Once the lead agency completes Part 3 of the long form EAF they should prepare and issue a Negative Declaration, which must be published in the ENB and filed in accordance with the SEQR regulations. Proof of publication must be submitted to EFC or DOH with the attached checklist.

Item 8 – For an equivalency project that receives a Positive Declaration, the project sponsor is required to prepare a Draft Environmental Impact Statement (“DEIS”) and to conduct a public

³ Please be reminded that all resources may not be completely up-to-date, and it is the applicant’s responsibility to ensure compliance to federal cross cutter regulations.

hearing on such DEIS prior to completion of the Final Environmental Impact Statement (“FEIS”) and final approval of the project. The lead agency must publish the notice of hearing of the DEIS in accordance with the SEQR regulations and in the ENB and in a local newspaper of general circulation in the area of potential impacts of the project. Following the comment period, the lead agency may prepare the Final Environmental Impact Statement. The FEIS must consist of:

- the DEIS, including any revisions or supplements to it
- copies or a summary of any substantive comments received
- responses to substantive public comments
- the hearing transcript

This documentation must be submitted to EFC or DOH with the attached checklist. Following the completion of the FEIS, publication of the notice of completion of the FEIS, and distribution of the FEIS to all of the involved agencies, and prior to a final decision regarding the project, the lead agency must issue a written findings statement, in accordance with the requirements of 6 NYCRR 617.11. Submit the notice of completion of the FEIS and the Statement of Findings to EFC or DOH with the attached checklist.

Environmental Crosscutters:

- 1. National Historic Preservation Act – Public Law No. 89-665 (1966), as amended, 16 U.S.C. Section 470 et. seq.**
 - 36 CFR Part 800. Protection of Historic Properties.
 - Advisory Council on Historic Preservation. Consultation with Indian Tribes in the Section 106 Review Process: A Handbook.
- 2. Archeological and Historic Preservation Act – Public Law No. 93-291 (1974)**
- 3. Protection of Wetlands – Executive Order No. 11990 (1977), as amended by Executive Order No. 12608 (1997)**
 - 40 CFR Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection.
- 4. Flood Plain Management – Executive Order No. 11988 (1977), as amended by Executive Order No. 13690 (2015) (reinstated by Executive Order No. 14030 (2021))**
 - 40 CFR Part 6 Appendix A: Statement of Procedures on Floodplain Management and Wetlands Protection.
 - October 8, 2015: Water Resources Council’s Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. The Guidelines include a step-by-step decision making process.

Floodplain Wetland Assessment – If the project is located in or will affect a floodplain, a floodplain assessment must be prepared. If there are no practical alternatives to the proposed site, the applicant must document the mitigating measures or design modifications that will be taken to reduce the threats from locating the project in the floodplain. In addition, the applicant must follow the eight-step decision-making process set forth in the October 8, 2015: Water Resources Council’s Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, available at:

- 5. Farmland Protection Policy Act – Public Law No. 97-98 (1981); 7 U.S.C. Section 4201 et. seq.**
 - 7 CFR Part 658: Department of Agriculture criteria for identifying and taking account the adverse effects of federal programs on the preservation of farmlands.
 - *EPA Policy to Protect Environmentally Significant Agricultural Lands*, September 8, 1978.
- 6. Coastal Zone Management Act – Public Law No. 92-583 (1972) as amended; 16 U.S.C. Section 1451 et. seq.**
 - 15 CFR Part 930 Subpart F: Consistency for Federal Assistance to State and Locals with Approved Coastal Zone Management Plans.
 - 15 CFR Part 923: Coastal Zone Management Plan Regulations.
- 7. Coastal Barrier Resources Act – Public Law No. 97- 348 (1982); 16 U.S.C. Section 3501 et. seq.**
 - 48 Fed. Reg. 45664 (1983): DOI, U.S. Fish and Wildlife Service, Coastal Barrier Act Advisory Guidelines.
- 8. Wild and Scenic Rivers Act, Public Law No. 90-542 (1968); 16 U.S.C. Section 1271 et. seq.**
 - 36 CFR Part 297 Subpart A: Wild and Scenic Rivers, Water Resources Projects.
 - 47 Fed. Reg. 39457 (1982): Joint DOI National Park Service and Department of Agriculture (“DOA”) Forest Service Final Revised Guidelines for Eligibility Classification and Management of River Areas.
- 9. Endangered Species Act - Public Law No. 93-205, as amended; 16 U.S.C. Section 1531 et. seq.**
 - 50 CFR Part 402: Department of Interior and Department of Commerce Procedures for Implementing Section 7 of the Endangered Species Act.
 - Final Endangered Species Act Consultation Handbook for Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act, U.S. Fish & Wildlife Service and National Marine Fisheries Service (March 1998).
- 10. Clean Air Act Conformity, Public Law No. 95-95, as amended, 42 U.S.C. Section 7401**
 - General Conformity Guidance: Questions and Answers (July 13, 1994 and October 19, 1994 (which addresses issues with respect to SRF funded projects).
- 11. Environmental Justice - Executive Order No. 12898 (1994)**
 - Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses (April 1998).
 - EPA Desk Reference to the Toolkit for Assessing Potential Allegations of Environmental Injustice.
- 12. Safe Drinking Water Act – Public Law No. 93-53 (1974) as amended, 42 U.S.C. 300f et. seq.**

13. Magnuson-Stevens Fishery Conservation and Management Act – Essential Fish Habitat Conservation Process - Public Law No. 94-265 (1976), as amended; 16 U.S.C. 1801 et. seq.

- 50 CFR 600.920 Federal agency consultation with the Secretary.
- “Essential Fish Habitat Consultation Guidance” issued by the Office of Habitat Conservation, National Marine Fisheries Service (April 2004) available at <https://repository.library.noaa.gov/view/noaa/4187> (last visited June 1, 2023).

14. Fish and Wildlife Coordination Act – 16 U.S.C. Section 661 et. seq.

- Water Resources Development under the Fish and Wildlife Coordination Act, November 2004, available at <https://www.fws.gov/media/water-resources-development-under-fish-and-wildlife-coordination-act-0> (last visited June 1, 2023).

15. Migratory Bird Treaty Act of 1918 – 16 U.S.C. Section 703 et. seq., Executive Order No. 13186 (2001)

- Migratory Bird Treaty Reform Act of 2004 – Public Law No. 108-447, 118 Stat. 2809, 3071-72.

For additional information on federal crosscutting authorities, please visit:

<https://www.epa.gov/sites/default/files/2015-08/documents/crosscutterhandbook.pdf> (last visited June 1, 2023).

DISADVANTAGED BUSINESS ENTERPRISES

****Applies to CWSRF, DWSRF and OSG****

Sponsors of equivalency projects must comply with the requirements of the Disadvantaged Business Enterprises (“DBE”) program outlined within 40 CFR Part 33. The DBE program generally requires that most recipients of equivalency funding and their prime contractors/consultants must seek out and use DBE-certified firms, when possible, when procuring supplies, equipment, construction and other services on equivalency funded projects. Funding recipients comply with the requirement by, among other things, making the good faith efforts below, following the additional contract administration requirements, submitting certain reports and information, and maintaining certain records. Note that the DBE program requirements and certification process are different compared to the New York State Minority and Women-Owned Business Enterprises program.

Funding recipients receiving funding for an equivalency project will be expected to:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the USSBA, USDOT, USEPA’s Office of Small and Disadvantaged Business Utilization, and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (1) through (5) of this section

Recipients will be expected to certify that they and their contractors are in compliance with these requirements. These conditions are included in the SRF Equivalency Terms and Conditions, which must be included in each funded contract.

SINGLE AUDIT REPORTING

****Applies to CWSRF, DWSRF and OSG****

Sponsors of equivalency projects are required to comply with the requirements of the Single Audit Act (“SAA”) (31 USC 7501 et seq.), 2 CFR Part 200, subpart F.

Each SRF equivalency project sponsor who expends \$750,000 or more of *any type or combination* of Federal financial assistance within their fiscal year is required to complete and file a Single Audit or a project specific audit within 9 months of the end of the fiscal year the Federal funds were expended. SRF financings for equivalency projects are considered to be Federal financial assistance under the SAA.

The following summarizes some of the key responsibilities for project sponsors with regard to EFC:

1. Maintain an accounting system that is capable of identifying all expenditures of Federal financial assistance, not just from the SRF programs;
2. Determine **annually** whether expenditures of Federal funds exceeded \$750,000 within the fiscal year of the project sponsor. If Federal expenditures exceeded \$750,000, then a Single Audit or program-specific audit should be prepared within 9 months of the end of the fiscal year. The Single Audit or the program-specific audit should address the CWSRF or DWSRF, as appropriate. The CFDA number for the CWSRF is 66.458. The CFDA number for the DWSRF is 66.468. Federal guidance on 2 CFR Part 200, Subpart F3 can be found on the following link: https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf
3. Submit a copy of the Single Audit or program-specific audit to the Federal Audit Clearinghouse when finalized; and
4. Initiate corrective actions for Single Audits or program-specific audits with findings and recommendations that impact the SRF financial assistance. EFC should be informed of such corrective actions, findings and recommendations related to the SRF contained in any Single Audits.

Recipients will be expected to certify that they and their contractors are in compliance with this requirement.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

****Applies to CWSRF, DWSRF and OSG****

Contractors must be in compliance with 2 CFR 200.216, which prohibits the use of loan or grant funds to procure or use certain telecommunication and video surveillance services or equipment either:

1. produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of such entities; or
2. provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by the government of a covered foreign county.

Entities on the excluded parties list can be found in the System for Award Management (www.sam.gov). This prohibition cannot be waived. See Public Law 115-232, section 889 for additional information.

Recipients will be expected to certify that they and their contractors are in compliance with this requirement. These conditions are included in the SRF Equivalency Terms and Conditions, which must be included in each funded contract.

BUILD AMERICA, BUY AMERICA (“BABA”) ACT AND AMERICAN IRON AND STEEL (“AIS”) REQUIREMENTS

****Applies to CWSRF, DWSRF and OSG****

The BABA Act was signed into law in 2021 creating a requirement that expands upon and is broader in scope than the AIS requirement. BABA applies to iron, steel, manufactured products, and construction materials on all DWSRF and CWSRF equivalency projects, whereas the AIS requirement applies to only iron and steel products on DWSRF projects and CWSRF treatment works projects when BABA is inapplicable. BABA and AIS will not apply to individual projects at the same time. Accordingly, all DWSRF or CWSRF equivalency Contracts and Subcontracts are subject to the BABA requirement, unless an EPA waiver applies or can be obtained. If a BABA EPA waiver applies or is obtained, then the AIS requirement applies, unless an AIS EPA waiver is separately obtained.

I. BABA Requirements

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, then all the iron, steel, manufactured products, and construction materials used in the project must be produced in the United States.

Please consult Subsection II below for AIS requirements associated with iron and steel products.

Manufactured products must be manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The federal Office of Management and Budget (OMB) is developing additional guidance regarding compliance and documentation of component costs.

Construction materials must have all manufacturing processes for the construction material occur in the United States. Some examples of construction materials are non-ferrous metals, plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber and drywall. The federal OMB is developing additional guidance regarding compliance and construction materials.

The EPA may waive the BABA requirement for a project if:

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

percent.

II. AIS Requirements

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 entire project.

The term “iron and steel products” means the following permanently installed 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, or 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.

Recipients will be expected to certify that they and their contractors are in compliance with this requirement. These conditions are included in the SRF Equivalency Terms and Conditions, which must be included in each funded contract.