



**Environmental
Facilities Corporation**

**Department
of Health**

New York State Revolving Fund Equivalency Guidance Packet

Effective June 1, 2023

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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:

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.