



Environmental Facilities Corporation | Department of Health

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Guidance For Equivalency Project Mandatory State Revolving Fund 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 and 29 CFR § 5.12; and,

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- 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, surety that is completing performance for a defaulted contractor pursuant to a performance bond, 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.

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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.

State Recipient means Environmental Facilities Corporation, Department of Health, and Department of Environmental Conservation.

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 and/or DWSRF grants and financing

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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 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 financing.

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.eeoc.gov/sites/default/files/2023-06/22-088_EEOC_KnowYourRights6.12ScreenRdr.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.

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 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 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 at least 30 days 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 the Small Business Administration (SBA).
 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.
 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 reported in the online filing system by the Contractor and Subcontractor, as applicable, annually during the term of the Contract or Subcontract. The reporting period is typically May – July. When the data collection period is open, the filing system can be accessed on this website: <https://eeocdata.org/eeo1/signin> and the 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

To be submitted by the Contractor to the MBO if the Contractor's good faith efforts do not result in obtaining DBE participation that meets the fair share objectives. 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 12, Waste Fraud and Abuse Poster](#), 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

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

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

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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 for Clean Water or DOH for Drinking Water projects on form OMB Control No. 0505-0028 Build America Buy America Waiver Request Data Collection. Upon review, EFC/DOH 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. The form is available for use on EFC's website under Forms & Guidance:

<https://efc.ny.gov/american-iron-and-steel-and-build-america-buy-america-guidance>.

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/DOH.

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. An AIS and BABA Compliance and De Minimis Worksheet is available for use on EFC's website under Forms & Guidance: <https://efc.ny.gov/american-iron-and-steel-and-build-america-buy-america-guidance>.

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 for Clean Water and DOH for Drinking Water projects. EFC/DOH will request any necessary supporting documentation and submit to EPA for feedback.

Requests for AIS waivers must be submitted to EFC/DOH. Upon review, EFC/DOH 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 and BABA Compliance and De Minimis Worksheet is available for use on EFC's website under Forms & Guidance: <https://efc.ny.gov/american-iron-and-steel-and-build-america-buy-america-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. If multiple construction types apply on separate wage determinations, each applicable wage determination must be incorporated. These wage determinations must be incorporated into solicitations and any subsequent Contracts. Prime Contracts must contain a provision requiring that Subcontractors follow the wage determination incorporated into the prime Contract.

(i) While the solicitation remains open, the Recipient must monitor <https://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) Recipient must update wage determinations after contract award when the contract or order is changed to include additional, substantial construction⁴ either

(i) not within the scope of the work, or when the contract or

(ii) the order is changed to require the Contractor to perform work for an additional time period not originally obligated, including when an option is exercised on a contract or order.

The Recipient must include the most recent revision of any wage determination(s) at the time the contract is changed, or the option is exercised.

(d) 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.

(e) 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. 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. All interviews must be

⁴ When the cost of construction exceeds either \$2,500,000 or 20% of total project costs.

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 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 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) 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 10](https://nysefc.app.box.com/s/d6sys8owtgzv4ndqjvqvpwr0htp2019s)) at <https://nysefc.app.box.com/s/d6sys8owtgzv4ndqjvqvpwr0htp2019s>.
 - 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 11](#).

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.

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

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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. Additional permanent signage is required for projects receiving funding from the NYS Bond Act.

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, as applicable. Permanent signage for projects receiving funding from the NYS Bond Act is available upon request, 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 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>

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

Visit an EEOC field office (information at 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 at <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" webpage at <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 | Department of Health

**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:		
Full Contract Amount \$			
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:		
Full Contract Amount \$			
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:		
Full Contract Amount \$			
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:		
Full Contract Amount \$			

**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:		
Full Contract Amount \$			
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:		
Full Contract Amount \$			
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:		
Full Contract Amount \$			
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:		
Full Contract Amount \$			

**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 equipment or service showing that it is 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 | Department of Health

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 | Department of Health

BABA CONTRACTOR CERTIFICATION

FOR CONSTRUCTION CONTRACTS PAID FOR WITH EQUIVALENCY 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 or have been waived by the United States Environmental Protection Agency (EPA) and the Made in America Office, in accordance with the requirements of the EPA 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 – BABA Waiver Request Form

6. Describe the infrastructure project description and location, to the extent known. *

7. Total funding, including federal and non-federal shares: *

8. Total estimated infrastructure costs, including all federal and non-federal shares (to the extent known): *

9. Is this waiver for a specific product or a category of products? Check one below: *

- a. Specific Product
 - b. Category of Products
-

10. Listing of Materials, Technical Specifications, and Quantity: *

List of iron or steel items, manufactured products, and construction materials proposed to be excepted from BABAA requirements, including name, cost, countries of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code for each. List each item separately. List the name of the product, how much the product costs, in U.S. dollars, the country or countries of origin, if known, and the relevant PSC and NAICS for each product. Links to manuals that provide the PSC and NIACS codes:

- PSC Codes: <https://www.acquisition.gov/psc-manual>
- NAICS Codes: <https://www.census.gov/naics/>

10.1 Technical specification descriptions of items to be waived, if applicable.

10.2 Quantity required:

11. Waiver Type *

Choose one of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type.

- **Nonavailability waivers:** Complete questions [11.1.1](#), and [11.1.2](#).
 - **Unreasonable Cost waivers:** Complete questions [11.2.1](#), [11.2.2](#), and [11.2.3](#).
 - **Public Interest waivers:** Complete question [11.3](#).
-

11.1 Nonavailability Waiver

Applicable responses to the following are required:

11.1.1 A description of the due diligence performed by the applicant, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.

11.1.2 If one or more respondent indicated that they could provide a Build America Buy America (BABA) compliant item, but you are requesting the non-availability waiver because the lead time to obtain the BABA compliant item is excessive, indicate below how the difference in lead time between a BABA compliant and non-compliant item is going to cause the project to miss a significant milestone or deadline.

11.2 Unreasonable Cost Waiver (BABA compliance increases total project cost by more than 25 percent)

Applicable responses to the following are required:

11.2.1 What is the additional cost of the BABA compliant items, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin? Attach documentation of prices for BABA compliant and non-compliant items for items to be included in the cost comparison. Attach an additional PDF file if needed. (See page 8 for [attachment instructions](#))

11.2.2 What is the additional administrative cost for compliance with the BABA requirements? Attach a certification from the engineer or architect attesting to the actual or expected additional administrative cost. Attach an additional PDF file if needed. (See page 8 for [attachment instructions](#))

11.2.3 The BABA requirements will be waived for individual items until the total additional cost of BABA compliance is less than 25 percent of the total project cost. Which items is the applicant requesting to be waived from the BABA requirements to reduce costs below the 25 percent cost threshold?

11.3 Public Interest Waiver

Explain how waiving the BABA requirement for this project or product serves the public interest.

12. Additional Waiver Information

Provide any additional information for the Agency’s consideration of the requested waiver.

13. Anticipated Impacts *

Identify any anticipated impacts if no waiver is issued. Attach additional PDF pages if needed.
(See page 8 for [attachment instructions](#))

14. Certifying Official Name: *

15. Certifying Official Signature: *

16. Date of Certification: *

Questions to be Answered by the Federal Agency

All fields are required and must be filled out.

If additional space is needed see [attachment instructions on page 8](#).

Federal [agency instructions](#) can be found on pages 13 and 14 of this document.

1A. Federal Awarding Agency

2A. Federal Financial Assistance Program Listing Number

3A. Federal Financial Assistance Program Title

4A. Federal Awarding Agency Point of Contact

First Name

Last Name

Email

Phone

5A. FAIN and Federal Awarding Agency Organizational Information

Provide the Federal Award Identification Number (FAIN) (if available) and Federal Agency name, subcomponent name (if known), and the CGAC code (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code).

Enter the Federal Agency name, and subcomponent name, if known, and the CGAC code. **USDA's CGAC code is 012. For example, an appropriate response would be U.S. Department of Agriculture, Forest Service, CGAC 012.**

FAIN

Federal Agency name, and subcomponent name, if known, and the CGAC code

6A. Waiver Level

Select one of the four waiver levels:

Project

Award

Program

Agency

7A. Is this a general applicability waiver?

Yes

No

8A. Agency Summary and Determination

Provide an agency summary and determination regarding the waiver request.

9A. Agency Waiver

This response should be a narrative and include all necessary information to support the justification for a waiver. To avoid the need for a project-specific waiver, a justification may cite, if applicable, the absence of any BABA compliant bids received in response to a solicitation.

(See page 8 for [attachment instructions](#)).

10A. Public Comments

Provide any relevant comments received through the public comment period. This section is to be filled out after the waiver has been posted to the Agency's BABA Website. For example, the USDA website is found at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.

11A. Waiver Timeline

Select the timeline you are requesting for the waiver of the BABAA domestic sourcing requirements.

For the entire period of performance of the grant in which the infrastructure projects will occur.

OR

For a limited time during the period of performance of the grant. We request a waiver of the identified BABAA domestic sourcing requirements from [] to [] date.

File Attachment Instructions

Attach PDF files if additional space is needed to answer any of the questions in this form. Indicate which questions the attachment addresses.

To attach a file, select the “Attach File” button to open the Attachment Panel in Adobe Reader or Acrobat.



Drag and drop your attachments to the panel or select the “Add a New Attachment” button from the left Attachment panel in Adobe reader or Acrobat.

Please indicate which questions the attachments address by naming your file with the question number (i.e., Question 9A.pdf).

Recipient Instructions:

1. **Submitter Type:** Select a submitter type. Applicant, Recipient or Subrecipient.
2. **Submitter Contact Information:**
 - **Legal Name:** Required. Enter the legal name of the financial assistance award recipient that is seeking a waiver under the award. This is the organization that has registered with the System for Award Management (SAM). Information on registering with SAM may be obtained by visiting [SAM.gov](https://sam.gov).
 - **UEI:** Required. Enter the organization's Unique Entity Identifier (UEI) received from SAM. The UEI is a unique 12 character organization identifier. Information on registering with System for Award Management ([SAM.gov](https://sam.gov)) may be obtained by visiting the [Grants.gov](https://grants.gov) website. If the entity is not required to register in SAM.gov, respond "Exempt from registration in SAM.gov."
 - **Address:** Required. Enter address: **Address 1** (required); **City** (required); **County/Parish, State** (required if country is US); **Province; Country** (required); **9-digit ZIP/Postal Code** (required if country is US). If +4 does not exist or it is unknown for the address, enter "0000".
3. **Submitter First and Last Name:** Provide the first and last name of the person submitting the waiver request.
4. **Submitter Email:** Enter the email of the person submitting the waiver request.
5. **Submitter Phone Number:** Enter the area code and phone number of the person submitting the waiver request. Include the area code, phone number and phone extension if applicable.
6. **Describe the infrastructure project description and location** (to the extent known). The location can be an address (street, city, state, country and postal code) or a description of an area, such as a roadway or tract of land. Global Positioning System (GPS) location information may also be used.
7. **Total Funding, including Federal and non-Federal shares:** Report the total funding amount for the award, in whole dollars. If the entity is contributing non-Federal funds, sometimes known as cost sharing or match, and add that to the Federal funding amount and report the sum of the two figures in the field.
8. **Total estimated infrastructure costs, including all Federal and non-Federal shares** (to the extent known): List the portion of the total award amount that represents construction costs, including any Federal funding being used for this project. If the entity is contributing non-Federal funds, sometimes known as cost sharing or match, add that to the Federal funding amount and report the sum of the two figures in the field.
9. **Is this a waiver for a specific product or a category of products?** Check the box next to Specific Product or Category of products.

Example:

- 9a. **Product waiver:** 8-inch stainless steel valves
- 9b. **Category of products:** all valves on the project.

10. Listing of Materials, Technical Specifications, and Quantity

List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from BABAA requirements, including name, cost, country(ies) of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code for each. Please see the instructions below for listing the items. List the name of the product, how much the product costs, in U.S. Dollars, the country or countries of origin, if known, and the relevant PSC and NAICS for each product. Links to manuals that provide the PSC and NAICS codes can be found below.

10.1 Technical specifications description of items to be waived, if applicable. Provide the technical specifications for each of the items listed in question 10.

10.2 Quantity required: List the quantity required for each item listed in question 10.

- PSC Codes: <https://www.acquisition.gov/psc-manual>
- NAICS Codes: <https://www.census.gov/naics/>

List each item separately.

- “Manufactured Product”: Items that consist of two or more of the listed construction materials below that have been combined together through a manufacturing process, and items that include at least one of the listed construction materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.
- “Construction Materials” includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that is or consists primarily of:
 - non-ferrous metals;
 - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - glass (including optic glass);
 - lumber; or drywall.

11. Waiver type: Choose one of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type:

- **Nonavailability waivers:** Complete questions 11.1, 11.1.1, and 11.1.2.
- **Unreasonable Cost waivers:** Complete questions 11.2, 11.2.1, 11.2.2, and 11.2.3.
- **Public Interest waivers:** Complete question 11.3.

Provide sufficient information related to the specific request.

11.1 Nonavailability Waiver: Check this box if seeking a Nonavailability waiver. By choosing this selection, this means you are unable to obtain American made iron, steel, manufactured products, or construction materials for an infrastructure project. You are requesting the Federal agency to waive the application of the Build America Buy America domestic preference. You must demonstrate market research, which may be accomplished with assistance from the Federal agency, and adequately considered qualified alternate items, products, or materials.

Applicable responses to the following are required:

11.1.1 A description of the due diligence performed by the applicant, engineer/architect, or contractor, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.

11.1.2 If one or more respondent indicated that they could provide a BABA compliant item, but you are requesting the non-availability waiver because the lead time to obtain the BABA compliant item is excessive, indicate below how the difference in lead time between a BABA compliant and non-compliant item is going to cause the project to miss a significant milestone or deadline.

11.2 Unreasonable Cost. (BABA compliance increases total project cost by more than 25 percent). This checkbox is chosen when the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the total project cost to the overall project by more than 25 percent. You are requesting the Federal agency to waive the application of the BABAA domestic preference. You must provide documentation to the Federal agency that no domestic alternatives are available within the cost parameter. This may be accomplished with assistance from the Federal agency.

Applicable responses to the following are required:

- 11.2.1** What is the additional cost of BABA compliant iron and steel, manufactured products, and construction materials, compared to items of non-domestic or unknown origin? Attach documentation of prices for BABA compliant and non-compliant items for items to be included in the cost comparison. Such documentation may include quotes from suppliers or bid tabulations from bid actions which solicited both BABA compliant and non-compliant products. Attach an additional PDF file if needed.
- 11.2.2** What is the additional administrative cost for compliance with the BABA requirements? Attach a certification from the engineer or architect attesting to the actual or expected additional administrative cost. Attach an additional PDF file if needed.
- 11.2.3** The BABAA allows for a waiver in cases where “the 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.” If you are requesting a waiver under this requirement, we will waive items until the excess costs due to BABA are less than 125 percent of the non-BABA project. The BABA requirements will be waived for individual items until the total additional cost of BABA compliance is less than 25 percent of the total project cost.

For example, the project has three items which each cost \$20 for the non-domestic item. The equivalent domestic item costs \$30. Total project cost includes those items, along with \$40 of labor and soft costs. (“Soft costs” is a construction industry term or contractor accounting term for an expense item that is not considered direct construction cost. Soft costs include architectural, engineering, financing, and legal fees, and other pre- and post-construction expenses.) In this example, administration of BABA adds \$4 to soft costs. The total cost of the non-BABA project would be \$100 (3 x \$20 + \$40) and the BABA project is \$134 (3 x \$30 + \$44), a 34 percent increase. Waiving BABA requirements for one of the three items would decrease total project cost to \$124, which is less than 25 percent cost threshold.

Item	BABA cost	Non-BABA cost
Construction contracts		
Items procured outside of construction contract		
Architecture/engineering services		
Subconsultants		
Land and right-of-ways		
Legal services		
Funds administration		
Construction management		
Construction contingency		
Interest		
Equipment		
Refinancing		
Other soft costs		
Total Project Cost	A	B

1) Percentage increase in total project cost due to BABA (= 100 percent multiplied by (A-B)/B):

2) Dollar amount to be waived (= A – 1.25 multiplied by B):

Indicate which items the applicant wishes to waive from the BABA requirements to bring the total costs below 125 percent of the non-BABA total project cost. Items should be selected judiciously so that the total cost savings of using non-BABA items exceeds the amount in Row 2 by the smallest practicable amount. Only items submitted in response to question 10.2.1 are eligible for a waiver (it is not expected that soft costs will be affected significantly by the waiver).

11.3 Public Interest. Explain how waiving the BABA requirement for this project or product serves the public interest. By choosing this checkbox, you will explain how waiving the BABA domestic preference for this project or product serves the public interest. You can demonstrate definite impacts on the community if specific items, products or materials are not utilized in an infrastructure project. You are requesting the Federal agency waive the application of the BABA domestic preference because the domestic content preference would be inconsistent with the public interest. You will ensure this waiver is used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

12. **Waiver Additional Information:** Indicate any additional information for the Agency’s consideration of the requested waiver.

13. **Anticipated Impacts:** Identify any anticipated impacts if no waiver is issued. Provide a narrative that will explain the impact to the award, project, or the public should the waiver be denied. Attach additional PDF pages if needed.

14. **Certifying Official Name:** The name of the person who is certifying the waiver request.

15. **Certifying Official Signature:** The signature of the person who is certifying the waiver request will sign this section.

16. **Date of Certification:** Provide the date (MM/DD/YYYY) that the signature was provided.

Federal Agency Instructions:

- 1A. Provide the Federal awarding agency.
- 2A. Provide the Federal financial assistance program listing number.
- 3A. Provide the Federal financial assistance program title.
- 4A. Provide the first name, last name, email, and phone number of the Federal awarding agency point of contact.
- 5A. Provide the Federal Award Identification Number (FAIN) (if available) and the Federal awarding agency organizational information (e.g., Common Government wide Accounting Classification (CGAC) Agency Code). Enter the Federal Agency name, and subcomponent name if known, and the CGAC code. **USDA's CGAC code is 012. For example, an appropriate response would be U.S. Department of Agriculture, Forest Service, CGAC 012.**
- 6A. Indicate waiver level. Project, Award, Program or Agency.
- 7A. Is this a general applicability waiver? Indicate if this is a general applicability waiver or not.
- 8A. Agency summary and determination regarding the waiver request. Provide a narrative summarizing the Federal Agency's determination of the waiver request. It should include the reasons for approving or disapproving the waiver.
- 9A. Agency waiver: In an attempt to avoid the need for a project specific waiver, such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation. This should be a narrative and include all necessary information to support the justification for a waiver. This may be submitted as an attachment as a PDF file.
- 10A. Any relevant comments received through the public comment period. This is to be filled out after the waiver has been posted to the Agency's Buy American Website. For example, the USDA website if found here: <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.
- 11A. Select the timeline you are requesting for the waiver of the BABAA domestic sourcing requirements:
For the entire period of performance of the grant in which the infrastructure projects will occur.
OR
For a limited time during the period of performance of the grant. We request a waiver of the identified BABAA domestic sourcing requirements from [XX/XX/XXXX] only until [XX/XX/XXXX] date. After the identified end date, if there is a need for another waiver for the infrastructure projects, a new Build America Buy America Waiver Request form must be completed and submitted to the Federal agency. The waiver time frame cannot exceed the approved period of performance of the grant unless there is an approved grant extension by the Federal awarding agency.

Public Posting of Waiver Request Information

The BABAA domestic sourcing requirements waiver authority generally requires the Federal awarding agency to post this waiver information for a period of public comment and review. The Department will not publicly post information considered to be personally identifiable information (PII), including signatures and specific contact information such as an email address and phone number. However, all other information contained in this form, along with any supporting documentation, may be publicly posted so that the public has adequate information to comment on your requested waiver of the BABAA domestic sourcing requirements. If you feel that some of the information contained in this waiver request is “proprietary information” and do not want this information disclosed, please follow the instructions in “Submission of Proprietary Information”, below. Please note that your designations of exempt material are not binding on the Department.

Submission of Proprietary Information

FOIA exempts from mandatory disclosure any “trade secrets or commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4) (Exemption 4). In accordance with Exemption 4, the Department will maintain as confidential any documents submitted by you, or prepared by the applicant or grantee, that are both customarily and actually treated as private by the applicant or grantee, or closely held and not publicly disseminated. If you feel that some or all of this submission falls within the scope of Exemption 4 and is entitled to confidential treatment, you must indicate the specific information the applicant or grantee considers proprietary in a cover attachment to this form. Please note that your designations of exempt material are not binding on the Department.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0028. Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is *required to obtain or retain benefit* (with section 70914 of the [Build America Buy America Act \(Pub. L. No. 117-58 §§ 70901-70952\)](#)). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application, or survey, please contact your assigned program officer directly.

Attachment 6 – BABA Sample EPA Manufacturer’s Certifications

The following information is provided as a sample letter of certification for **BABA** compliance for Non-Ferrous **Construction Materials**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the non-ferrous construction materials shipped/provided to the subject project are in full compliance with the Buy America, Build America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). Each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurred in the United States, per [OMB Guidance 2 CFR 184.6](#). Detailed standard provided below.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Such product manufacturing process(es) took place at the following location(s): (City and State)

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative
Printed name of company representative
Professional title of company representative
Email address
Phone number

§ 184.6 Construction material standards.

- (a) The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.”
- (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.

The following information is provided as a sample letter of certification for **BABA** compliance for **Manufactured Products**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the manufactured product(s) shipped/provided to the subject project is/are in full compliance with the Build America, Buy America Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable). This/these product(s) meet(s) the 55 percent component cost test, where the cost of components that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components; and final manufacturing occurred in the United States.

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Final product manufacturing process(es) took place at the following location(s): (City and State)

1. XXXX
2. XXXX
3. XXXX

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative
Printed name of company representative
Professional title of company representative
Email address
Phone number

The following information is provided as a sample letter of certification for **BABA** compliance for **Iron/Steel Products**. **Documentation must be provided on company letterhead.**

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project XXXXXXXXXXXX (must state the water/wastewater system name, location, and/or project/contract title, that is specific and recognizable enough to easily associate it with this particular project)

I, (company representative), certify that the (initial melting, reheating, refining, forming, rolling, drawing, finishing, fabricating, coating, assembly) of the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel Requirement (AIS) (if applicable), and for the iron/steel category of products in the Build America, Buy America Act requirement, as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52 and in EPA's State Revolving Fund Programs (if applicable).

Items, Products and/or Materials and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code:

1. XXXX
2. XXXX
3. XXXX

Such product manufacturing process(es) took place at the following location: (City and State)

Initial Melting location: (City and State)

Bending, Cutting, etc location: (City and State; list out each step taken by a different manufacturer or producer)

If any of the above compliance statements change, we will immediately notify the subject project prime contractor.

Signature of company representative
Printed name of company representative
Professional title of company representative
Email address
Phone number

Attachment 7 – AIS Contractor’s Certification



Environmental Facilities Corporation | Department of Health

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 or have been waived by the United States Environmental Protection Agency (EPA), in accordance with the requirements of the EPA 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 8 – AIS Sample EPA 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. *Xxxx*

2. *Xxxx*

3. *Xxxx*

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 9 – Federal Payroll Form (WH-347)

Davis-Bacon and Related Acts Weekly Certified Payroll Form

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



Unless otherwise noted, the information requested is specific to the named project below.
Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rev. January 2025
OMB No.: 1235-0008
Expires: 01/31/2028

SUBMISSION OF FINAL DBRA CERTIFIED PAYROLL FORM

PRIME CONTRACTOR

SUBCONTRACTOR

PROJECT NAME				PROJECT NO. or CONTRACT NO.			CERTIFIED PAYROLL NO.		PRIME CONTRACTOR'S/SUBCONTRACTOR'S BUSINESS NAME														
PROJECT LOCATION				WAGE DETERMINATION NO.			WEEK ENDING DATE		PRIME CONTRACTOR'S/SUBCONTRACTOR'S BUSINESS ADDRESS														
(1A)	(1B)	(1C)	(1D)	(1E)	(2)	(3)	(4)					(5)	(6A)	(6B)	(6C)	(7A)	(7B)	(8)			(9)		
WORKER ENTRY NO.	WORKER LAST NAME	WORKER FIRST NAME	WORKER MIDDLE INITIAL	WORKER IDENTIFYING NO.	(J) JOURNEYWORKER (RA) REGISTERED APPRENTICE	LABOR CLASSIFICATION	ST = STRAIGHT TIME OT = OVERTIME	(TOP) DAYS OF WORK WEEK (BOTTOM) DATES					TOTAL HOURS WORKED FOR WEEK	HOURLY WAGE RATE PAID FOR ST AND OT	TOTAL FRINGE BENEFIT CREDIT	PAYMENT IN LIEU OF FRINGE BENEFITS	GROSS AMT EARNED	GROSS AMT EARNED FOR ALL WORK	DEDUCTIONS FOR ALL WORK			NET PAY TO WORKER FOR ALL WORK	
								HOURS WORKED EACH DAY											TAX WITH-HOLDINGS	FICA	OTHER (MUST SPECIFY, SEE INSTRUCTIONS)		TOTAL DEDUCTIONS
							ST																
							OT																
							ST																
							OT																
							ST																
							OT																
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While use of Form WH-347 itself is optional, covered contractors and subcontractors performing work on Federal or federally assisted construction contracts are required by the DBRA regulations and the contract clauses to submit payroll information on a weekly basis. The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federal or federally financed construction contracts to, on a weekly basis, "furnish a statement on the wages paid each employee during the prior week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors and subcontractors to submit weekly certified payrolls to the appropriate Federal agency if the agency is a party to the contract (or, if the agency is not such a party, to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the Federal agency). Each certified payroll must be accompanied by a signed "Statement of Compliance" (e.g., page 2 of the WH-347 or another document with identical wording) indicating that the certified payrolls are accurate and complete, and that each laborer or mechanic has been paid not less than the required Davis-Bacon prevailing wage rate(s) (including any fringe benefits) for the work performed. DOL and contracting agencies receiving this information review the information to determine whether workers 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 (over)

PROJECT NO. or CONTRACT NO.

I paid or supervised the payment of the laborers or mechanics working on the above project during the stated time period. I certify the following:

- The payroll information submitted with this statement is correct and complete for the above project during the above period, and the wage and fringe benefit rates paid to the workers, including credit taken for the reasonably anticipated costs of a bona fide fringe benefit plan, fund or program, are not less than the applicable wage and fringe benefits rates for the
- All regular payrolls and all other basic records that the contractor is required to maintain for this payroll period are complete and accurate and will be made available upon request from the
- The classifications reported for each laborer or mechanic are the classification(s) of work that each worker actually performed.

Any workers paid as apprentices during the above period are duly registered in a bona fide apprenticeship program registered with the Office of Apprenticeship, Employment and Training Administration, United States Department of Labor ("OA"), or a State Apprenticeship Agency ("SAA") recognized by Department of Labor. I have verified the registered apprenticeship program

- | | |
|-----------------------------|------------------------------|
| <input type="checkbox"/> OA | <input type="checkbox"/> SAA |
| <input type="checkbox"/> OA | <input type="checkbox"/> SAA |
| <input type="checkbox"/> OA | <input type="checkbox"/> SAA |

Fringe benefits have been paid in cash and/or to bona fide fringe benefit plans, funds, or programs. Where the contractor is claiming an hourly credit for their contributions to or reasonably anticipated costs of a bona fide fringe benefit plan, fund, or program, provide plan information and the hourly credit claimed for each worker listed on the previous page of this form.

If an amount is listed in (6B) on the first page of this certified payroll form, enter the hourly credit claimed under each plan name, type and number for each worker and check whether the plan is funded or unfunded.

	Plan 1		Plan 2		Plan 3		Plan 4		Plan 5		Plan 6	
	<input type="checkbox"/> Funded	<input type="checkbox"/> Unfunded	<input type="checkbox"/> Funded	<input type="checkbox"/> Unfunded	<input type="checkbox"/> Funded	<input type="checkbox"/> Unfunded	<input type="checkbox"/> Funded	<input type="checkbox"/> Unfunded	<input type="checkbox"/> Funded	<input type="checkbox"/> Unfunded	<input type="checkbox"/> Funded	<input type="checkbox"/> Unfunded
							Hourly Credit		Hourly Credit		Hourly Credit	
	Hourly Credit						Hourly Credit		Hourly Credit		Hourly Credit	
	Hourly Credit						Hourly Credit		Hourly Credit		Hourly Credit	
	Hourly Credit						Hourly Credit		Hourly Credit		Hourly Credit	
	Hourly Credit						Hourly Credit		Hourly Credit		Hourly Credit	
	Hourly Credit						Hourly Credit		Hourly Credit		Hourly Credit	
	Hourly Credit						Hourly Credit		Hourly Credit		Hourly Credit	
	Hourly Credit						Hourly Credit		Hourly Credit		Hourly Credit	

All workers on the project have been paid the full weekly wages earned, and no rebates or deductions have been or will be made either directly or indirectly, other than permissible

(____) ____ - ____

Attachment 10 – 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 11 – 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 12 – 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.