



# 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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#### Identify Contract Type prior to Advertisement for Bid:

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

Effective October 1, 2025

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# INTRODUCTION

The terms and conditions below must be incorporated verbatim into contracts receiving SRF financial assistance. Additional information relating to each of the requirements is included in the companion guidance document. Recipients, Contractors, Subcontractors, and any other involved entities must also comply with any and all applicable rules and regulations not listed below or in the companion guidance document.

## REQUIRED CONTRACT LANGUAGE

### COMMONLY USED TERMS

The following commonly used terms are defined herein as follows:

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

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

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

**Contractor** means all bidders, prime contractors, 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.

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

**Recipient** means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due thereunder are being paid in whole or in part. Responsible through Project Finance Agreement (PFA) to comply with EFC requirements.

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

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

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

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

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

## **SECTION 1 FEDERAL ARCHITECTURAL AND ENGINEERING PROCUREMENT REQUIREMENTS**

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

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

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

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

### **I. General Provisions**

- A. Contractors and Subcontractors are required to comply with the following provisions:
1. 40 CFR Part 33 (“Federal DBE Regulations”) for contracts under EPA financial assistance agreements, as those terms are defined therein.
  2. Title VI of the Civil Rights Act of 1964 and 40 CFR Part 7 (“Title VI”) for any program or activity receiving federal financial assistance, as those terms are defined therein.
  3. Title VII of the Civil Rights Act of 1964 and 41 CFR Part 60-1 Subpart A (“Title VII”) for construction contracts related to any government programs providing federal financial assistance, as those terms are defined therein.
  4. 41 CFR Part 60-4 (“Federal Affirmative Action Regulations”) for federal or federally assisted construction contracts in excess of \$10,000, as those terms are defined therein.

5. Section 504 of the Rehabilitation Act of 1973 ("Section 504") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  6. The Age Discrimination Act of 1975 ("Age Discrimination Act") for any program or activity receiving federal financial assistance, as those terms are defined therein.
  7. Section 13 of the Federal Water Pollution Control Act ("Clean Water Act") Amendments of 1972 ("Section 13") for any program or activity receiving federal financial assistance under the Clean Water Act, as those terms are defined therein.
- B. Upon request from the Recipient and/or EFC, Contractor will provide complete responses to inquiries and all DBE and EEO records available within a reasonable time or as otherwise determined by EFC.
  - C. Failure to comply with all of the requirements herein may result in a finding by the Recipient that the Contractor is non-responsive, non-responsible, and/or has breached the Contract, leading to the withholding of funds or such other actions or enforcement proceedings as allowed by the Contract.
  - D. If any terms or provisions herein conflict with Federal DBE Regulations, Title VI, Title VII, or Federal Affirmative Action Regulations, such law and regulations shall supersede these requirements.
  - E. The Contractor and Subcontractor shall not discriminate on the basis of race, color, national origin, age, disability, or sex in the performance of this Contract. The Contractor and Subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Contractor and Subcontractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or other legally available remedies.

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

- A. Contractors and Subcontractors shall have instituted grievance procedures to assure the prompt and fair resolution of complaints when a violation of Title VI of the Civil Rights Act of 1964 or Title 40 CFR Part 7 is alleged.
- B. For federally assisted construction Contracts, the Contractor and Subcontractor will comply with the requirements of 41 CFR § 60-1.4(b) and (c), and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor and Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- C. The Contractor shall comply with the provisions of the Human Rights Law (Executive Law Article 15), Title VI, Title VII, the Federal Affirmative Action Regulations, Section 504, Age Discrimination Act, Section 13, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

- D. Pursuant to 41 CFR § 60-1.7 for federally assisted construction Contracts, Contractor and Subcontractor will annually file an EEO-1 Report with the Joint Reporting Committee for the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) according to the instructions provided at <https://www.eeoc.gov/employers/eo-1-survey/eo-1-instruction-booklet>, if Contractor or Subcontractor:
1. Is not exempt from compliance pursuant to 41 CFR § 60-1.5;
  2. Has 50 or more employees;
  3. Is a prime Contractor or first tier Subcontractor; or Subcontractor below the first tier which performs construction work at the site of construction; and
  4. Has a Contract, Subcontract, or purchase order amounting to \$50,000 or more.
- E. Pursuant to 40 CFR § 7.95, the Contractor shall display a copy of the EEO notice at the project site in a visible location. The notice shall accommodate individuals with impaired vision or hearing and should be provided in languages other than English where appropriate. The notice must also identify the employee responsible for its EEO compliance. See guidance document for sample notice.
- F. For federal or federally assisted construction contracts in excess of \$10,000, the Contractor and Subcontractor will comply with the Affirmative Action Regulations and such provisions are hereby incorporated by reference. These provisions require, in part, that the Contractor and Subcontractor place affirmative action goals on Contracts and Subcontracts, as established by the United States Department of Labor. See guidance document for goals.
- G. The Contractor will include the provisions of Subdivisions II(A) and II(B) in every Subcontract in such a manner that the requirements of these subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

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

- A. Fair Share Objectives for this Contract are 20%
- B. Good Faith Efforts

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

1. For purposes of demonstrating good faith efforts and achieving the fair share objectives established herein, the Contractor should seek out the participation of the following certified entities:
  - a. DBEs certified by the Small Business Administration (SBA) directory available at: [https://web.sba.gov/pro-net/search/dsp\\_dsbs.cfm](https://web.sba.gov/pro-net/search/dsp_dsbs.cfm)
  - b. DBEs certified in New York State: <https://nysucp.newnycontracts.com/>
2. Participation of Brokers and Truckers/Haulers
  - a. Contractors cannot count the participation of a DBE who acts as a Broker or passive conduit of funds without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices. If 50% or more of the total dollar amount of a DBE’s prime contract or subcontract is subcontracted to a non-DBE, the DBE prime contractor or subcontractor will be presumed to be a Broker.
  - b. Contractors may count the participation of a DBE trucker/hauler only if the trucker/hauler is performing a “commercially useful function,” according to the following factors:
    - i. The DBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular

contract, and there cannot be a contrived arrangement for the purpose of meeting DBE objectives.

- ii. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

#### C. DBE Utilization Plan

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

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

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

#### E. Quarterly Report

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

reporting to EPA.

F. Other Requirements

1. All contracts shall comply with the contract administration requirements outlined at 40 CFR 33.302.

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

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

#### **I. BABA Requirements**

The DWSRF or CWSRF Contract or Subcontract shall be subject to the Build America, Buy America Act, and the regulations promulgated thereafter (Pub. L. No. 117-58, §§ 70901-70953, and 2 CFR Part 184), which requires, among other things, that no SRF funds “may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

The Contractor shall submit with their bid or proposal documents an executed BABA Contractor’s Certification on the form attached hereto as [Attachment 2](#) acknowledging to and for the benefit of the Recipient of the Clean Water State Revolving Fund (“CWSRF”) or the Drinking Water State Revolving Fund (“DWSRF”) financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation (“EFC”) through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron, steel, manufactured products, and construction materials used in the project be produced in the United States (“BABA Requirement”) including iron, steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

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

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

#### **II. AIS Requirements**

*The requirements of this section apply to (1) all contracts for which Part 1 of this section does not apply, (2) all Construction Contracts and Subcontracts for DWSRF projects and CWSRF Treatment Works projects and (3) all contracts for the purchase of iron and steel products for a DWSRF project or CWSRF Treatment Works project. Disregard this section if it does not apply to this Contract or*

*Subcontract.*

The Contractor shall submit with their bid or proposal documents an executed AIS Contractors Certification on the form attached hereto as [Attachment 3](#) acknowledging to and for the benefit of the Recipient of the Clean Water State Revolving Fund ("CWSRF") or the Drinking Water State Revolving Fund ("DWSRF") financial assistance that the Contractor understands the goods and services under this Agreement are being funded with monies made available by the New York State Environmental Facilities Corporation ("EFC") through the CWSRF or the DWSRF and that such funding is subject to certain statutory restrictions requiring that certain iron and steel products used in the project be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants that:

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

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

## **SECTION 4 DAVIS-BACON (DB) PREVAILING WAGE REQUIREMENTS**

*The requirements of this section apply to all Construction Contracts and Subcontracts greater than \$2,000 for either DWSRF projects or CWSRF Treatment Works projects. Disregard this section if it does not apply to this Contract or Subcontract.*

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

#### **(a) Required Contract Clauses**

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

###### **(i) Wage rates and fringe benefits**

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

As provided in paragraphs (d) and (e) of this section the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

(ii) *Frequently recurring classifications*

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph (a)(1)(iii) of this section, provided that:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
2. The classification is used in the area by the construction industry; and,
3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) *Conformance*

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

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

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the Contractor and the laborers and mechanics to be employed in the classification (if

known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(E) The contracting officer must promptly notify the Contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) of this section. The Contractor must furnish a written copy of such determination to each affected worker, or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph (a)(1)(iii)(C) or (D) of this section must be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iv) *Fringe benefits not expressed as an hourly rate*

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

(v) *Unfunded plans*

If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(vi) *Interest*

In the event of a failure to pay all or part of the wages required by the Contract, the Contractor will be required to pay interest on any underpayment of wages.

2. Withholding.

(i) *Withholding requirements*

The Recipient, Subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor, so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime Contractor or any Subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in paragraph (a) of this section for violations of this contract, or to satisfy any such liabilities required by this Contract or any other Federal contract, or federally-assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2).

The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same prime contractor, or any other federally-assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Contractor liability for which the funds were withheld.

In the event of a Contractor's failure to pay any laborer or mechanic, including any apprentice or helper, working on the site of the work (or otherwise working on construction or development of the project under a development statute) all or part of the wages required by the Contract, or upon the Contractor's failure to submit the required records as discussed in paragraph (a)(3)(iv) of this section, the Recipient, Subrecipient at any tier, and/or contracting agency may on its own initiative and after written notice to the Contractor, sponsor, applicant, or owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) *Priority to withheld funds*

The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both over claims to those funds by:

- (A) A Contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a Contractor, or a Contractor's bankruptcy estate;
- (D) A Contractor's assignee(s)
- (E) A Contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

3. Payrolls and basic records.

(i) *Basic record requirements*

(A) Length of record retention

All regular payrolls and other basic records must be maintained by the Contractor and any Subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in a construction or development of the project under a development statute) for a period of at least three years after all the work on the prime contract is completed.

(B) Information required

Such records must contain the name, Social Security number, last known address, telephone number, and email address of each such worker, each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act), daily and weekly number of hours actually worked in total on each covered contract; deductions made; and actual wages paid.

(C) Additional records relating to fringe benefits

Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits

under a plan or program described in section 40 U.S.C. 3141(2)(B) of the Davis–Bacon Act, the Contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) *Certified payroll requirements*

(A) Frequency and method of submission

The Contractor or Subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, a copy of all payrolls to the Recipient. The prime contractor is responsible for the submission of all certified payrolls by all Subcontractors. A prime contractor may permit or require Contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the Contractor, the contracting agency, EFC, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the Contractor is unable or limited in its ability to use the electronic system.

(B) Information required

The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i)(B), except that full social security numbers and home addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's social security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor website. It is not a violation of this section for a prime Contractor to require a Subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Recipient (or the applicant, sponsor, or owner).

(C) Statement of Compliance

Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor, or the Contractor's or Subcontractor's agent who pays or supervises the payment of the persons employed under the Contract and must certify the following:

1. That the certified payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information and records are correct and complete;
2. That each laborer or mechanic (including each helper and apprentice) working on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as

specified in the applicable wage determination incorporated into the Contract.

(D) Use of Optional Form WH-347

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

(E) Signature

The signature by the Contractor, Subcontractor, or the Contractor's or Subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(F) Falsification

The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(G) Length of certified payroll retention

The Contractor or Subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) *Contracts, Subcontracts, and related documents*

The Contractor or Subcontractor must maintain this Contract or Subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The Contractor or Subcontractor must preserve these Contracts, Subcontracts, and related documents during the course of the work and for a period of 3 years after all work on the prime contract is completed.

(iv) *Required disclosures and access*

(A) Required record disclosures and access to workers

The Contractor or Subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents the Recipient, EFC, EPA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR § 5.1, available for inspection, copying, or transcription by authorized representatives of the Recipient, EFC, EPA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) Sanctions for non-compliance with records and worker access requirements

If the Contractor or Subcontractor fails to submit the required records, make them available, or refuses to permit worker interviews during working hours on the job, the federal agency may, after written notice to the Recipient, Contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR § 5.12. In addition, any Contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the Contractor or a person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location

of the records and the volume of production.

(C) Required information disclosures

Contractors and Subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the EPA if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the federal agency is not such a party to the contract, the Contractor, Subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the EPA, Recipient, EFC, or subrecipient at any tier, contracting agency, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and trainees.

(i) *Apprentices*

(A) Rate of pay

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA) Training, or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Fringe benefits

Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) Apprenticeship ratio

The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph (a)(4)(i)(D) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(4)(i)(A) of this section, must be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) Reciprocity of ratios and wage rates

Where a Contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being

performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the Contractor's registered program must be observed.

(ii) *Equal employment opportunity*

The use of apprentices and journey workers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5. Reserved

6. Subcontracts

The Contractor or Subcontractor must insert in any Subcontracts the clauses contained in 29 CFR § 5.5(a)(1) through (11) or a link to the DBRA Requirements for Contractors and Subcontractors Under EPA Grants documents on EPA's [Contract Provisions for Davis-Bacon and Related Acts](#) webpage, along with applicable wage determination(s) and such other clauses or contract modifications as the EPA may by appropriate instructions require, and a clause requiring the Subcontractors to include these clauses and wage determination(s) in any lower-tier Subcontracts. The prime Contractor and any Subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of underpayment or loss, due to any workers of lower-tier Subcontractors, and may be subject to debarment, as appropriate.

7 through 9. Reserved

10. Certification of eligibility

- (i) By entering into this Contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
- (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 40 U.S.C. 6144(b) or 29 CFR 5.12(a).
- (iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. § 1001.

11. Anti-Retaliation

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any Contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part of 29 CFR part 1 or 3;
- (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
- (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

**For Contracts in Excess of \$100,000, in addition to part (a):**

**(b) Contract Work Hours and Safety Standards Act (CWHSSA)**

1. **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. **Withholding for Unpaid Wages and Liquidated Damages.**

*(i) Withholding process*

The EPA, EFC, Recipient, Subrecipient at any tier, and/or contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime Contractor or any Subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section, any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the Contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Contractor liability for which the funds were withheld.

*(ii) Priority to withheld funds*

The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(1) of this section, or both, over claims to those funds by:

- (A) A Contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its procurement costs;
- (C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (D) A Contractor's assignee(s);
- (E) A Contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907

4. **Subcontracts.** The Contractor or Subcontractor must insert in any Subcontracts the clauses set forth in paragraphs (1) through (5) of this section and also a clause requiring the Subcontractors to include these clauses in any lower-tier Subcontracts. The prime contractor is responsible for compliance by any Subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (1) through (5). In the event of any violations of these clauses, the prime contractor and any Subcontractor(s) responsible will be liable for any unpaid wages for monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

#### 5. **Anti-Retaliation**

It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any Contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- (ii) Filing any complain, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWSSA or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- (iv) Informing any other person about their rights under CWHSSA or this part.

## **SECTION 5 REQUIREMENTS REGARDING SUSPENSION AND DEBARMENT**

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

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

In addition, the Contractor and any Subcontractors have not been debarred from or deemed ineligible for Government contracts or federally assisted Construction contracts pursuant to Executive Order 12549.

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

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

## **SECTION 6 RESTRICTIONS ON LOBBYING**

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

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

## **SECTION 7 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

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

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

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

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

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

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

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

## **SECTION 8 CONSTRUCTION SIGNS**

*The requirements of this section apply to all EFC projects. Additional permanent signage is required for projects receiving funding from the NYS Bond Act.*

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

# ATTACHMENTS (Required Forms)

## Attachment 1 – 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			
<b>This Submittal is:</b>		<input type="checkbox"/> The First/Original Utilization Plan <input type="checkbox"/> Revised Utilization Plan #:	
DBE Subcontractor Information		Contract Amount	For EFC Use:
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Full Contract Amount \$</b>			
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Full Contract Amount \$</b>			
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Full Contract Amount \$</b>			
<b>Business Name:</b>	<b>Fed. Employer ID#:</b>		
<b>Address:</b>	<b>Phone #:</b>		
<b>Scope of Work:</b>	<b>Email:</b>		
<b>Certifying Entity:</b> <input type="checkbox"/> DOT in State of _____; or <input type="checkbox"/> SBA <input type="checkbox"/> Other (indicate entity): _____	<b>Start Date:</b> <b>Completion Date:</b>		
<b>Full Contract Amount \$</b>			

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

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

**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 2 – 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 3 – 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 4 – 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: \_\_\_\_\_