

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

**NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU**

**Supplemental conditions
for
Federally Assisted Storm Water and/or Wastewater
Infrastructure under the
Clean Water State Revolving Loan Fund
Revised February 2021**

REPRODUCTION OF THIS GUIDANCE
SHOULD BE ON COLORED PAPER,
PREFERABLY PINK

REQUIRED FEDERAL FORMS

Forms that must be submitted within bidder's proposal:

1. XP-211 Certifications Regarding Contract under Equal Opportunity Clause & Non-Segregated Facilities
2. XP-215 MBW/WBE/SBRA Utilization Form along with proof of solicitation (i.e. newspaper advertisement, letters of solicitation)
3. XP-315 Davis Bacon Certification (does not apply to non-point source projects)
4. 5700-49 Certification Regarding Debarment, Suspension & Other Responsibility Matters
5. NMED FORM DBE-3
6. NMED FORM DBE-4
7. SRF Telecom Prohibition Certification
8. AIS CWSRF 314 (does not apply to non-point source projects)

Form to be provided with every construction pay application:

9. XP-214 Labor Standards Certification (does not apply to non-point source projects)
10. AIS Pay Application Certification (does not apply to non-point source projects)

REFERENCES

- Copeland Anti-Kickback, 29 CFR Part 3
<https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=29:1.1.1.1.4>
- Suspension and Debarment, Subpart C of 2 CFR 180 and 1532
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr180_main_02.tpl
<https://ecfr.io/Title-02/pt2.1.1532>
- Disadvantaged Business Enterprise, 40 CFR Part 33
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr33_main_02.tpl
- Equal Employment Opportunity, 41 CFR Part 60
https://www.ecfr.gov/cgi-bin/text-idx?SID=ec3611532eacd5ad65ef7df6f322a31f&mc=true&node=pt41.1.60_61&rgn=div5
- Labor Standards, 29 CFR Part 4 & 6
<https://ecfr.io/Title-29/pt29.1.4>
<https://ecfr.io/Title-29/pt29.1.6>
- Nondiscrimination, 40 CFR Part 7
<https://ecfr.io/Title-40/pt40.1.7>
- Uniform Administrative Requirements, Cost Principles and Audit Requirements, 2 CFR Parts 200 and 1500
<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=84eca2b8c00b167d252c25ba6eab0eeb&mc=true&n=pt2.1.200&r=PART&ty=HTML>
<https://www.ecfr.gov/cgi-bin/text-idx?SID=9dad727f830d7c452669df30fc406fee&node=pt2.1.1500&rgn=div5>
- NPDES General Permits for Storm Water Discharge from Construction Sites in Region 6
<https://www.epa.gov/npdes/epas-2017-construction-general-permit-cgp-and-related-documents>

Model Contract Clause – Attached

NPDES Bypass Policy – Attached

Federal Cross Cutters – https://ecfr.io/Title-40/se40.1.35_13575 see attached information also

Detailed Guidance on the American Iron and Steel Requirements can be found at:

<https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

Enhancing Public Awareness of SRF Assistance Agreements – memo dated 6/3/18 - Attached

XP-211

BIDDER'S CERTIFICATION*

In Compliance with Equal Employment Opportunity and Nonsegregated Facilities

Project Name _____ Project Number _____
Contract For _____

The following certifications must be completed by the bidder for each contract.

A. EQUAL EMPLOYMENT OPPORTUNITY:

- ☐ () I have developed and have on file at my each establishment affirmative action programs pursuant to 41 CFR Part 60-2.
- ☐ () I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**. I have filed all reports due under the requirements contained in 41 CFR 60-1.7.
- ☐ () I have not participated in previous contract(s) subject to the equal opportunity clause under **Executive Orders 11246 and 11375**.
- ☐ () I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

B. NONSEGREGATED FACILITIES

- ☐ () I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding \$10,000 which is not exempt from the equal opportunity clause as required by 41 CFR 60-1.8.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Typed Name & Title of Bidder's Authorized Representative _____

Signature of Bidder's Authorized Representative _____ Date _____

Name & Address of Bidder

**CERTIFICATION BY CONTRACTOR
STATEMENT OF COMPLIANCE
WITH LABOR STANDARDS**

In accordance with Title 29, Subtitle A, Part 5, Section 5.6(a)(1), each monthly pay application must be accompanied by the following certification executed by each prime contractor employing mechanics and laborers at the site on work in which the New Mexico Environment Department Clean Water State Revolving Loan makes funds available to participate:

Pay Application No. _____ for period _____ to _____

Name of Project

Location

Contract No.

Date Contract Awarded

Project No. _____

I hereby certify that all of the contract requirements as specified under the applicable labor standards as set forth in the Davis-Bacon Act, the Copeland "Anti-Kickback" Act and the Contract Work Hours and Safety Standards Act, have been complied with by _____ as principal contractor and by each _____

(Name of Contractor)

subcontractor employing mechanics or laborers at the site of the work, or there is a substantial dispute with the respect to the required provisions. I also certify that I have submitted all weekly payroll to _____ (Name of grantee).

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative

Date

Owner/Grantee Certification

I hereby certify that the above is true to the best of my knowledge and that I have reviewed all certified payroll supplied by the prime contractor and certify that it meets all labor standards as set forth in the Davis Bacon Act.

Signature of Grantee Authorized Representative

Date

I understand that the falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

NOTE: The bidder shall complete the following Minority/Women's/Small Business in Rural Area (MBE/WBE/SBRA) utilization information whenever they solicit sub contract construction work and/or services and purchase of equipment and supplies for the project.

1. Do you maintain and update qualified MBE, WBE, and SBRA on your solicitation lists for supplies, equipment, construction and/or service? Yes___ No___

If yes, when did you update your MBE/WBE/SBRA solicitation lists? _____

2. Do you maintain a list of minority, women and rural small business-focused publications that may be utilized to solicit MBEs or WBEs or SBRA's?
Yes___ No___

If yes, name the publications: _____

3. Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide MBE/WBE/SBRA firms for placement on your solicitation lists? Yes___ No___

4. Do you seek out Minority Business Development Centers to assist you in identifying MBEs/WBEs/SBRAs for potential work opportunities on your proposed bid for this project? Yes___ No___

5. Do you analyze the bid package or contract documents to identify portions of work that can be divided and performed by qualified MBEs, WBEs, and SBRA's including the bonding range? Yes___ No___

If yes, please attach a brief description of portions of work you have identified for subcontracting.

6. Do you develop realistic delivery schedules which may provide for greater MBE/WBE/SBRA participation? Yes___ No___

7. Do you send a letter of solicitation to MBE/WBE/SBRA for this project?
Yes___ No___

If yes, please attach a sample copy of each different solicitation letter and the name and address of each MBE/WBE/SBRA.

8. Do you advertise in general circulation, trade journals, State agency publications of identified MBEs/WBEs/SBRAs, minority or women or rural small business focused media, etc., concerning the subcontracting opportunities on your proposed bid for this project? Yes___ No___

If yes, please list the name of publication and dates of advertisement and attach a copy of each advertisement from each publication.

9. Do you conduct pre-bid, pre-solicitation, and post award conferences, meetings and follow-ups with interested MBE, WBE, and SBRA? Yes___ No___

If yes, please list person who attended conference as representative of MBE/WBE/SBRA

Name & Title of Person: _____

Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____

Date and Place of Conference: _____

Name & Title of Person: _____

Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____

Date and Place of Conference: _____

Name & Title of Person: _____

Name of MBE/WBE/SBRA: _____

Address: _____ Phone: _____

Date and Place of Conference: _____

10. Total dollar amount of the contract:

\$

11. Total dollar amount and percentage of MBE/WBE/SBRA participation:

MBE:	Construction	____%	Equipment	____%	Supplies	____%	Services	____%
	(\$)		(\$)		(\$)		(\$)	
WBE:	Construction	____%	Equipment	____%	Supplies	____%	Services	____%
	(\$)		(\$)		(\$)		(\$)	
SBRA:	Construction	____%	Equipment	____%	Supplies	____%	Services	____%
	(\$)		(\$)		(\$)		(\$)	

12. Name, address, phone number, contact person, type of construction subcontract, and dollar amount of subcontract.

MBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

WBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

MBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

WBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

MBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

WBE Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Amount: \$

MBE Subcontractor:

Address:

Phone:

Contact Person:

WBE Subcontractor:

Address:

Phone:

Contact Person:

SBRA Subcontractor:

Address:

Phone:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

MBE Subcontractor:

WBE Subcontractor:

SBRA Subcontractor:

Address:

Address:

Address:

Phone:

Phone:

Phone:

Contact Person:

Contact Person:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

I understand that a false statement on the above information may be grounds for rejection of this bid proposal or termination of the contract award.

Typed Name & Title of Authorized Representative

Signature of Bidder's Authorized Representative

Date

Davis-Bacon Act Certification

The Contractor acknowledges to and for the benefit of the Owner _____ ("Purchaser") and the State of New Mexico (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the New Mexico Environment Department Clean Water State Revolving Loan Fund and such law contains provisions commonly known as the Davis-Bacon Act that requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the federal prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area as determined by the Secretary of Labor.

The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Davis-Bacon Act, (b) as such has compensated all contractors and sub-contractors performing work on this project not less than the prevailing wage rate and fringe benefits for corresponding classes as determined by the Secretary of Labor, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State 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 State.

(Contractor Signature & Date)

(Owner Signature & Date)

EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated or cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Bidder's Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

Please use the space below to report any concerns regarding the above EPA-funded project:

Subcontractor Signature	Print Name
Title	Date

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ☐ DOT ☐ SBA ☐ Other: _____		Meets/ exceeds EPA certification standards? ☐ YES ☐ NO ☐ Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	☐ YES ☐ NO		
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Telecommunication and Video Surveillance Services Prohibition Certification

The Contractor acknowledges to and for the benefit of the (City, County, or other legal entity) of _____ (“Purchaser”) and the State of New Mexico (“State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund that have federal statutory requirements commonly known as “Prohibition on Certain Telecommunication and Video Surveillance Services (2 CRF 200.216);” that 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 \(Sam.gov\)](https://sam.gov) exclusion list.

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- 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).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- 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.
- 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).
- Security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible
- SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover from the Contractor any loss, expense, or cost incurred by the Purchaser or State resulting from any such failure, including loss of funding, whether in whole or in part, from the State or any resultant costs owed to the State by the Purchaser. The Contractor and the Purchaser agree that 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 State.

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative

Date

American Iron And Steel Certification

The Contractor acknowledges to and for the benefit of the (City, County, or other legal entity) of _____ (“Purchaser”) and the State of New Mexico (“State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund that have federal statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to 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 to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover from the Contractor any loss, expense, or cost incurred by the Purchaser or State resulting from any such failure, including loss of funding, whether in whole or in part, from the State or any resultant costs owed to the State by the Purchaser. The Contractor and the Purchaser agree that 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 State.

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative

Date

American Iron And Steel Certification - Pay Application #

The Contractor acknowledges that it understands the goods and services being paid for under this Pay Application are being funded with monies made available by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund that have federal statutory requirements commonly known as “American Iron and Steel,” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that: (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project 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 Purchaser or the State. Notwithstanding any other provision of th, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover from the Contractor any loss, expense, or cost incurred by the Purchaser or State resulting from any such failure, including loss of funding, whether in whole or in part, from the State or any resultant costs owed to the State by the Purchaser. The Contractor and the Purchaser agree that 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 State.

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative

Date

AIS Pay Application Certification

Sample Certifications for AIS compliance

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

Date

Company Name

Company Address

City, State Zip

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

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

List Items, 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:

Name and Title

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

Date

Company Name

Company Address

City, State Zip

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

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

Item, Products and/or Materials:

1. 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

Name and Title

Wage Rate Requirements

(DOES NOT APPLY TO NON-POINT SOURCE PROJECTS)

(1) Minimum wages.

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (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 § 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 (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The

State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the

Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social

security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the

required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

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

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

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

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

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

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

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

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

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

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

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(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 (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 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 (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for

unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

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

(b) The subrecipient shall 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. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall 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 subrecipient shall 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, if practicable, the subrecipient should 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 . Subrecipients 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 subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients 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 <http://www.dol.gov/esa/contacts/whd/america2.htm>.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6

MODEL CONTRACT CLAUSE

Recipients must ensure that, when appropriate, the following clauses or their equivalent are included in each contract.

1. SUPERSESSSION

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 31.36(i) apply to that work eligible for EPA assistance to be performed under this contract and that these clauses supersede any conflicting provisions of this contract.

2. PRIVITY OF CONTRACT

This contract is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to the applicable EPA procurement regulations in effect on the date of the assistance award for this project.

3. CHANGES

a. The following clause applies only to contracts for construction.

1. The recipient may at any time, without notice to any surety, by written order, make any change in the work within the general scope of the contract, including but not limited to changes:
 - i. In the specifications (including drawings and designs);
 - ii. In the time, method or manner of performance of the work;
 - iii. In the recipient-furnished facilities, equipment, materials, services or site, or
 - iv. Directing acceleration in the performance of the work.
2. A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the recipient which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances and source of the order and that the contractor regards the order as a change order.
3. Except as provided in this clause, no order, statement or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.
4. If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify the contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost the

contractor reasonably incurred in attempting to comply with those defective specifications.

5. If the contractor intends to assert a claim for an equitable adjustment under this clause, the contractor must, within 30 days after receipt of a written change order under paragraph (a)(1) or the furnishing of a written notice under paragraph (a)(2), submit a written statement to the recipient setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The contractor may include the statement of claim in the notice under paragraph (2) of this changes clause.

6. No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

b. The following clause applies only to contracts for services.

1. The recipient may at any time, by written order and without notice to the sureties, make changes within the general scope of this contract in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this contract, whether or not changed by any order, the recipient shall make an equitable adjustment and modify this contract in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date it receives the recipient's notification of change, unless the recipient grants additional time before the date of final payment.

2. No claim by the contractor for an equitable adjustment shall be allowed if made after final payment under this contract.

3. No services for which the contractor will charge an additional compensation shall be furnished without the written authorization of the recipient.

c. The following clause applies only to contracts for supplies.

1. The recipient may at any time, by written order and without notice to the sureties, make changes within the general scope of this contract in any one or more of the following:

- i. Drawings, designs or specifications where the supplies to be furnished are specifically manufactured for the recipient;
- ii. Method of shipment or packing; and
- iii. Place of delivery.

2. If any changes cause an increase or decrease in the cost or time required to perform any part of the work under this contract, whether or not changed by such order, the recipient shall make an equitable adjustment in the contract price or delivery schedule, or both, and modify the contract in writing. The contractor must assert any claim for adjustment under this clause within 30 days from the date the contractor receives the recipient's notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this contract. where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient has the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

3. No claim by the contractor for an equitable adjustment shall be allowed if made after final

payment under this contract.

4. DIFFERING SITE CONDITIONS

The following clause applies only to construction contracts.

- a. The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:
 1. Subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or
 2. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.
- b. The recipient shall promptly investigate the conditions. If it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed as a result of such conditions, the recipient shall make an equitable adjustment and modify the contract in writing.
- c. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).
- d. No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

5. SUSPENSION OF WORK

The following clause applies only to construction contracts.

- a. The recipient may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.
- b. If the performance of all or any part of the work is suspended, delayed or interrupted for an unreasonable period of time by an act of the recipient in administration of this contract, or by the recipient's failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), the recipient shall make an adjustment for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and modify the subagreement in writing. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.
- c. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act, or failure to act, involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the amount claimed is asserted in writing as soon as practicable after the termination of such

suspension, delay or interruption, but not later than the date of final payment under the contract.

6. TERMINATION

The following clause applies only to contracts over \$10,000.

- a. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- b. This contract may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- c. If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.
- d. Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the contractor in performing this contract, whether completed or in process.
- e. Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party a contract to complete the work under this contract.
- f. If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the subagreement price shall be made as provided in paragraph (c) of this clause.

7. REMEDIES

This clause applies only to contracts over \$25,000.

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters

in question between the recipient and the contractor arising out of, or relating to, this contract or the breach of it will be decided, if the parties mutually agree, by arbitration, mediation, or other alternative dispute resolution mechanism; or in a court of competent jurisdiction within the State in which the recipient is located.

8. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

NOTE - The following clause applies to (1) any contract negotiated between the recipient and its contractor in excess of \$100,000; (2) negotiated contract amendments or change orders in excess of \$100,000 affecting the price of a formally advertised, competitively awarded, fixed price contract, or (3) any lower tier contract or purchase order in excess of \$100,000 under a contract other than a formally advertised, competitively awarded, fixed price contract. This clause does not apply to contracts awarded on the basis of effective price competition.

- a. The contractor and subcontractor, where appropriate, assure that the cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated contracts, lower tier contracts and change orders is based on current, accurate and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this contract, lower tier contract or amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or cost or profit shall be reduced accordingly and the recipient shall modify the contract in writing to reflect such action.
- b. Failure to agree on a reduction shall be subject to the remedies clause of this contract.

NOTE - Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier contracts, the contractor may wish to include a clause in each lower tier contract requiring the lower tier contractor to appropriately indemnify the contractor. It is expected that any lower tier contractor subject to such indemnification will generally require substantially similar indemnification for defective cost and pricing data submitted by lower tier contractors.

9. AUDIT; ACCESS TO RECORDS

- a. The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on EPA funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied, and the applicable EPA regulations in effect on the date of execution of this contract. The contractor shall also maintain the financial information and data used in the preparation or support of any cost submission required under applicable regulations for negotiated contracts or change orders and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the recipient, and [the State] or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

b. If this is a fixed price contract awarded through sealed bidding or otherwise on the basis of effective price competition, the contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and contract amendments affecting the contract price. In the case of all other types of prime contracts, the contractor agrees to make paragraphs (a) through (g) applicable to all contract awards in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.

c. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).

d. The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).

e. Records under paragraphs (a) and (b) above shall be maintained by the contractor during performance on EPA assisted work under this contract and for the time periods specified in 40 CFR part 31. In addition, those records which relate to any controversy arising under an EPA assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the contractor for the time periods specified in 40 CFR part 31.

f. Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.

g. This right of access clause applies to financial records pertaining to all contracts (except for fixed price contracts awarded through sealed bidding or otherwise on the basis of effective price competition) and all contract change orders regardless of the type of contract, and all contract amendments regardless of the type of contract. In addition this right of access applies to all records pertaining to all contracts, contract change orders and contract amendments:

1. To the extent the records pertain directly to contract performance;
2. If there is any indication that fraud, gross abuse or corrupt practices may be involved;
- or
3. If the subagreement is terminated for default or for convenience.

10. COVENANT AGAINST CONTINGENT FEES

The contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this assurance, the recipient shall have the right to annul this agreement without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

11. GRATUITIES

a. If the recipient finds after a notice and hearing that the contractor or any of the contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or

otherwise) to any official, employee or agent of the recipient, the State or EPA in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the recipient may, by written notice to the contractor, terminate this contract. The recipient may also pursue other rights and remedies that the law or this contract provides.

b. In the event this contract is terminated as provided in paragraph (a), the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. BUY AMERICAN

This clause applies only to construction contracts award under 40 CFR Part 35, Subparts E and I.

In accordance with Section 215 of the Clean Water Act (33 U.S.C. 1251 et. seq.) and 40 CFR 31.36(c)(5), the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen and supplies in the performance of this contract.

13. RESPONSIBILITY OF THE CONTRACTOR

a. The following clause applies only to subagreements for services.

1. The contractor is responsible for the professional quality, technical accuracy, timely completion and coordination of all designs, drawings, specifications, reports and other services furnished by the contractor under this contract. If the contract involves environmental measurements or data generation, the contractor shall comply with EPA quality assurance requirements in 40 CFR 31.45. The contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.
2. The contractor shall perform the professional services necessary to accomplish the work specified in this contract in accordance with this contract and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.
3. The owner's or EPA's approval of drawings, designs, specifications, reports and incidental work or materials furnished shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause for action arising out of the performance of this contract.
4. The contractor shall be, and shall remain, liable in accordance with applicable law for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this contract, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data or any third party. The contractor shall not

be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

5. The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

b. The following clause applies only to contracts for construction.

1. The contractor agrees to perform all work under this contract in accordance with this agreement's designs, drawings and specifications.

2. The contractor guarantees for a period of at least one (1) year from the date of substantial completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall promptly give notice to the contractor of observed defects. In the event that the contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

3. The contractor's obligations under this clause are in addition to the contractor's other express or implied assurances under this contract or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment or work.

14. FINAL PAYMENT

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the contractor shall execute and deliver to the owner a release of all claims against the owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this contract, by State law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the owner's claims against the contractor or his sureties under this contract or applicable performance and payment bonds.

15. 40 CFR part 33

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor 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 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.

**United States Environmental Protection Agency
Region 6**

Policy for Bypass During Construction

It is a violation of an NPDES permit to bypass any part of a collection system or treatment plant. Such violations are subject to the enforcement provisions of Section 309 of the Clean Water Act. Under extreme circumstances, bypassing can sometimes be employed for short periods, but only after thorough review and authorization by the regulatory agency.

NPDES regulations and permits prohibit the diversion of wastes from any portion of the treatment facility unless:

- I. Bypass is unavoidable to prevent loss of life, personal injury, or severe property damage; or
2. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the Permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
3. The Permittee submits prior notice of an anticipated bypass, if possible, at least ten days before the date of the bypass.

The regulatory agency may authorize an anticipated bypass after considering its adverse effects, if it determines that it will meet the above conditions.

-) The construction sequence must be such that wastes are provided a minimum of secondary treatment, or the equivalent for industrial treatment facilities during all phases of construction unless more stringent treatment levels are required by the state agency; or
- 2) The facility must maintain compliance with interim limitations set by the regulatory agency based on plant performance.
- 3) Disinfection is to be utilized if required to protect public health.

CROSS-CUTTING FEDERAL AUTHORITIES

Environmental Authorities

- National Environmental Policy Act, Pub. L. No. 91-190 (1970), 42 U.S.C. § 4321 *et. seq.*
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Wilderness Act, Pub. L. 88-577, as amended

- **Historic Resources**
 - National Historic Preservation Act, Pub L. 89-665, as amended, 80 Stat. 917 (1966), 16 U.S.C. § 470 *et. seq.*
 - Archeological and Historic Preservation Act, Pub. L. 93-291 (1974), 16 U.S.C. § 469a-1

- **Environmentally Sensitive Lands**
 - Protection of Wetlands, Executive Order 11990 (1977), as amended by Executive Order 12608 (1997)
 - Floodplain Management, Executive Order 11988 (1977), as amended by Executive Order 12148 (1979)
 - Farmland Protection Policy Act, Pub. L. 97-98 (1981), 7 U.S.C. § 4201 *et. seq.*

- **Coastal Area Protection**
 - Coastal Zone Management Act, Pub. L. 92-583 (1972), as amended, 16 U.S.C. § 1451 *et. seq.*
 - Coastal Barriers Resources Act, Pub. L. 97-348, 96 Stat. 1653 (1982), 16 U.S.C. § 3501 *et. seq.*

- Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 913 (1968), 16 U.S.C. § 1271 *et. seq.*
- Endangered Species Act, Pub. L. 93-205 (1973), as amended, 16 U.S.C. § 1531 *et. seq.*
- Essential Fish Habitat Consultation Process under the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265 (1976), as amended, 16 U.S.C. § 1801 *et. seq.*
- Clean Air Act Conformity, Pub. L. 95-95 (1977), as amended, 42 U.S.C. § 7401 *et. seq.*
- Safe Drinking Water Act, Pub. L. 93-523 (1974), as amended, 42 U.S.C. 300f *et. seq.*

Social Policy Authorities

Civil Rights Laws (i.e., Super Cross-Cutters)

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690
- The Age Discrimination Act of 1975, 42 U.S.C. § 6102

- Equal Employment Opportunity, Executive Order 11246 (1965)

Disadvantage Business Enterprise Provisions

- Promoting the use of Small, Minority, and Women-Owned Businesses, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 Pub. L. 102-389

Economic and Miscellaneous Authorities

Prohibitions Relating to Violators of the Clean Air Act and the Clean Water Act with Respect to Federal Contracts, Grants, or Loans

- Executive Order No. 11738 (1973)
- Section 306 of the Clean Air Act, 42 U.S.C. § 7606, and
- Section 508 of the Clean Water Act, 33 U.S.C. § 1368
- Debarment and Suspension, Executive Order 12549 (1986)
- New Restriction on Lobbying, Section 319 of Pub. L. 101-121
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89-754 (1966), as amended, 42 U.S.C. § 3331 *et. seq.*
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646 (1971), as amended, 42 U.S.C. §§ 4601-4655
- Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects Executive Order 13202 (2001), as amended by Executive Order 13208 (2001)

Revised 02/18/2014



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: De Minimis Waiver of Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA), 2014

FROM: Nancy K. Stoner
Acting Assistant Administrator

The EPA is hereby granting a nationwide waiver pursuant to the “American Iron and Steel (AIS)” requirements of P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), section 436 under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects. This action permits the use of products when they occur in de minimis incidental components of such projects funded by the Act that may otherwise be prohibited under section 436(a). Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel” (AIS) requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Fiscal Year 2014, unless the agency determines it necessary to waive this requirement based on findings set forth in Section 436(b). The Act states, “[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency... finds that— (1) applying subsection (a) would be inconsistent with the public interest” 436(b)(1).

In implementing section 436 of the Act, the EPA must ensure that the section's requirements are applied consistent with congressional intent in adopting this section and in the broader context of the purposes, objectives, and other provisions applicable to projects funded under the SRF. Water infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project. In bid solicitations for a project, these high-cost components are generally described in detail via project specific technical specifications. For these major components, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

Every water infrastructure project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

The EPA undertook multiple inquiries to identify the approximate scope of de minimis incidental components within water infrastructure projects during the implementation of the American Reinvestment and Recovery Act (ARRA) and its requirements (Buy American provisions, specifically). The inquiries and research conducted in 2009 applies suitably for the case today. In 2009, the EPA consulted informally with many major associations representing equipment manufacturers and suppliers, construction contractors, consulting engineers, and water and wastewater utilities, and performed targeted interviews with several well-established water infrastructure contractors and firms who work in a variety of project sizes, and regional and demographic settings to ask the following questions:

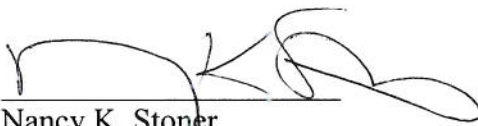
- What percentage of total project costs were consumables or incidental costs?
- What percentage of materials costs were consumables or incidental costs?
- Did these percentages vary by type of project (drinking water vs. wastewater treatment plant vs. pipe)?

The responses were consistent across the variety of settings and project types, and indicated that the percentage of total costs for drinking water or wastewater infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total cost of the materials used in and incorporated into a project. In drafting this waiver, the EPA has considered the de minimis proportion of project costs generally represented by each individual type of these incidental components within the many types of such components comprising those percentages, the fact that these types of incidental components are obtained by contractors in many different ways from many different sources, and the disproportionate cost and delay that would be imposed on projects if the EPA did not issue this waiver.

Assistance recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver and must retain relevant documentation (i.e., invoices) as to those items in their project files.

If you have any questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Municipal Support Division, at connor.timothy@epa.gov or (202) 566-1059 or Kirsten Anderer, Environmental Engineer, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Issued on: APR 15 2014

Approved by: 
Nancy K. Stoner
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 3 2015

OFFICE OF WATER

MEMORANDUM

SUBJECT: Guidelines for Enhancing Public Awareness of SRF Assistance Agreements

FROM: Andrew D. Sawyers, Ph.D., Director
Office of Wastewater Management (4201M) *[Signature]*

Peter C. Grevatt, Director
Office of Ground Water and Drinking Water (4601M) *[Signature]*

TO: Water Management Division Directors
Regions I-X

Last year, the Environmental Protection Agency (EPA) implemented an agency-wide initiative to enhance public awareness of EPA assistance agreements nationwide. The Office of Water has developed guidelines to inform states how this initiative should be implemented in the State Revolving Fund (SRF) Programs.

The guidelines were developed with input from EPA and state SRF staff. The guidelines recognize that each of the state SRF programs and the projects they fund are different and that one implementation method will not work for everyone. Therefore, as a result of input from the states, the guidelines offer a number of options that can be used to enhance public awareness of SRF assistance agreements.

Implementation of these guidelines will begin with the awarding of the FY 2015 SRF capitalization grants. A term and condition on compliance with the guidelines is to be included in all new SRF grants.

Please have your staff provide copies of the guidelines to your states. Questions regarding the guidelines should be directed to Sheila Platt (202/564-0686) or Howard Rubin (202/564-2051).

Attachment

Enhancing Public Awareness of SRF Assistance Agreements

Introduction

The Environmental Protection Agency (EPA) is currently implementing an agency-wide initiative focused on signage to enhance public awareness of EPA assistance agreements nationwide. The intention of this effort is to communicate the positive impact and benefits of EPA funding around the country and increase awareness surrounding the improvements communities receive as a result of State Revolving Fund (SRF) assistance. Projects implemented with Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) monies are included in this initiative, as many CWSRF and DWSRF assistance agreements have direct and tangible benefits to populations around the country.

EPA's Office of Water developed these guidelines as a way to inform states of this directive and how it should be implemented in the SRF programs. The primary objective is to enhance public understanding of the positive benefits of CWSRF and DWSRF funding to towns, cities, municipalities and water systems. To that end, states are presented with a range of options for implementing these guidelines. All of these options achieve the ultimate goal of communicating to a broad audience the positive role EPA funding of the state CWSRF and DWSRF programs plays in communities across the country.

The information in the guidelines was developed with input from EPA and state staff across the country as well as the members of the State-EPA Workgroup. The guidelines recognize the wide range of project types, varied locations and different institutional approaches among states and communities. Therefore, providing states and SRF assistance recipients maximum flexibility is optimal. The guidelines allow selection of the implementation method which best balances two goals. First, it should satisfy the overall objective of communicating EPA's role in funding assistance agreements that achieve positive benefit. Second, the implementation method should be practically and financially viable for states and communities and avoid any overly burdensome investment of time and resources. In some cases, it might be appropriate for a state to select a combination of options listed below, provided this does not result in excessive cost to communities.

Project Selection Requirements

Signage requirements will not be required to apply to all SRF projects. Signage will be considered an equivalency requirement for SRF programs. States should select a set of borrowers and/or projects totaling a funding amount equivalent to the amount of their federal capitalization grant to satisfy the signage requirement. There are no other requirements or restrictions on which projects should or should not participate in this initiative. Therefore, it is at the discretion of the state SRF program to select projects most able to efficiently and effectively comply in a way that

meets the intention to enhance public awareness without significant financial hardship to the state or its borrowers. This can be done either through the selection of specific projects or borrowers, or by setting a threshold within the state for which projects will be requested to meet signage requirements. States should note that they have the option of selecting different implementation options for different borrowers depending on the location, project type and available resources. Borrowers and/or projects complying with the signage requirement must ensure limited English proficient individuals have meaningful access to activities receiving EPA funds, consistent with Executive Order 13166 and EPA Order 1000.32.

In this regard, to increase public awareness of projects serving communities where English is not the predominant language, States should encourage recipients when implementing a particular signage option to translate the language used (excluding the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

Although the signage requirement does not apply to all SRF projects, we recommend that states encourage all borrowers/projects to notify the public of the benefits of the projects and the role of the SRF, using one of the options below.

Summary of Options

The guidelines present a number of options which communities can explore to implement EPA's signage policy. The option selected should meet all of the above basic requirements while remaining cost-effective and accessible to a broad audience. The guidelines describe the following strategies as acceptable options for communities to follow:

- Standard signage
- Posters or wall signage in a public building or location
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility
- Online signage placed on community website or social media outlet
- Press release

Each of these options is described in more detail in the sections below.

Implementation Option: Standard Signage

EPA recommends that large projects that involve significant expansion or construction of a new facility elect to publicize through standard signage. This option should be selected for projects where the sign would be near a major road or thoroughfare or where the facility is in a location at which this would effectively publicize the upgrades. Some facilities will not find this an appropriate or cost-effective solution. For example, investing in a large road sign for a facility that is located in a rural area or where access is limited to a smaller service road would likely not be an optimal solution.

Signs can also be located away from the project site if there is another reasonable alternative. For example, a community may elect to place a sign advertising the project near a body of water that receives discharge from a particular facility.

States selecting projects that will implement this requirement through use of a traditional sign should ensure the following are included:

- The name of the facility, project and community
- Project cost
- The State Agency/SRF administering the program
- The EPA and State Agency logos (EPA logo may only be used on a sign)

If the EPA logo is displayed along with logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from the EPA Office of Public Affairs (OPA), the EPA logo is the identifier for assistance agreement projects. States are required to ensure that recipients comply with the sign specifications provided by the OPA, available at http://www.epa.gov/ogd/tc/epa_logo_seal_specifications_for_infrastructure_grants.pdf. To obtain the appropriate EPA logo graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication.

Implementation Option: Posters or Brochures

Smaller projects, projects located in rural areas, and other efforts may find that it is more cost-effective and practical to advertise efforts through creation of a poster or smaller sign. If the project involves nonpoint source or green infrastructure components, those can be described at the discretion of the state or community.

The poster or brochure and acknowledgement should be visible, as well as a website or other source of information for individuals that may be curious about the SRF program. The community could also implement this option as a short pamphlet or brochure that is placed in one of these locations for community members to read.

Posters or brochures should be placed in a public location that is accessible to a wide audience of community members. This can include, but is not limited to:

- Town or City Hall
- Community Center
- Locally owned or operated park or recreational facility
- Public Library
- County/municipal government facilities
- Court house or other public meeting space

Given the low cost for producing multiple copies of the same poster, pamphlet, or brochure, communities can explore options for displaying these posters in several locations simultaneously. This would achieve the overall objective of reaching a broad audience and publicizing the project.

States have the option of creating a template verbiage and layout to provide to borrowers, particularly smaller or disadvantaged communities. This could reduce the burden on small municipalities which may or may not have the staffing capacity to meet signage requirements on their own.

States selecting projects that will implement this requirement through use of posters or brochures should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of project
- Brief description of the water quality benefits the project will achieve

Implementation Option: Newsletter, Periodical or Press Release

For communities where there is no suitable public space or where advertisement through signage is unlikely to reach community members effectively, projects can be advertised in a community newsletter or similar periodical. States can use guidelines from their standard public notice practices. For new construction, if a groundbreaking ceremony is to be held, an announcement could publicize or accompany publicity for this event.

In some cases, it may be appropriate for the state agency to issue a formal press release announcing construction of a new facility. Distributing a single prepared statement concisely summarizing the project purpose and the joint funding from EPA and state resources can reach a wide audience as the statement goes through multiple news outlets. Programs should consider whether or not this is an option that is likely to effectively publicize the CWSRF or DWSRF program in local news sources.

If a recipient decides on a public or media event to publicize the accomplishment of significant events related to construction as a result of EPA support, EPA must be provided with at least a ten working day notice of the event and provided the opportunity to attend and participate in the event.

States selecting projects that will implement this requirement through use of a newsletter, periodical or press release should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program

- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Insert or Pamphlet in Water/Sewer Bill

Utilities can consider including a single-page insert within water and sewer bills that are mailed to residents and users in the area. This approach would effectively publicize the project to those individuals directly benefitting from the project. The flyer or insert could emphasize the interest rate and financial savings that the community achieved by taking advantage of SRF funds as well as the environmental and public health benefits to the community.

States selecting projects that will implement this requirement through use of an insert or pamphlet in water/sewer bill should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Online & Social Media Publicity

Many communities are increasingly finding that the online forum is the most cost-effective approach to publicizing their SRF programs and reaching a broad audience of stakeholders. Online “signage” should follow the minimum information guidelines above and may appear on the town, community or facility website if available. In some cases, communities may be active on social media sites such as Facebook or Twitter. These can be used as an opportunity for publicizing projects and information about how SRF funds are being used in the community. These online announcements/notices may be appropriate for settings where physical signage would not be visible to a wide audience. They can be a more cost-effective option than traditional signs or publicity in print media outlets. This option may be most useful where the community’s website is a well-recognized source of information for its residents.

In the case of some projects, such as nonpoint source or sponsorship projects, there might be additional opportunities for online publicity through partner agencies or organizations. This could take place either on the organization’s website or again through social media outlets.

States selecting projects that will implement this requirement through use of online & social media publicity should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project was wholly or partially funded with EPA funding
- Brief description of the project

- Brief listing of water quality benefits to be achieved

Suggested Language for Alternate Options

For any of the alternate implementation options listed above, SRF programs have discretion to structure their signage as they see appropriate. The language below is offered as an option for use in posters, pamphlets, brochures, press releases, or online materials. States may consider using the following:

“Construction of upgrades and improvements to the [Name of Facility, Project Location, or WWTP] were financed by the [Clean Water/Drinking Water] State Revolving Fund. The [CWSRF/DWSRF] program is administered by [State Agency] with joint funding from the U.S. Environmental Protection Agency and [State Name]. This project will (description of project) and will provide water quality benefits [details specifying particular benefits] for community residents and businesses in and near [name of town, city, and/or water body or watershed to benefit from project.] [CWSRF/DWSRF] programs operate around the country to provide states and communities the resources necessary to maintain and improve the infrastructure that protects our valuable water resources nationwide. “

For projects in certain areas, states should consider whether or not it is appropriate to include additional details about the projects. Specific benefits, such as reduction of CSO events, lessening of nutrient pollution, reducing contaminant levels or water pumping costs, or improvements to a particular water body, may be of interest to community residents. In these cases, including them would further serve to showcase positive efforts financed by the SRF programs. Additionally, for projects with components that meet Green Project Reserve (GPR) criteria, States may elect to detail these particular improvements. For example, the state could include quantitative improvements in energy efficiency or water conservation achieved by project upgrades. If the project includes green infrastructure components such as rain gardens and green roofs that have environmental and aesthetic benefits to the community, these can be described briefly as well. Again, this additional information can be included at the discretion of the state when it is appropriate, given the project type, location, and the type of signage or publicity effort selected.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment in the SRF Programs

FROM: Kiri Anderer, P.E., Acting Associate Branch Chief
Infrastructure Branch, OGWDW

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Date: 2020.12.11 07:55:52
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Michael Deane, Branch Chief
State Revolving Fund Branch, OWM

MICHAEL DEANE

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DEANE
Date: 2020.12.11 17:56:38 -05'00'

TO: SRF Branch Chiefs
Regions 1-10

Effective August 13, 2020, recipients and subrecipients of EPA funded assistance agreements, including borrowers under EPA funded revolving loan funds, 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.

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- 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).
- Telecommunications or video surveillance services provided by such entities or using such equipment.

- 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.

Applicability in the State Revolving Fund (SRF) Programs

Clean Water and Drinking Water SRF (CWSRF and DWSRF) programs may not expend equivalency funds for these products on or after August 13, 2020. States must ensure that equivalency assistance agreements include the telecommunications prohibition condition [provided by EPA's Office of Grants and Debarment](#) (OGD) in OGD's most recent EPA General Terms and Conditions. The condition must also be in construction contracts associated with equivalency assistance agreements.

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

The prohibition also applies to the CWSRF administrative funds (if states are billing those costs to the federal CWSRF capitalization grant) and the four DWSRF set-asides. States should be mindful of items such as cell phones, computers, and mobile WiFi routers or hotspots funded by those accounts.

If you have questions on the implementation of this grant condition, please contact Michael Deane at Deane.Michael@epa.gov or Kiri Anderer at Anderer.Kirsten@epa.gov.

Information on Requirements that Pass-Through Entities must “Flow Down” to Subrecipients

EPA is providing the following list of statutory, regulatory, and Executive Order requirements to assist recipients or “pass-through entities” who make subawards under the Uniform Grant Guidance (UGG) to identify potential Federal requirements that may apply to subrecipients on EPA funded projects per [2 CFR 200.331\(a\)\(2\)](#). The list is for informational purposes only and is not intended to be a comprehensive description of all requirements applicable to each EPA financial assistance award. How a specific requirement applies depends on the nature of the project and may require coordination between EPA and other Federal agencies. Pass-through entities should consult their EPA Project Officer for further advice if they believe any of these requirements impact a subaward.

Note that major EPA assistance programs involving construction such as the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs have their own regulations and guidance documents for complying with “Flow Down” requirements. Loans and similar transactions that CWSRF and DWSRF recipients enter into are not subawards for the purposes of the [2 CFR Part 200](#) UGG. The information below, therefore, does not apply to loans and similar transactions entered into by recipients of CWSRF and DWSRF capitalization grants.

1. Nondiscrimination Laws and Social Policies

These requirements, if applicable, apply to the organization receiving EPA financial assistance itself, rather than the project receiving EPA funding. Most EPA financial assistance recipients are subject to the laws and policies described below. This list of nondiscrimination and social policy requirements is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement. If it appears that one or more of these requirements may apply, pass-through entities should consult with their EPA Project Officer for advice.

a. Non-Discrimination Laws

Title VI of the Civil Rights Act of 1964, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, The Age Discrimination Act of 1975. These four laws prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability or age, in programs or activities receiving federal financial assistance. Pursuant to EPA’s regulations on “*Nondiscrimination in Programs receiving Federal Assistance from the Environmental Protection Agency*,” in [40 CFR Part 5](#) and [40 CFR Part 7](#) the pass-through entity must agree, and require all subrecipients to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age. The fact that the regulations do not address discrimination on the basis of age *does not* exempt recipients from compliance with the later-enacted Age Discrimination Act.

b. Executive Order 11246

Part III of Executive Order No. 11246 (September 24, 1965) as amended prohibits discrimination in Federally assisted construction activities. As provided in section 301 of the Executive Order, Pass-through entities must ensure that subrecipients include the seven clauses specified in section 202 of the Order in all construction contracts. Section 302 defines “Construction contract” as “any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.” Contracts less than \$10,000 are exempt from the requirements of the Order.

c. Disadvantaged Business Enterprises

EPA regulations at [40 CFR Part 33, “Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs”](#) set forth requirements for making good faith efforts to ensure that Disadvantaged Business Enterprises, including Minority Business Enterprises and Women’s Business Enterprises receive a fair share of contracts awarded with funds provided by EPA financial assistance agreements. These requirements apply to subrecipients in accordance with [40 CFR 33.102](#) and the definition of “Recipient” in [40 CFR 33.103](#).

d. Consultation with State and Local Officials

The Demonstration Cities and Metropolitan Development Act and the Intergovernmental Cooperation Act instructed federal agencies to consult with local officials to ensure smoother coordination of their assistance programs and to ensure that projects funded under federal programs are consistent with local planning requirements. Similarly, Executive Order 12372 as amended (1983) established procedures for intergovernmental review of federal financial assistance projects. EPA has implemented these requirements in [40 CFR Part 29](#).

The [Catalogue of Federal Domestic Assistance](#) entry for the pass-through entity’s agreement with EPA will specify whether intergovernmental review requirements are applicable. If intergovernmental review is required, and neither EPA nor the pass-through entity complied with [40 CFR Part 29](#) prior to award because the location of subaward projects had not been determined, the pass-through entity must comply with intergovernmental review requirements after award. Intergovernmental review requirements vary among the states. As provided at [40 CFR 29.9\(d\)](#) if a state does not have a single point of contact for intergovernmental review, the recipient must offer directly affected State, area-wide, regional and local officials an opportunity to comment on the subrecipient’s proposed project.

e. Clean Air Act and Clean Water Act

Section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), as implemented by Executive Order 11738 (1973), prohibit performance of Federal assistance agreements at facilities disqualified due to certain violations of the CAA or CWA. Disqualified facilities are listed in the [System for Award Management](#). Pass-through entities must ensure that subrecipients are not disqualified and that they are aware of the requirement to check SAM, to determine if facilities that will be used to perform contracts or subawards are listed in SAM.

2. Financial Management Policies

These policies apply to transactions financed by EPA financial assistance funds and apply to both pass-through entities and subrecipients on the basis of either regulatory requirement or the [General Terms and Conditions](#) (T&C) of the pass-through entity’s agreement with EPA. Pass-through entities should consult with their EPA Project Officer for advice if they have questions regarding how these policies apply to a particular subaward.

a. Federal Funding Accountability and Transparency Act

As set forth in the General Condition of the pass-through entity’s agreement with EPA entitled “Reporting Subawards and Executive Compensation” the pass-through entity must ensure that subrecipients comply with Federal Funding Accountability and Transparency Act (FFATA) reporting requirements. Pass-through entities may use the terms of their subaward agreement or other effective means to meet their responsibilities.

b. Suspension and Debarment

The pass-through entities responsibilities are described at [2 CFR Part 180, Subpart C](#) and the “Debarment and Suspension” T&C of the pass-through entity’s agreement with EPA. These requirements, which

include checking [SAM](#) to ensure that potential contractors, subrecipients and their principals and agents are not suspended, debarred or otherwise ineligible to participate in Federal assistance programs also apply to subrecipients. It is important to note that in addition to being precluded from all first tier contracts and all contracts requiring EPA approval in accordance with [2 CFR 180.220](#) under [2 CFR 1532.220](#) suspended or debarred parties may not receive EPA funded contracts in excess of \$25,000 at any tier. Also, at [2 CFR 1532.995](#) EPA has identified activities that suspended or debarred parties may not perform as a “Principal” in EPA financial assistance agreements and subawards.

c. Limits on Fees Charged by Individual Consultants

EPA’s Fiscal Year 2009 Appropriation Act (Pub. L. 111-8) restricts the amount of EPA financial assistance that recipients may use to compensate individual consultants. EPA implements this requirement at [2 CFR 1500.9\(a\)](#) and the “Consultant Cap” T&C. Pass-through entities must ensure that subrecipients comply with the limitation on compensation for individual consultants through the terms of their subaward agreements or another effective means. Additional information regarding when the consultant fee limit applies is available at 69 Fed. Reg. 18380 (April 7, 2004).

d. Management Fees

EPA policy prohibits recipients and subrecipients from charging management fees or making similar arrangements to receive EPA financial assistance in excess of direct or Federally approved indirect cost rates. This prohibition is implemented by the Management Fees T&C. Pass-through entities must ensure that subrecipients comply with this requirement through the terms of their subaward agreements or another effective means.

e. New Restriction on Lobbying, 40 CFR Part 34

Pass-through entities must ensure that subawards in excess of \$100,000 require that subrecipients submit certification and disclosure forms required by [40 CFR 34.110](#) and the “Lobbying and Litigation” T&C.

f. Uniform Grant Guidance Requirements (UGG)

Subrecipients must comply with [2 CFR Part 200](#) requirements when they award procurement contracts, make subawards, and incur other costs borne by EPA financial assistance. Pass-through entities must ensure that subrecipients comply with this requirement through the terms of their subaward agreements or another effective means.

3. Environmental Authorities

These requirements typically apply when an EPA funded project involves construction, remediation of contamination in water, soil, or buildings, and similar activities which alter the physical environment. Other environmental laws may apply to a project independent of EPA funding. Financial assistance for research, training, technical assistance and related outreach, environmental education, program operations, or installation of pollution control equipment on vehicles or vessels, are generally not affected by these requirements. Note that this list of environmental authorities is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement. If it appears that one or more of these requirements may apply, pass-through entities should consult with their EPA Project Officer for advice.

a. National Environmental Policy Act

Where applicable, the National Environmental Policy Act (NEPA) requires federal agencies to conduct an environmental review of their proposed actions, with a view toward ensuring informed decision-making and public input. EPA’s NEPA regulations are at [40 CFR Part 6](#), and note that certain EPA actions are exempt from NEPA. Pass-through entities and subrecipients may be required to assist EPA with NEPA compliance, where appropriate.

b. Executive Order No. 12898 (1994)

This Executive Order (E.O.) directs federal agencies to “make achieving environmental justice part of its mission.” Each covered agency is required to identify and address, as appropriate, any “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” One vehicle for EPA’s efforts to address environmental justice concerns is a NEPA analysis. Considering environmental justice generally involves identifying potential adverse effects on minority populations and low-income populations, as well as encouraging early public participation and the development of alternative or mitigating options as appropriate. The terms and conditions of the EPA award may require pass-through entities and subrecipients to assist EPA in ensuring the requirements of the Executive Order are met.

c. National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. Under the ACHP’s regulations, consultations generally occur in the first instance with state and/or tribal historic preservation officials, with direct ACHP involvement in certain cases. EPA funded projects with the potential to affect historic properties – *i.e.*, properties listed in or eligible for listing in the National Register of Historic Places – may implicate this statute. This may include, for instance, EPA-funded projects that involve alteration of structures (*e.g.*, asbestos abatement) that are historic properties or construction/remediation on culturally sensitive lands. Pass-through entities should work with their Project Officer to ensure that subrecipients are available to work with EPA on any required consultation process with the State or Tribal Historic Preservation Office prior to commencing the project to ensure compliance with section 106 of the NHPA.

d. Archeological and Historic Preservation Act

This law applies if archeologically significant artifacts or similar items are discovered after an EPA funded construction project has begun, and compliance may be coordinated with the NHPA, discussed above. The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific, prehistorical, historical, or archaeological data that may be lost during the construction of federally sponsored projects to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly. Pass-through entities must ensure that subrecipients performing construction projects are aware of this requirement and pass-through entities must notify EPA if the AHPA is triggered.

e. Protection of Wetlands, Executive Order 11990 (1973), as amended

EPA funded projects involving new construction in wetlands may implicate this Executive Order. The terms and conditions of the EPA assistance agreement may require pass-through entities to ensure that subrecipients assist EPA in determining whether a proposed project will be located in (or affect) a wetland, and if so, evaluating practicable alternative locations for the project or other mitigation.

f. Flood Plain Management, Executive Order 11988 (1977), as amended, and Executive Order 13690 (2015)

EPA funded projects that are in or will affect a flood plain are covered by these Executive Orders and Water Resources Council guidance. EPA assistance agreement terms and conditions may require pass-through entities to ensure that subrecipients work with EPA to evaluate practicable alternatives or other mitigation to reduce flood risks and protect flood plains.

g. Farmland Protection Policy Act

This statute requires EPA to use criteria developed by the Natural Resources Conservation Service (NRCS) to identify the potential adverse effects of Federal programs on farmland and its conversion to nonagricultural uses, to mitigate these effects, and to ensure that programs are carried out in a manner that is

compatible with the farmland preservation policies of state and local governments, and private organizations. Pass-through entities and their subrecipients may need to work with EPA or NRCS, as appropriate, to ensure compliance.

h. Coastal Zone Management Act

This statute requires EPA to ensure that Agency funded activities in coastal areas are consistent with state coastal zone management plans that have been approved by the Department of Commerce. Pass-through entities and subrecipients should consult directly with the state Coastal Zone Management agency during the planning stages to ensure that the EPA funded project will be consistent with the state's coastal zone management plan.

i. Coastal Barriers Resources Act

This statute restricts federal financial assistance that would encourage development in the Coastal Barriers Resources System, a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes, and adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. During the planning phase of a proposed project located in the Coastal Barriers Resources System, pass-through entities and subrecipients should consult with the state Coastal Zone Management agency to determine whether a proposed project will have an effect on the system, and if so, the alternative sites or mitigating measures that must be incorporated in the project's design.

j. Wild and Scenic Rivers Act

This statute prohibits federal assistance for water resource projects that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a congressionally designated wild and scenic river. Pass-through entities and subrecipients should consult with appropriate state or federal (National Park Service or Bureau of Land Management) agency to determine whether the project or any alternatives under consideration may affect a designated river.

k. Endangered Species Act (ESA)

This statute requires Federal agencies to ensure that their activities are not likely to jeopardize endangered species, adversely modify designated critical habitats, or incidentally take (injure or kill) endangered animals without authorization, in consultation with the appropriate federal wildlife agency (the U.S. Fish and Wildlife Service or National Marine Fisheries Service) as described in [50 CFR Part 402](#). The ESA consultation process is triggered when an action "may affect" ESA-protected species or critical habitat. Pass-through entities and subrecipients should coordinate with EPA to ensure consultation occurs where appropriate."

l. Magnuson-Stevens Fisheries Conservation and Management Act

Magnuson-Stevens Fisheries Conservation and Management Act as amended by The Sustainable Fisheries Act of 1996 is intended to manage and conserve Essential Fish Habitats (EFH). The National Marine Fisheries Service (NMFS) administers the Act. Pass-through entities and subrecipients must coordinate with NMFS to determine whether a proposed project may adversely affect an EFH. If an action may adversely affect an EFH, the subrecipient must complete an EFH consultation with NMFS.

m. Clean Air Conformity Act

This statute prohibits any Federal assistance for an activity within a non-attainment or maintenance area that fails to conform to an applicable State Implementation Plan. Pass-through entities and subrecipients should first consult with their state air program's web site to determine if an EPA funded activity is in a non-attainment or maintenance area. If the EPA funded activity is within a non-attainment or maintenance area the pass-through entity and subrecipient should consult with the state air program to determine conformity. Note that EPA regulations at [40 CFR 93.153\(c\)](#) exempt a number of activities including

planning, studies, technical assistance and remediation under the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA).

n. **Safe Drinking Water Act**

Precludes the use of EPA financial assistance for projects that would contaminate sole source aquifers. Pass-through entities and subrecipients must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the assistance recipient, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project. If the project could potentially affect ground water supplies, the assistance recipient, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures.