

**Attachment D**  
Clean Water State Revolving Fund Specification Requirements

## **Clean Water State Revolving Fund Specifications Requirements**

**State Revolving Fund:** This project is being financed through the Missouri State Revolving Fund, by the Water and Wastewater Loan Revolving Fund and federal Capitalization Grants to Missouri.

**Equal Employment Opportunity and Nondiscrimination in Employment – 41 CFR 60-4; E.O. 11246:** 41 CFR 60-4 published April 7, 1978 and amended October 3, 1980, requires that the SRF funding applicant and selected bidders comply with Executive Order 11246 for bids, contracts, and subcontracts for all federally assisted construction contracts exceeding \$10,000. The specifications explain the requirements for bidders and contractors under E.O. 11246.

- Bidders please see document titled “Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)”

**Disadvantaged Business Enterprises (DBE) (includes Minority-owned Business Enterprises/Women-owned Business Enterprises, MBE/WBE) – 40 CFR Part 33, 10 CSR 20-4.040(17), E.O. 11625 and 12138:** The applicant is an Equal Opportunity Employer and invites the submission of bids from Disadvantaged Business Enterprises.

- Bidders please see document titled “Missouri State Revolving Fund Procedures for Implementation Minority Business Enterprise/Women’s Business Enterprise”
- The selected bidders must complete the “Missouri State Revolving Fund Disadvantaged Business Enterprise (Minority and Women’s Business Enterprise) Utilization Worksheet”

**Employment of Unauthorized Aliens Prohibited – §285.530 RSMo:** Pursuant to §285.530.1, RSMo, the contractor assures that it, as well as its subcontractors, does not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri, and shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Further, the contractor assures that it, as well as its subcontractor shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

In accordance with §285.525 to 285.550, RSMo a general contractor or subcontractor of any tier shall not be liable when such contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of §285.530, RSMo if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of §285.530, RSMo and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor’s employees are lawfully present in the United States.

- The selected contractor(s) must complete the “Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization” form.
- In addition, the selected contractor(s) must enroll in the federal E-verify system, provide supporting documentation of enrollment, and provide verification documentation for enrollment in the Federal E-Verify system.

### **Davis-Bacon Act:**

- Bidders please see “Davis Bacon Act Requirements”
- Bidders please see “Davis-Bacon Act Requirements Funding Recipient Requirements”

**Contract Work Hours and Safety Standards Act – 40 U.S.C. 327-330:** The contractor(s) and subcontractor(s) shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5).

### **U.S. Environmental Protection Agency Certification of Non-segregated Facilities:**

- The selected bidders must complete this form.

**OSHA Training – §292.675, RSMo:** Any person signing a contract to work on the construction of public works for any public body shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction

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safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work on such construction project.

**Debarment and Suspension – 10 CSR 20-4.040(17); E.O. 12549:** The Code of Federal Regulations at Title 2, Part 180, prohibits participation in USEPA funded contracts by persons excluded or disqualified from doing business with the federal government. Bidders are responsible for advising the Owner if they are excluded or disqualified, and to check whether subcontractors they intend to use are excluded or disqualified. All tiers of subcontractors have the same responsibility to notify the one for which they are providing services if they are excluded or disqualified, and to check the status of any subcontractors they intend to use. Status can be checked on the System for Award Management (SAM) located on the Internet at <https://www.sam.gov/SAM/>. All subcontracts at any tier should include this language.

- The selected bidders must complete the “Certification Regarding Debarment and Suspension” form.

**Small Business Act – P.L. 100-590:** Prior to awarding contracts, the SRF funding applicant and any contractor awarding subcontracts must take the following affirmative steps in accordance with Section 129 of Public Law 100-590, Small Business Administration Reauthorization and Amendment Act of 1988:

- a. Placing Small Business in Rural Areas (SBRA) on solicitation lists;
- b. Ensuring that SBRA are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRA;
- d. Establishing delivery schedules, where the requirements of work will permit which would encourage participation by SBRA; and
- e. Utilizing the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate.

**Award of Contract – 10 CSR 20-4.040(18):** The applicant will award the contract to the lowest responsive, responsible bidder. The contract must be for a firm fixed-price.

The contract award will be awarded only to responsible contractors possessing the ability to perform successfully, which will be determined by considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**Privity of Contract:** The Missouri Department of Natural Resources, its divisions, nor its employees are or will be a party to the contract(s) at any tier.

**Protests:** Neither the U.S. Environmental Protection Agency (USEPA) nor the Missouri Department of Natural Resources will be involved in protest(s) and their resolution.

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**Domestic Products Procurement Law – 10 CSR 20-4.040(17); §§34.350 - 34.359 RSMo:** All manufactured goods or commodities used or supplied in the performance of any contract or subcontract awarded on this project shall be manufactured, assembled or produced in the United States, unless obtaining American-made products would increase the cost of the contract by more than ten percent (10%). In accordance with §34.350 through 34.359 RSMo, a waiver may be requested from the owner.

- The selected bidders must complete the “Domestic Products Procurement Act – §§34.350 - 34.359 RSMo Certification” form.

**Anti-Lobbying Act – P.L. 101-121:** Sub-recipients who request or receive from the grant recipient a sub-grant, contract, or sub-contract exceeding \$100,000, at any tier under a federal grant shall comply with the Anti-Lobbying Act, Section 319 of Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to the next tier above.

- Selected bidders must complete one of the following forms:
  - If the selected bidder lobbied on the behalf of this project, the contractor will complete the “Disclosure of Lobbying Activities” form.
  - If the selected bidder did not lobby on the behalf of this project, the contractor will complete the “Certification Regarding Lobbying” form.

**Record Retention:** The contractor(s) and sub-contractor(s) shall retain all project related records for three years after final payment(s) and all other pending matters are closed.

**Access to Construction Site and Contract Records – 10 CSR 20-4.040(17); Clean Water Act sec. 308 (B)i:** The contractor shall provide access to the project site and project records by, the Missouri State Auditor, the Missouri Department of Natural Resources, the Missouri Clean Water Commission, the Environmental Improvement and Energy Resources Authority, the USEPA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

**Payment Provisions – 10 CSR 20-4.040(20):** The owner shall make payment to the contractor in accordance with §8.960, RSMo. Retainage can be no more than 5%.

**False Claims Act:** The contractor(s) and sub-contractor(s), if required by future OMB guidance, shall promptly refer to the State of Missouri or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

**Clean Air Act - 42 U.S.C. 7506(C):** The contractor(s) and sub-contractor(s) shall comply with the Clean Air Act.

**Clean Water Act - 33 U.S.C. 1368:** The contractor(s) and sub-contractor(s) shall comply with the Clean Water Act.

**Energy Efficiency Requirements – Energy Policy and Conservation Act (P.L.94-163, 89 Stat. 871):** The contractor(s) and sub-contractor(s) shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

**Recycled Materials – U.S.C. 6962 (RCRA Section 6002):** In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA), preference shall be given to the procurement of specific products containing recycled materials identified in guidelines developed by the USEPA. Current guidelines are contained in 40 CFR Part 247-254.

**Historical and Archaeological – P.L. 93-291:** If during the course of construction evidence of deposits of historical or archaeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Missouri Department of Natural Resources and the Director, Division of State Parks, P.O. Box 176, Jefferson City, Missouri 65102-0176, Telephone (573) 751-2479. The contractor shall halt any further disturbances of the deposits until notified by the owner that they may proceed. The owner will issue a notice to

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proceed only after the state official has surveyed the find and made a determination to the Missouri Department of Natural Resources and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

**Missouri Products – Chap. 71.140 RSMo:** Preference shall be given to Missouri products in accordance with Chapter 71.140, Revised Statutes of Missouri.

- This applies to loan only funded projects. Please contact the solicitor to determine if applicable to this project.

**Missouri Firms – §34.076 RSMo:** Pursuant to §34.076, Revised Statutes of Missouri, preference shall be given to those persons doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less. In addition, in order for a non-domiciliary Missouri bidder to be successful, his bid must be that same percentage lower than a domiciliary Missouri bidder's bid, as would be required for a Missouri bidder to successfully bid in the non-domiciliary's state.

- This applies to loan only funded projects. Please contact the solicitor to determine if applicable to this project.

**Prohibition on certain telecommunications and video surveillance services or equipment Certification – 2 CFR 200.216:** In accordance with 2 CFR 200.216, recipients and sub-recipients are prohibited from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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).

**Anti-Discrimination Against Israel Act – §34.600, RSMo:** In compliance with §34.600 RSMo, the contracting company certifies that it is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, in accordance with §34.600, RSMo. Any contract that fails to comply with the provisions of this section shall be void against public policy.

- This provision does not apply to contracts with a total potential value of less than one hundred thousand dollars or to contractors with fewer than ten employees.

**American Iron and Steel – Sec. 608(a) of the Federal Water Pollution Control Act:** In accordance with Sec. 608(a) of the Federal Water Pollution Control Act, the Participant assures that it, as well as its contractors and sub-contractors, will only use iron and steel products in the Project which are produced in the United States in a manner consistent with United States obligations under international agreements. The term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

The Participant understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in §608(d) of the Federal Water Pollution Control Act.

The contractor shall submit all AIS certifications for any iron and steel requested for reimbursement. No applicable items will be reimbursed without the necessary AIS documentation.

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- Bidders please see AIS guidance titled “Implementation of American Iron and Steel provisions.”
- Bidders please see AIS waivers:
  - De-Minimis Waiver
  - National Product Waiver for Pig Iron and Direct Reduced Iron for State Revolving Fund Projects
  - National Product Waiver for Minor Components within Iron and Steel Products (with cost ceiling) for State Revolving Fund Projects
- Contractors bidding on this project must complete and include with their bid the “American Iron and Steel Certification” form.

### **Stormwater Permit – 10 CSR 20-6.200**

The Department requires the SRF funding applicant to verify their existing National Pollutant Discharge Elimination System (NPDES) permit(s) cover stormwater discharges or obtain the necessary permit(s). The following scenarios may be applicable:

1. The SRF funding applicant is a regulated Municipal Separate Storm Sewer System (MS4) per 10 CSR 20-6.200(1)(D)24 and their NPDES MS4 permit outlines compliance with construction stormwater requirements,
2. The design flow of the wastewater treatment plant is greater than or equal to 1 million gallon per day and the NPDES permit also regulates construction stormwater, or
3. Neither 1 or 2 above applies and the proposed project disturbs one (1) or more acres of total land area or less than one (1) acre as part of a common plan or sale resulting in the need for a land disturbance permit to discharge construction stormwater.

For further information, contact the Missouri Department of Natural Resources, Water Protection Program, Operating Permits Section, P.O. Box 176, Jefferson City, Missouri 65102. Telephone: (573) 522-4502.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS  
(EXECUTIVE ORDER 11246)**

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign

two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than once month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory affect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these Specifications are being carried out.

n. Ensure that all facilities and company activities re nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female

construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications providing that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these Specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligation under these Specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these Specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these Specifications, the Director shall proceed in accordance with 41-CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION  
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY  
(EXECUTIVE ORDER 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
All years	%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any)

Construction Technical Assistance Guide

[https://www.dol.gov/sites/dolgov/files/OFCCP/Construction/508\\_cetag\\_12032020.pdf](https://www.dol.gov/sites/dolgov/files/OFCCP/Construction/508_cetag_12032020.pdf)

## MISSOURI STATE REVOLVING FUND

### Procedures for Implementation

#### Minority Business Enterprise/Women's Business Enterprise

Each bidder/offeror must fully comply with the requirements, terms, conditions of 40 CFR Part 33 and DNR's regulations to award a fair share of subagreements to minority and women's business enterprises. The bidder/offeror commits itself to taking affirmative steps and complying with the Six Good Faith Efforts contained herein. Bidders/offerors will take affirmative steps prior to submission of bids/proposals.

#### Affirmative Steps

1. When feasible, segmenting total work requirements to permit maximum minority business and women business enterprises (MBE/WBE) participation.
2. Assuring that MBEs and WBEs are solicited whenever they are potential sources of goods or services. This step may include:
  - a. Sending letters or making other personal contacts with MBEs and WBEs (e.g. those whose names appear on lists prepared by the Missouri Office of Administration, the Missouri Department of Transportation, or the funding recipients and other MBEs and WBEs known to the bidder/offeror.) MBEs and WBEs should be contacted when other potential subcontractors are contacted, within reasonable time (fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:
    - i. Specific description of the work to be subcontracted;
    - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
    - iii. Date the quotation is due to the bidder/offeror;
    - iv. Name, address, and phone number of the person in the bidder/offeror's firm whom the prospective MBE/WBE subcontractor should contact for additional information.
  - b. Sending letters or making other personal contacts with local, state, federal and private agencies and DBE associations relevant to the project. Such contacts should provide the same information provided in the direct contacts to DBE firms.
3. Where feasible, establishing delivery schedules which will encourage participation by MBEs and WBEs.

## Determination of Compliance

It is to be noted that bidders/offerors must demonstrate compliance with DBE requirements in order to be deemed responsible. Demonstration of compliance shall include, but is not limited to, the following information:

1. Names, addresses and phone numbers of MBEs/WBEs expected to perform work;
2. Work to be performed by the MBEs and WBEs;
3. Aggregate dollar amount of work to be performed by MBEs and WBEs, showing aggregate to MBEs and aggregate to WBEs separately;
4. Description of contacts to MBE and WBE organizations, agencies and associations which serve MBEs/WBEs, including names of organizations, agencies and associations and dates of contacts;
5. Description of contacts to MBEs and WBEs, including number of contacts, fields, (i.e. equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.

The Six Good Faith Efforts, and Minority and Women's Business Enterprise Utilization Worksheet shall be included in the specifications.

All bidders/offerors should complete the Minority and Women's Business Enterprise Utilization Worksheet and submit to the funding recipient prior to contract award.

Additional information on DBE requirements can be found at [https://www.epa.gov/osbp/dbe\\_team.htm](https://www.epa.gov/osbp/dbe_team.htm)

**Lists of Certified Disadvantaged Business Enterprises** – To help comply with the Six Good Faith Efforts, please visit the following web sites to access existing lists of certified DBEs:

Small Business Administration <https://www.sba.gov/search?query=dynamic+small+business+search>

Missouri Department of Transportation <https://www.modot.mo.gov/ecr/index.htm>

Office of Equal Opportunity <https://oeo.mo.gov/>

The contractor shall not discriminate on the basis of race, color, nation 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.

(Funding recipients may establish alternative methods of compliance equivalent to or more stringent than the above.)

### **“Six Good Faith Efforts”**

The Six Good Faith Efforts are required methods to be used by all Loan and Grant recipients to ensure that all disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance dollars.

The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor’s receipt of payment from the recipient.

A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

If a DBE subcontractor fails to complete work under its subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described below if soliciting a replacement subcontractor.

A recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its Fair Share Goals. The current Fair Share Goals are 10% for Minority Business Enterprises and 5% for Women Business Enterprises in accordance with 40 CFR, Part 33, Subpart D.

#### **The Six Good Faith Efforts are:**

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

**MISSOURI STATE REVOLVING FUND  
DISADVANTAGED BUSINESS ENTERPRISE  
(MINORITY AND WOMEN'S BUSINESS ENTERPRISE)  
UTILIZATION WORKSHEET**

Funding Recipient \_\_\_\_\_

Project No.: \_\_\_\_\_

Contractor/Engineer: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Contact Person: \_\_\_\_\_

Contractor MBE/WBE: Yes  No

OA / MODOT / EPA Certification No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Email Address \_\_\_\_\_

Amount of Contract \_\_\_\_\_ Total Contract MBE% \_\_\_\_\_ WBE % \_\_\_\_\_

1. MBE \_\_\_\_\_ Subcontractor \_\_\_\_\_

WBE \_\_\_\_\_ Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email Address: \_\_\_\_\_

OA MBE/WBE Certification Number \_\_\_\_\_

MODOT MBE/WBE Certification (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Amount of Subcontract \_\_\_\_\_

Scope of Work \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. MBE \_\_\_\_\_ Subcontractor \_\_\_\_\_

WBE \_\_\_\_\_ Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_

Email Address: \_\_\_\_\_

OA MBE/WBE Certification Number \_\_\_\_\_

MODOT MBE/WBE Certification (Yes) \_\_\_\_\_ (No) \_\_\_\_\_

Amount of Subcontract \_\_\_\_\_

Scope of Work \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. MBE \_\_\_\_\_ Subcontractor \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Email Address: \_\_\_\_\_  
OA MBE/WBE Certification Number \_\_\_\_\_  
MODOT MBE/WBE Certification (Yes) \_\_\_\_\_ (No) \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. MBE \_\_\_\_\_ Subcontractor \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Email Address: \_\_\_\_\_  
OA MBE/WBE Certification Number \_\_\_\_\_  
MODOT MBE/WBE Certification (Yes) \_\_\_\_\_ (No) \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. MBE \_\_\_\_\_ Subcontractor \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Email Address: \_\_\_\_\_  
OA MBE/WBE Certification Number \_\_\_\_\_  
MODOT MBE/WBE Certification (Yes) \_\_\_\_\_ (No) \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. MBE \_\_\_\_\_ Subcontractor \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Email Address: \_\_\_\_\_  
OA MBE/WBE Certification Number \_\_\_\_\_  
MODOT MBE/WBE Certification (Yes) \_\_\_\_\_ (No) \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prepared By: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

SEP 08 2005

## EXECUTIVE ORDER

05-30

  
SECRETARY OF STATE  
COMMISSION DIVISION

WHEREAS, since 1990, the Office of Administration, State of Missouri has endeavored to "establish and implement a plan to increase and maintain the participation of certified socially and economically disadvantaged small business concerns or minority business enterprises, directly or indirectly, in contracts for supplies, services, and construction contracts, consistent with targets determined after an appropriate study conducted to determine the availability of socially and economically disadvantaged small business concerns and minority business enterprises in the marketplace;" pursuant to Senate Bills 808 & 672 passed by the General Assembly and signed into law by then Governor Ashcroft; and

WHEREAS, such a study was conducted and found statistically significant disparities in state contractual expenditures for construction and the purchase of goods and services, as compared to the ready, willing and able minority and women-owned business enterprises (M/WBEs) in the state; and

WHEREAS, Executive Order 98-21 established goals to increase the percentage of goods and services procured from certified M/WBEs; and

WHEREAS, the goals for M/WBE participation established in Executive Order 98-21 have not been substantially met; and statistically significant disparities in state contractual expenditures for construction and the purchase of goods and services from minority and women-owned businesses in the state still exist; and

WHEREAS, on September 27, 2004, Behavioral Interventions, Inc. filed a lawsuit in the U.S. District Court, in the Western District of Missouri challenging the propriety of Missouri's M/WBE program. In January 2005, a preliminary injunction was issued ordering the Office of Administration, State of Missouri to suspend the placing of M/WBE requirements in any procurement by the State of Missouri. Because of the uncertainty created in the aftermath of the litigation, the program has undergone comprehensive revision not only to withstand constitutional scrutiny, but also to more adequately address the compelling needs and obstacles of minority and women-owned businesses to gain greater access to business opportunities, both public and private, within the state of Missouri; and

WHEREAS, the State of Missouri is dedicated to the compelling governmental interest in remedying race and sex based discrimination in a manner consistent with state and federal law; and

WHEREAS, the State of Missouri is committed to enhancing the economic health and prosperity of the state by promoting the greater use of minority and women-owned businesses. Job creation for Missouri residents, and therefore the success of minority and women-owned businesses, are paramount goals of this Administration; and

WHEREAS, the State of Missouri will gain enormously from improvements in expanded business opportunities for Missouri residents created by the expansion of minority and women-owned businesses and through the additional tax revenues generated by those individuals and businesses; and

WHEREAS, to further these goals, which are of the highest priority of this Administration, it is the policy of this Administration to develop economic opportunities for minority and women-owned businesses wherever possible.

NOW, THEREFORE, I, Matt Blunt, Governor of the State of Missouri, under the authority vested in me under the constitution and the laws of this state, to fulfill the mandate of the General Assembly in Senate Bills 808 & 672 and to pursue the compelling interest of remedying discrimination, do hereby declare the following narrowly tailored policies and procedures shall be adopted by the Executive Branch of state government in procuring all types of goods and services:

1. The Office of Supplier and Workforce Diversity (OSWD) is established to replace the Office of Equal Opportunity. All the authority, powers and privileges of the Office of Equal Opportunity is transferred to the OSWD. The Director of OSWD shall be appointed by the Governor. The Director of OSWD shall report to the Commissioner of Administration. The Director shall have primary responsibility for assisting in the coordination and implementation of affirmative action throughout all departments of the executive branch of state government, including programs to increase M/WBE participation, and advising the Governor on issues regarding equal employment opportunity, affirmative action, and efforts to administer affirmative action goals and timetables for implementation throughout the departments of the executive branch.

The Office of State Compliance Officer is hereby abolished. The Director of OSWD shall be the State's chief compliance officer for the executive branch of state government to ensure that the State of Missouri is complying with all federal and state laws concerning equal employment opportunity and affirmative action. If needed, the Director shall assist each department in developing an Affirmative Action Plan of Implementation. Additionally, the Director of OSWD shall review progress reports of the departments and shall meet biannually with each department director to evaluate departmental results and determine the course of future affirmative action goals, timetables, recruiting, planning, and implementation. The results of each meeting shall be reported in writing to the Governor and Commissioner of Administration.

Not later than January first of each calendar year, the Director of OSWD shall provide a report to the Governor and the Commissioner of Administration which summarizes the activities of each department pursuant to this Order and which contains recommendations for additional programs to accomplish the purposes of this Order.

The Commissioner of Administration shall provide the Director of OSWD with such facilities, staff, resources, equipment, and supplies as are necessary to carry out the duties set forth herein. The Director of OSWD shall submit a proposal each fiscal year to the Commissioner of Administration detailing the needs of the Office of Supplier and Workforce Diversity.

2. All state agencies shall continue to make every feasible effort to target the percentage of goods and services procured from certified MBEs and WBEs to 10% and 5%, respectively. These efforts shall include participation in an Executive Branch Contract Compliance Council which shall, in cooperation with the OSWD, review procurement efforts to assist in meeting the requirements of this Executive Order.
3. The Divisions of Purchasing and Materials Management (PMM) and Facilities Management, Design and Construction (FMDC) within the Office of Administration shall be authorized to implement the following programs to increase M/WBE procurement:
  - a. PMM shall be authorized to encourage prime contractors to subcontract with M/WBEs on all contracts of \$100,000 or greater. OSWD contracts shall include a provision for participation which will allow the bidders to tailor a plan to fit the contract. Mandatory percentage goals of M/WBE participation shall not be established in violation of federal or state law. M/WBE participation shall be encouraged by PMM in consultation with OSWD and the user agency depending on the availability of M/WBE vendors in the applicable commodity/service and geographical area. PMM shall consider M/WBE participation as a significant factor in a contract bid. The M/WBE participation will be evaluated along with other criteria in the award of a bid. It is intended that 10% MBE and 5% WBE percentage is desired. The participation can be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation.

OSWD in conjunction with PMM shall also appoint a M/WBE Purchasing Manager for the purpose of promoting and coordinating the participation of M/WBEs in State of Missouri contracts.

b. FMDC shall be authorized to evaluate M/WBE participation in design contracts, as part of the quality-based selection process, for construction projects worth \$1.5 million or more. On contracts with lesser value, FMDC shall make special efforts to target M/WBEs as prime contractors. Overall participation targets for each fiscal year shall be 10% MBE and 5% WBE; however, mandatory percentage goals shall not be established in violation of federal or state law. The targets may be met through the use of prime contractors, subcontractors, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation.

FMDC shall also be authorized to seek participation of M/WBEs on construction contracts. The targets shall be set on a project by project basis by FMDC in consultation with the OSWD, taking into account the availability of M/WBE contractors in the applicable geographic area and construction trade, with the overall participation targets for each fiscal year at 10% MBE and 5% WBE. The targets may be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation.

c. Both FMDC and the PMM shall establish policies or rules to implement these programs which shall include a waiver provision for prime contractors who make a good faith effort to attain such targets but do not succeed. They shall also establish enforcement procedures in cooperation with the OSWD to assist contractors to meet subcontracting commitments. Their programs shall be reviewed annually to determine whether targets should be modified.

d. FMDC and PMM are authorized and directed to identify and consult with such entities as the St. Louis Minority Business Council, the Kansas City Minority Supplier Council and the Kansas City Council of Women Business Owners in identifying M/WBEs to participate in state procurements.

4. OSWD shall monitor the programs and work with FMDC and PMM in their implementation. The OSWD shall have the following responsibilities and carry out the following tasks:

a. to actively recruit, facilitate and serve as a clearinghouse for M/WBE contractors to participate in the programs;

b. to cooperate with the PMM and the FMDC in the administration and enforcement of the M/WBE participation programs;

c. to cooperate with the PMM and the FMDC in the development of policies, forms, and procedures to carry out the requirements of the M/WBE participation programs;

d. to participate in M/WBE target setting;

e. to perform fact-gathering and record-keeping to determine both the effectiveness of state participation programs and the availability and utilization of eligible M/WBEs on individual projects, including levels of participation and availability in specific areas;

f. to certify contractors as M/WBEs;

g. to assess the continuing need for M/WBE participation targets for specific contracting areas;

h. to monitor contractor participation with M/WBE targets; and

- i. to recommend sanctions for contractors who fail to faithfully execute M/WBE participation plans during the course of contract performance.
5. The programs shall be reviewed annually to monitor the level of M/WBE participation achieved in state contracting areas during the previous year. An assessment of the programs and whether their continuation is necessary shall be delivered to the Governor and the General Assembly. After it is determined that M/WBEs participate in state contracts in a manner commensurate with their presence and capability in the state marketplace, the programs set forth in section 2 will be terminated.
6. Executive Order No. 98-21 (1998) and article II of Executive Order 94-03 (1994) are hereby superseded and replaced by this Executive Order.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 8th day of September, 2005.

**Matt Blunt**  
Governor

**ATTEST:**

**Robin Carnahan**  
Secretary of State

OCT 21 2015

EXECUTIVE ORDER  
15-06SECRETARY OF STATE  
COMMISSIONS DIVISION

WHEREAS, the State of Missouri is committed to enhancing the economic health and prosperity of Minority and Women Business Enterprises (M/WBEs) through the use of M/WBE contract benchmarks established in state contracts for supplies, services, and construction that are consistent with §§37.020 – 37.023, RSMo, and the findings of the most current disparity study; and

WHEREAS, upon funding being appropriated by the General Assembly in 2013, the Office of Administration (OA) commissioned a Disparity Study which was completed on October 24, 2014, that studied the utilization of M/WBEs in state contracts and the availability of M/WBEs in the applicable marketplace; and

WHEREAS, Executive Order 14-07 established the Disparity Study Oversight Review Committee to review the findings of the 2014 Disparity Study and to produce meaningful recommendations to assist the State of Missouri in developing a contracting process that is inclusive, promotes diversity, and provides greater opportunity for M/WBEs; and

WHEREAS, after conducting a thorough review and analysis of the findings of the 2014 Disparity Study, the Disparity Study Oversight Review Committee submitted its report to the Governor on January 27, 2015; and

WHEREAS, the Disparity Study Oversight Review Committee's report sets forth recommendations to help eliminate the lingering effects of discrimination to ensure a level playing-field for all Missouri business owners; and

WHEREAS, on September 14, 2015, the Ferguson Commission, created pursuant to Executive Order 14-15, released its final report which called for Missouri to implement a statewide M/WBE program "with outcomes measures that incorporate capacity building, mentoring, and education with respect to the state and local procurement system;" and

WHEREAS, the State of Missouri is dedicated to the compelling governmental interest of remedying race and sex based discrimination in a manner consistent with state and federal law.

NOW, THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, in recognition of the obligations of the State of Missouri and by virtue of the authority vested in me by the Constitution and the Laws of the State of Missouri, do hereby state that the following narrowly tailored policies and procedures shall be adopted by the Executive Branch of state government in procuring goods and services:

1. All state agencies shall make every feasible effort to increase the percentage of goods and services procured from certified M/WBEs in order to achieve the annual goals of 10% MBEs and 10% WBEs of all annual Executive Branch procurement funds. These efforts shall include participation in an Executive Branch Contract Compliance Council which shall, in cooperation with the Office of Administration, Office of Equal Opportunity (OEO), review procurement efforts to assist in meeting the requirements of this Executive Order.
2. Both the Division of Purchasing and Facilities Management, Design and Construction (FMDC) within the Office of Administration shall be authorized to implement the following program to increase M/WBE procurements:
  - a. Division of Purchasing and FMDC shall encourage prime contractors to subcontract with M/WBEs on state contracts. Division of Purchasing and FMDC contracts are permitted to include a provision setting forth participation of M/WBEs as prime contractors or subcontractors who perform a commercially useful function. M/WBE participation requirements shall be determined by the Division of Purchasing and FMDC, in consultation with OEO and the user agency, by evaluating the availability of M/WBE vendors in the applicable commodity/service and geographical area as determined by the most recent disparity study and other applicable factors. Division of Purchasing and FMDC shall use individual contract percentages to help meet the

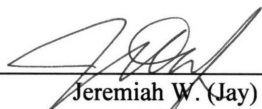
state's annual program goals. The M/WBE participation will be evaluated for responsiveness along with other criteria in the award of a bid. The participation can be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation.

- b. Division of Purchasing and FMDC shall revise their policies and regulations to further implement this program which shall include a waiver provision for prime contractors who make a good faith effort to take all necessary and reasonable steps to attain such percentages but are otherwise unable to achieve them. Division of Purchasing and FMDC shall also establish enforcement procedures, in cooperation with OEO and the Contract Oversight Office within the Office of Administration, which shall include consequences for failure to meet percentage commitments unless a good faith waiver is obtained from the Division of Purchasing or FMDC, respectively.
  - c. Division of Purchasing and FMDC are authorized and directed to identify and consult with such other certifying entities as recommended by OEO in order to facilitate M/WBEs to participate in state procurements.
3. The Office of Administration shall also be authorized to:
- a. Conduct a comprehensive review of OEO and determine the need for increased funding and personnel to enable OEO to carry out the work it has been assigned.
  - b. Evaluate the state's current M/WBE eligibility standards and determine what revisions, if any, should be considered to applicable statutes and regulations. This includes an evaluation of whether M/WBE eligibility should be capped based upon a firm's gross income and/or personal net worth. The Office of Administration should refer to the Disparity Study and the Committee's report as a reference regarding potential revisions to the program's eligibility standards.
  - c. Research existing bonding and financing programs for small vendors that enhance access to bonding and working capital in order to reduce barriers to business development and success, and determine the feasibility of developing such a program within OEO.
  - d. Evaluate the existing experience and surety bonding requirements and determine what adjustments, if any, should be considered to facilitate increased M/WBE participation.
  - e. Evaluate the possibility of lengthening solicitation periods for vendors, whenever possible, in an effort to increase M/WBE participation.
  - f. Research the feasibility and consider establishing a Mentor-Protégé Program within OEO, whereby a larger firm provides instruction and training to an emerging firm to increase the protégé's skills, capacities, and business areas.
  - g. Educate and advise state agencies on implementing internal procedures that ensure compliance with §8.690 RSMo.
  - h. Implement an electronic contracting system that provides access to state contracting information and collects measureable data to document the achievement of M/WBE goals.
4. OEO shall work with the Division of Purchasing and FMDC in the implementation of this Executive Order, and shall have the following responsibilities:
- a. Actively recruit, certify, and serve as a clearinghouse for M/WBEs to participate in the program.
  - b. Partner with agencies and organizations that conduct similar services that can provide technical assistance and supportive services.

- c. Cooperate with the Division of Purchasing, FMDC, and the Contract Oversight Office in the administration and enforcement of the M/WBE participation program and contract requirements.
  - d. Cooperate with the Division of Purchasing and FMDC in the development of policies, forms, and procedures to carry out the requirements of the M/WBE participation program.
  - e. Provide guidance to the Division of Purchasing and FMDC in the setting of M/WBE individual contract percentages.
  - f. Review and record the effectiveness of the state agencies' participation in the program in light of the availability and utilization of eligible M/WBEs on individual contracts, and make recommendations to the agencies for improvement and enforcement of the program.
  - g. Provide outreach to M/WBEs to educate firms about the program, the state's procurement process, and business elements such as obtaining bonding, lines of credit, or other related services. Outreach efforts shall also serve to foster enhanced working relationships between M/WBEs and prime contractors.
  - h. Recommend sanctions for contractors who fail to faithfully execute M/WBE participation requirements during the course of contract performance.
5. OEO shall review the program annually to monitor the level of M/WBE participation achieved in state contracting areas during the previous fiscal year. An assessment of the program and whether the continuation is necessary shall be prepared by OEO and delivered to the Governor and the General Assembly by March after the completion of the fiscal year. After it is determined by OEO that M/WBEs participate in state contracts at a level commensurate with their presence and capability in the state marketplace, then the program set forth in this Executive Order shall be terminated. If the program is still deemed to be necessary on March 1, 2019, a new Disparity Study should be conducted and a new Disparity Study Oversight Review Committee should be appointed to review the results of that study.
6. This Order shall take effect immediately and supersedes Executive Order 05-30.



IN WITNESS WHEREOF, I have hereunto set my hand and cause to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 21st day of October, 2015.

  
Jeremiah W. (Jay) Nixon  
Governor

ATTEST:

  
Jason Kander  
Secretary of State



## Certification Regarding Debarment and Suspension

Applicant Name: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project No.: \_\_\_\_\_ SAM.gov UEI No.: \_\_\_\_\_

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

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental (federal, state, or local) entity;
- b) Have not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against them for:
  - 1) 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;
  - 2) Violation of federal or state antitrust statutes relating to the submission of offers; or
  - 3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental 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 certification, had one or more public transactions (federal, state, or local) terminated for cause or default.

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

I am able to certify to the above statements.

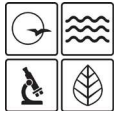
I am unable to certify to the above statements and attached my explanation.

\_\_\_\_\_  
Typed Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date



MISSOURI DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF ENVIRONMENTAL QUALITY  
FINANCIAL ASSISTANCE CENTER

## **Certification Regarding Debarment and Suspension Instructions**

The Missouri Department of Natural Resources receives assistance from the federal government, and the funds provided to a community constitute a sub-agreement. Accordingly, each prospective recipient of a grant, loan, or cooperative agreement and any contractor or subcontractor must agree to fully comply with Executive Order 12549, 2 C.F.R. Part 180, and 2 C.F.R. Part 1532 regarding Debarment and Suspension.

“Principals,” for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within an entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

The prospective grant, loan, or cooperative agreement recipient should return the signed certification, and explanation if needed, with its application to:

Missouri Department of Natural Resources  
Financial Assistance Center  
PO Box 176  
Jefferson City, MO 65102-0176

Or email to [fac@dnr.mo.gov](mailto:fac@dnr.mo.gov).

The recipient of funding should also obtain a certification from their consulting engineer and prime contractor. The funding recipient shall also check the status on the System for Award Management (SAM) located on the Internet at <https://www.sam.gov/portal/public/SAM/>.

Each prospective subcontractor should submit a completed certification or explanation to the prime contractor for the project.

U.S. ENVIRONMENTAL PROTECTION AGENCY  
WATER QUALITY OFFICE

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related sub-contracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name and Title of Signer \_\_\_\_\_  
(Print or Type)

Firm Name \_\_\_\_\_

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.



## Instructions for Completing the Business Entity Certification Form

### Box A: Non-Business Entity

Fill in Box A only if applicant qualifies for one of the following types of entities:

1. Self-employed individuals with no employees,
2. State agencies,
3. Federal government entities, or
4. Entities utilizing the services of “direct sellers” as defined in §288.034.12(17), RSMo.

### Box B or Box C: Business Entity

Complete Box B or C if the applicant is a “business entity” as defined in [§285.525, RSMo](#). Business entity includes Missouri schools, Missouri universities (other than stated in Box C), out-of-state agencies, out-of-state schools, out-of-state universities, and *political subdivisions*.

Most State Revolving Fund applicants are political subdivisions; and therefore, would need to fill out Box B if they have not submitted documentation previously or Box C if they already had work authorization documentation on file with a state agency or public university on or after September 1, 2009.

For questions, contact the Missouri Department of Natural Resources’ Financial Assistance Center at [fac@dnr.mo.gov](mailto:fac@dnr.mo.gov), 573-751-1192, or toll free 800-361-4827.

**BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,  
AND AFFIDAVIT OF WORK AUTHORIZATION**

**BUSINESS ENTITY CERTIFICATION:**

**The bidder/contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.**

**BOX A:** To be completed by a non-business entity as defined below.

**BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at [http://www.dhs.gov/xprevprot/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm).

**BOX C:** To be completed by a business entity who has already submitted documentation with a notarized date on or after **September 1, 2009**, to a Missouri state agency including Division of Purchasing and Materials Management.

**Business entity**, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

**BOX A – CURRENTLY NOT A BUSINESS ENTITY**

I certify that \_\_\_\_\_ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

I am a self-employed individual with no employees, **OR**

The company that I represent utilizes the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if \_\_\_\_\_ (Company/Individual Name) is awarded a contract for the services requested herein under \_\_\_\_\_ (Bid/SFS/Contract Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then, prior to the performance of any services as a business entity, \_\_\_\_\_ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the \_\_\_\_\_ (insert agency name) with all documentation required in Box B of this exhibit.

_____ Authorized Representative’s Name (Please Print)	_____ Authorized Representative’s Signature
_____ Company Name (if applicable)	_____ Date

**BOX B – CURRENT BUSINESS ENTITY STATUS**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530.

\_\_\_\_\_  
Authorized Business Entity  
Representative's Name (Please Print)

\_\_\_\_\_  
Authorized Business Entity  
Representative's Signature

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

As a business entity, the bidder/contractor must perform/provide the following. The bidder/contractor should check each to verify completion/submission:

- Enroll and participate in the E-Verify federal work authorization program (Website: [http://www.dhs.gov/xprevprot/programs/gc\\_1185221678150.shtm](http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm); Phone: 888-464-4218; Email: [e-verify@dhs.gov](mailto:e-verify@dhs.gov)) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND
- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include a page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed, at minimum, by the bidder/contractor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the bidder's/contractor's name and company ID, then no additional pages of the MOU must be submitted.; AND
- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

**AFFIDAVIT OF WORK AUTHORIZATION:**

The bidder/contractor who meets the section 285.525, RSMo definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now \_\_\_\_\_ (Name of Business Entity Authorized Representative) as  
\_\_\_\_\_ (Position/Title) first being duly sworn on my oath, affirm  
\_\_\_\_\_ (Business Entity Name) is enrolled and will continue to participate in the  
E-Verify federal work authorization program with respect to employees hired after enrollment in the program  
who are proposed to work in connection with the services related to contract(s) with the State for the duration  
of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that  
\_\_\_\_\_ (Business Entity Name) does not and will not knowingly employ a person who is  
an unauthorized alien in connection with the contracted services provided to the contract(s) for the duration of  
the contract(s), if awarded.

***In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)***

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

Subscribed and sworn to before me this \_\_\_\_\_ of \_\_\_\_\_. I am commissioned as  
(DAY) (MONTH, YEAR)

a notary public within the County of \_\_\_\_\_, State of \_\_\_\_\_,  
(NAME OF COUNTY) (NAME OF STATE)

and my commission expires on \_\_\_\_\_.  
(DATE)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date

**BOX C – AFFIDAVIT ON FILE – CURRENT BUSINESS ENTITY STATUS**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ A page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed by the bidder/contractor and the Department of Homeland Security – Verification Division.
- ✓ A completed, notarized Affidavit of Work Authorization signed and dated on or after **September 1, 2009**.

\_\_\_\_\_  
Authorized Business Entity  
Representative's Name (Please Print)

\_\_\_\_\_  
Authorized Business Entity  
Representative's Signature

\_\_\_\_\_  
E-Verify MOU Company ID Number

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

Missouri State Agency or Public University\* Name

\_\_\_\_\_

Date of Submission \_\_\_\_\_

Bid/Contract Number \_\_\_\_\_  
(If known)

- \* Public University includes the following five schools:
  - Harris-Stowe State University - St. Louis
  - Missouri Southern State University - Joplin
  - Missouri Western State University - St. Joseph
  - Northwest Missouri State University – Maryville
  - Southeast Missouri State University - Cape Girardeau
  - Division of Purchasing & Materials Management



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EPA Project Control Number

## CERTIFICATION REGARDING LOBBYING

### CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Typed Name & Title of Authorized Representative

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Signature and Date of Authorized Representative

The public reporting and recordkeeping burden for this collection of information is estimated to average 15 minutes per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503



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

MAR 20 2014

OFFICE OF WAfer

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76,  
Consolidated Appropriations Act, 2014

FROM: f ( Andrew D. Sawyers, Director C.  
v) Office of Wastewater Management (4201M)

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

TO: Water Management Division Directors  
Regions I- X

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 iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

## Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

### **Project Coverage**

#### **1) What classes of projects are covered by the AIS requirement?**

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

#### **2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?**

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

#### **3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?**

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

#### **4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?**

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

**5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?**

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

**6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?**

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

**7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?**

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

**8) What if a project has split funding from a non-SRF source?**

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

**9) What about refinancing?**

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

**10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?**

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

**Covered Iron and Steel Products**

**11) What is an iron or steel product?**

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

**12) What does the term ‘primarily iron or steel’ mean?**

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

**13) Can you provide an example of how to perform a cost determination?**

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

**14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?**

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

**15) What is the definition of steel?**

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

**16) What does ‘produced in the United States’ mean?**

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

**17) Are the raw materials used in the production of iron or steel required to come from US sources?**

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

**18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?**

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

**19) What is the definition of ‘municipal castings’?**

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;

Meter Boxes;  
Service Boxes;  
Steel Hinged Hatches, Square and Rectangular;  
Steel Riser Rings;  
Trash receptacles;  
Tree Grates;  
Tree Guards;  
Trench Grates; and  
Valve Boxes, Covers and Risers.

## **20) What is ‘structural steel’?**

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

## **21) What is a ‘construction material’ for purposes of the AIS requirement?**

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

## **22) What is not considered a ‘construction material’ for purposes of the AIS requirement?**

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

**23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?**

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

**24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?**

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

**Compliance**

**25) How should an assistance recipient document compliance with the AIS requirement?**

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

## **26) How should a State ensure assistance recipients are complying with the AIS requirement?**

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

## **27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?**

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov). More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

## **28) How do international trade agreements affect the implementation of the AIS requirements?**

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

### **Waiver Process**

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

### **Definitions**

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

## Step-By-Step Waiver Process

### Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: [cwsrfwaiver@epa.gov](mailto:cwsrfwaiver@epa.gov). For DWSRF waiver requests, please send the application to: [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov).

## Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA’s website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: [https://water.epa.gov/grants\\_funding/aisrequirement.cfm](https://water.epa.gov/grants_funding/aisrequirement.cfm)
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

## Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at [dorfman.jordan@epa.gov](mailto:dorfman.jordan@epa.gov) or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto:anderer.kirsten@epa.gov) or (202) 564-3134.

Attachments

## Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p><b>General</b></p> <ul style="list-style-type: none"> <li>• Waiver request includes the following information:               <ul style="list-style-type: none"> <li>— Description of the foreign and domestic construction materials</li> <li>— Unit of measure</li> <li>— Quantity</li> <li>— Price</li> <li>— Time of delivery or availability</li> <li>— Location of the construction project</li> <li>— Name and address of the proposed supplier</li> <li>— A detailed justification for the use of foreign construction materials</li> </ul> </li> <li>• Waiver request was submitted according to the instructions in the memorandum</li> <li>• Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li> </ul>	✓	
<p><b>Cost Waiver Requests</b></p> <ul style="list-style-type: none"> <li>• Waiver request includes the following information:               <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li> </ul> </li> </ul>		
<p><b>Availability Waiver Requests</b></p> <ul style="list-style-type: none"> <li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:               <ul style="list-style-type: none"> <li>— Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li> <li>— Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li> </ul> </li> <li>• Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought</li> <li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li> </ul>		

## Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
<b>Cost Waiver Requests</b> <ul style="list-style-type: none"> <li>• Does the waiver request include the following information?               <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market</li> </ul> </li> <li>• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?</li> </ul>				
<b>Availability Waiver Requests</b> <ul style="list-style-type: none"> <li>• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?               <ul style="list-style-type: none"> <li>— Supplier information or other documentation indicating availability/delivery date for materials</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials</li> </ul> </li> <li>• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?</li> <li>• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)</li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested?               <p>Examples include:</p> <ul style="list-style-type: none"> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State</li> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States</li> <li>— Correspondence with construction trade associations indicating the non-availability of the materials</li> </ul> </li> <li>• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?</li> </ul>				

### **Appendix 3: Example Loan Agreement Language**

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

#### **Appendix 4: Sample Construction Contract Language**

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the \_\_\_\_\_ (the “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 and/or Drinking Water State Revolving Fund that have 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 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.

## Appendix 5: Sample Certifications

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.

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

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 (XXXXXXXXXXXX)

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

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

\_\_\_\_\_

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative



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:

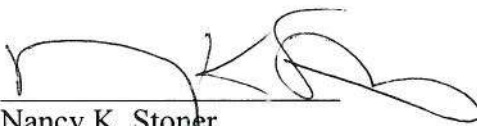
- What percentage of total project costs were consumables or incidental costs?
- What percentage of materials costs were consumables or incidental costs?
- Did these percentages vary by type of project (drinking water vs. wastewater treatment plant vs. pipe)?

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](mailto:connor.timothy@epa.gov) or (202) 566-1059 or Kirsten Anderer, Environmental Engineer, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto: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

FEB 18 2015

OFFICE OF WATER

**DECISION MEMORANDUM**

**SUBJECT:** National Product Waiver for Pig Iron and Direct Reduced Iron for State Revolving Fund Projects

**FROM:** *Allen Delinday*  
for Kenneth J. Kopocis  
Deputy Assistant Administrator

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the "American Iron and Steel" provisions of the Clean Water Act and Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," for certain intermediate goods used in the manufacture of iron and steel products.<sup>1</sup> This waiver permits the use of pig iron and direct reduced iron manufactured outside of the United States in domestic manufacturing processes for iron and steel products used in projects funded by a Clean Water or Drinking Water State Revolving Fund that may otherwise be prohibited absent this waiver. The waiver is retroactive and thus also applies to the use of non-domestic pig iron and direct reduced iron before the signature date.

**Background:** Pig iron and direct reduced iron are intermediate products of iron and steel manufacturing used as material feed sources in iron and steel foundries and steel mills. Pig iron is a product of iron ore smelting in a blast furnace. It is made from molten iron, which has been cast in the shape of "pigs" as it comes from the blast furnace. Direct reduced iron ore is produced from iron ore, pellets or fines, which are reduced in a solid state using natural gas. Hot briquetted iron, or HBI, is a compacted form of direct reduced iron with enhanced physical characteristics for shipment and storage.

**Coverage:** This waiver permits the use of iron and steel products that were manufactured using non-domestic pig iron and direct reduced iron in projects that receive funds from either the CWSRF or DWSRF. Any project that received or will receive funds from the CWSRF or DWSRF beginning with the enactment of P.L. 113-76, the "Consolidated Appropriations Act, 2014," may use this waiver for iron and steel that use these intermediate goods.

**Rationale:** The AIS provisions require CWSRF and DWSRF assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded

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<sup>1</sup>Absent a waiver, all treatment works and drinking water facilities that are constructed, in whole or in part, with funds from the CWSRF or the DWSRF, must use American made iron and steel. EPA is allowed under certain circumstances to provide waivers of this requirement.

through an SRF assistance agreement unless the Agency determines that it is necessary to waive this requirement. EPA has authority to issue waivers in accordance with Section 608(c)(2) of the Clean Water Act and the AIS provisions extended by P.L. 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015,” under the authority of Section 424(b)(2). The provision states in part: “[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency... finds that – iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.”

Product manufacturers and suppliers informed EPA of concerns about the sufficient availability of domestically produced pig iron and direct reduced iron. The iron and steel products produced at steel mills and foundries that use non-domestic intermediate goods are not compliant with the AIS requirements. AIS compliant products used at water and wastewater projects could be in extremely short supply should a waiver of the intermediate goods not be available.

EPA conducted extensive market research on the supply of pig iron and direct reduced iron and found that domestic supplies of these goods sold on the open market are generally not available. There are three major types of facilities that manufacture iron and steel finished products: basic oxygen furnace steel mills (BOF), electric arc furnace steel mills (EAF) and foundries. BOF steel mills undertake both iron making and steel making, as molten iron from the blast furnace is the required feedstock for BOF steel production. EAF steel mills and foundries, on the other hand, use iron and steel scrap as their principal feedstock, which must be supplemented with the use of pig iron and/or direct reduced iron in their manufacturing processes to achieve required steel qualities.

EPA market research has shown that BOF steel mills are able to produce adequate amounts of pig iron to meet their own demands, but these mills use the bulk of this production for their own processes and do not sell pig iron on the open market in sufficient quantities. At this time, there is only one producer of direct reduced iron operating in the U.S. and the company uses the output internally for EAF steel production. Therefore, EAF steel mills and foundries must import pig iron and direct reduced iron to meet their iron needs.

At least 60 percent of the nation’s steel production comes from the EAF steel mills that use non-domestic pig iron and direct reduced iron in their manufacturing processes. Consequently, the majority of steel used in water and wastewater projects would not be compliant with the AIS requirements absent this waiver. Similarly, most, if not all, of the iron foundries in the United States use non-domestic pig iron and direct reduced iron to produce cast and ductile iron products used by water and wastewater projects. Therefore, the majority of iron used in water and wastewater projects would not be compliant with the AIS requirements absent this waiver. Hence, EPA is hereby providing a nationwide waiver pursuant to AIS requirements to cover the non-domestic intermediate iron goods used in the manufacture of iron and/or steel components and products for water and wastewater projects.

Public Comments: EPA requested comments on the draft national waiver and a majority of the comments received were supportive of a national waiver. The commenters in support of the waiver agreed with the Agency’s conclusion that pig iron and direct reduced iron are not

produced in the United States in sufficient and reasonably available quantities to meet the needs of many domestic foundries and steel mills. These commenters believe that the waiver will ensure that pig iron and direct reduced iron are treated similarly to raw material inputs in iron and steel manufacturing and by doing so the EPA will preserve the viability of the AIS requirement. These commenters also state that the waiver would treat pig iron and direct reduced iron in a manner consistent with the implementation of other similar federal laws such as the Federal Highway Administration's Buy America requirement. The FHWA issued a similar nationwide waiver of the Buy America requirements in 1995 for pig iron and processed, pelletized and reduced iron ore.

A few commenters challenged the Agency's issuance of a nationwide waiver of the AIS requirements for pig iron and direct reduced iron. These commenters disagreed with the Agency's interpretation of the AIS requirements and stated that raw materials used in iron and steel production must also be produced in the United States. In addition, the commenters questioned whether the Agency could exempt iron and steel products that are composed of non-domestic materials.

The statutory language lists the categories of products that are considered "iron and steel products." The statutory requirements include provisions that allow the EPA to issue waivers under defined conditions, including the case where iron and steel products are not produced in the United States in sufficient and reasonably available quantities. The Agency's market research, supported by comments from manufacturers, has shown that pig iron and direct reduced iron are not produced in the United States in sufficient and reasonably available quantities. Therefore the Agency is authorized to issue a waiver for iron and steel products composed of non-domestic pig iron and direct reduced iron.

Legal Authority: Legal authority for the AIS requirements for CWSRF projects is included under Sec. 608(c)(2) of the Clean Water Act and previously under P.L. 113-76, the "Consolidated Appropriations Act, 2014," under the authority of Section 436(b)(2). Legal authority for the AIS requirements for DWSRF projects is included under P.L. 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," under the authority of Section 424(b)(2) and also previously under P.L. 113-76. This waiver will continue in force for DWSRF projects under any continuing resolutions or statutes that use similar language as in Section 424 of the "Consolidated and Further Continuing Appropriations Act, 2015."

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OCT 27 2015

OFFICE OF WATER

**DECISION MEMORANDUM**

**SUBJECT:** National Product Waiver for Minor Components within Iron and Steel Products (with Cost Ceiling) for State Revolving Fund Projects

**FROM:** Kenneth J. Kopocis *Kenneth J. Kopocis*  
Deputy Assistant Administrator

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the "American Iron and Steel" provisions of the Clean Water Act and Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," (hereinafter referred to as "the Acts") for minor components within a product under an established cost ceiling.<sup>1</sup> The waiver will permit projects funded by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund to use non-domestically produced miscellaneous minor components within an otherwise domestically produced iron and steel product for up to 5 percent of the total material cost of the product. These products could be prohibited absent this waiver. This waiver is retroactive, and so also applies to products purchased before the signature date of this waiver.

Coverage: The items covered by this waiver include miscellaneous minor components within iron and steel products as defined in the AIS provisions of the Acts. The specific minor components in covered iron and steel products will vary by product and manufacturer. Pursuant to this waiver, non-domestically produced miscellaneous minor components comprising up to 5 percent of the total material cost of an otherwise domestically produced iron and steel product may be used. This waiver does not exempt the whole product from the AIS requirements, and the primary iron or steel components of the product must be produced domestically. Unless subject to a separate waiver, all other iron and steel components in these products must still meet the AIS requirements. Valves and hydrants are also subject to the cost ceiling requirements described here. This waiver supersedes the EPA's previous guidance issued on May 30, 2014, (Question 1) related to minor components in valves and hydrants.

The coverage of this waiver is different from that of the existing national de minimis waiver. While the national de minimis waiver covers entire products (when those products are generally of low cost and incidental to the construction of the project), this waiver covers minor components within an iron and steel product. In addition, the national de minimis waiver is intended for assistance recipients to use for their projects, while this minor components waiver is intended to allow manufacturers to certify that their products comply with the AIS requirements.

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<sup>1</sup> Absent a waiver, all treatment works and drinking water facilities that are constructed, in whole or in part, with funds from the CWSRF or the DWSRF, must use American made iron and steel. The EPA is allowed under certain circumstances to provide waivers of this requirement.

Rationale: The AIS provisions require recipients of CWSRF and DWSRF assistance to use specific domestically-produced iron and steel products in their project, unless the Agency determines it is necessary to waive this requirement. The EPA has authority to issue waivers in accordance with Section 608(c)(1) of the Clean Water Act and the AIS provisions extended by P.L. 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015,” under the authority of Section 424(b)(1). The provisions state in part: “[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency...finds that...applying subsection (a) would be inconsistent with the public interest.”

Many product manufacturers and suppliers identified significant compliance challenges absent this waiver. Water and wastewater utilities are generally unable to obtain a range of AIS compliant iron and steel products (such as valves, hydrants and pipe restraints) that contain 100 percent domestic components. The manufacturers stated that the origin of a significant proportion of very small minor components cannot be reliably tracked or even discerned. They provided examples of product lines that would need duplicative inventories of extremely low-cost miscellaneous minor components in order to supply AIS compliant products. Manufacturers also raised concerns related to challenges of inventory tracking, inventory control and excessive costs associated with duplicative inventory needed to supply utilities with essential domestic products.

The EPA concludes that requiring manufacturers and suppliers to overcome the challenges identified above would be inconsistent with the public’s interest. In order to balance the reliability, availability and maximum supply of domestically produced iron and steel products, it is acceptable for a manufacturer to incorporate a relatively small proportion of miscellaneous minor components of non-domestic or unknown origin within an otherwise domestically manufactured product.

Legal Authority: Legal authority for the AIS requirements for CWSRF projects is included under Sec. 608(c)(1) of the Clean Water Act and previously under P.L. 113-76, “Consolidated Appropriations Act, 2014,” under the authority of Section 436(b)(1). Legal authority for the AIS requirements for DWSRF projects is included under P.L. 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015”, under the authority of Section 424(b)(1) and also previously under P.L. 113-76. This waiver will continue in force for DWSRF projects under any continuing resolutions or statutes that use similar language as Section 424 of the “Consolidated and Further Continuing Appropriations Act, 2015.”

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](mailto:connor.timothy@epa.gov) or (202) 566-1059 or Kiri Anderer, Environmental Engineer, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto:anderer.kirsten@epa.gov) or (202) 564-3134.

## American Iron and Steel Certification

The Contractor acknowledges to and for the benefit of \_\_\_\_\_ and the State of Missouri that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements (see attached) 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 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.

\_\_\_\_\_  
Name of Contracting Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Signer (Please type)

## **Davis Bacon Act Requirements**

Pursuant to the Federal Appropriations Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Appropriations Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Additional guidance can be located at DOL's web site at <https://www.wdol.gov/index.aspx>

1. The Davis-Bacon (DB) prevailing wage requirements apply to the construction, alteration, and repair activity of infrastructure, including all construction, alteration and repair activity involving waste water or drinking water treatment plants is subject to DB. Prime contractors and subcontractors must follow the wage determination incorporated into the prime contract.

### **2. Contract and Subcontract provisions.**

(a) Minimum wages.

(1) 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, 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, 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)(2) 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.

- (2) 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 EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii) The classification is utilized in the area by the construction industry; and
  - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the funding recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the funding recipient (s) to the MDNR. The MDNR will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the MDNR or will notify the MDNR within the 30-day period that additional time is necessary.
- (4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the funding recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the funding recipient shall refer the questions, including the views of all interested parties and the recommendation of the MDNR, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (5) The wage rate (including fringe benefits where appropriate) 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.
- (6) 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.

- (7) 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.

(b) Withholding.

- (1) The funding recipient(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.

(c) Payrolls and basic records.

- (1) 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.

- (2) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the funding recipient, that is, the entity that receives the grant or loan from the MDNR. As to each payroll copy received, the funding recipient shall provide written confirmation in a form satisfactory to the MDNR 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 funding recipient (s) for transmission to the MDNR or EPA if requested by EPA, the MDNR, 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 funding recipient (s).
- (3) 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:
  - (i) 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;
  - (ii) 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;

- (iii) 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.
  - (4) 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 (c)(3) of this section.
  - (5) 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.
  - (6) The contractor or subcontractor shall make the records required under paragraph (c)(1) of this section available for inspection, copying, or transcription by authorized representatives of the MDNR, 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.
- (d) Apprentices and trainees.
- (1) 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.

- (2) 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.

- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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 funding recipient(s), MDNR, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (k) Certification of eligibility.
  - (1) 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).
  - (2) 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).

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

### **3. Contract Provision for Contracts in Excess of \$100,000.**

- (a) Contract Work Hours and Safety Standards Act. The following clauses shall be inserted 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. 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 funding recipient, 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 any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the MDNR and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### **4. Compliance Verification**

- (a) The funding recipient 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.
- (b) The funding recipient must 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. Funding recipients 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. Funding recipients 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 funding recipient 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 funding recipient 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, the funding recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Funding recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the funding recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

- (d) The funding recipient 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) Funding recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

## **Davis-Bacon Act Requirements**

### **Funding Recipient Requirements (updated 9/13/2024)**

If the funding recipient encounters a unique situation at a site that presents uncertainties regarding Davis Bacon (DB) applicability, the funding recipient must discuss the situation with the MDNR before authorizing work on that site.

The funding recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. The funding recipients may obtain wage determinations at <https://sam.gov/content/wage-determinations>.

While the solicitation remains open, the funding recipient shall monitor [www.SAM.gov](http://www.SAM.gov) on a regular basis to ensure that the wage determination contained in the solicitation remains current. For contracts entered into pursuant to sealed bidding procedures, a revised wage determination issued at least 10 calendar days before the opening of bids is effective with respect to the solicitation and contract. If a revised wage determination is issued less than 10 calendar days before the opening of bids, it is effective with respect to the solicitation and contract unless the MDNR finds that there is not a reasonable time still available before bid opening to notify bidders of the revision and a report of the finding is inserted in the contract file. No such report is required if the revision is issued after bid opening.

If the funding recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes the DOL makes to the wage determination contained in the solicitation shall be effective unless the MDNR, at the request of the funding recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The funding recipient shall monitor [www.SAM.gov](http://www.SAM.gov) on a regular basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

If the funding recipient carries out an activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the funding recipient shall insert the appropriate DOL wage determination from [www.SAM.gov](http://www.SAM.gov) into the ordering instrument.

Funding recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a funding recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the funding recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the funding recipient shall either terminate the contract or

ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The funding recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

The funding recipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses:

- 1) The funding recipient 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 funding recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- 2) The funding recipient 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 funding recipient must 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. The funding recipients 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. The funding recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- 3) The funding recipient 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 funding recipient 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, the funding recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. The funding recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the funding recipient shall verify evidence of fringe

benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

The funding recipient 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.

The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the funding recipient, that is, the entity that receives the grant or loan from the MDNR. As to each payroll copy received, the funding recipient shall provide written confirmation in a form satisfactory to the MDNR 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.

As a general rule, the wage determination incorporated into a bid solicitation and related contract award establishes the minimum wage rates and fringe benefits which must be paid for the entire term of the contract. In the following circumstances, the contracting agency must incorporate the most recent revision of the wage determination(s) into an ongoing contract.

Out-of-scope changes: Where a contract is changed to include additional, substantial construction, alteration, and/or repair work not within the scope of the work of the original contract, the most recent wage determination revision must be incorporated into the contract, to be effective at the date of the change in the contract;

Additional time periods (e.g., options): If the contractor is required to perform work for an additional time period not originally obligated, including where an option to extend the term of the contract is exercised, the most recent wage determination revision must be incorporated into the contract, to be effective at the date of the contract extension or exercise of the option;

IDIQs, etc.: For contracts calling for construction, alteration, and/or repair work over a period of time that is not tied to the completion of any particular project (e.g., IDIQs, Multiple Award Schedules), the most recent revision of a wage determination must be incorporated into the umbrella contract on an annual basis at the anniversary date of the contract's award.

The funding recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/esa/contacts/whd/america2.htm>.