

DWSRF BOILERPLATE

FEDERAL REQUIREMENTS

FOR

DWSRF LOAN APPLICANTS



October 2022

FEDERAL REQUIREMENTS FOR DWSRF PROJECTS

All DWSRF loan applicants shall comply with all the federal regulations listed herein before receiving DWSRF loan funds.

I. CROSS-CUTTER REGULATIONS

(1) ENVIRONMENTAL AUTHORITIES

- A. ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974, 16 U.S.C. 16 U.S.C. §469a-1
The applicant shall consult with the State of Hawaii, Historic Preservation Division (SHPD) (and in some cases, the U.S. Environmental Protection Agency (EPA)) to determine if the proposed project may impact potential archaeological or historical resources.
If potential archaeological or historical resources are discovered during construction, all work in the area shall cease immediately and the construction management consultant shall evaluate the situation and make recommendations to the Hawaii State Historic Preservation Division. The Historic Preservation Officer will determine the necessary actions for construction to proceed.
- B. BALD AND GOLDEN EAGLE PROTECTION ACT, 16 U.S.C. §§668-668C
This Act currently does not apply to the State of Hawaii.
- C. CLEAN AIR ACT, 42 U.S.C. 7506(c)
The applicant must coordinate with the State of Hawaii, Clean Air Branch to determine if the project conforms to the State Implementation Plan (SIP).
- D. COASTAL BARRIER RESOURCES ACT, 16 U.S.C. §§3501-3510
This Act currently does not apply to the State of Hawaii.
- E. COASTAL ZONE MANAGEMENT ACT OF 1972, 16 U.S.C. §§ 1451-1464
The applicant should consult with the State of Hawaii, Coastal Zone Management Agency to ensure that the project will be consistent with the state program.
- F. ENDANGERED SPECIES ACT 16 U.S.C. §§ 1531-1543
The applicant shall consult with the U.S. Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (and in some cases, EPA) to determine whether any endangered or threatened species or critical habitat exist within the locale of the proposed project.
- G. ENVIRONMENTAL JUSTICE, EXECUTIVE ORDER 12898
The applicant shall attempt to identify and address disproportionately high and adverse human health or environmental effects of this project on minority populations and low-income populations.

- H. FARMLAND PROTECTION POLICY ACT, 7 U.S.C. §§ 4201-4209
The applicant must determine whether the proposed project contains or will affect prime farm lands.
- I. FISH AND WILDLIFE COORDINATION ACT, 16 U.S.C. §§ 661-664
The applicant shall consult with the FWS to determine the effect the proposed project may have on wildlife and its habitat.
- J. FLOODPLAIN MANAGEMENT, EXECUTIVE ORDER 11988 as amended by EXECUTIVE ORDERS 12148 and 13690
The applicant shall determine if the proposed project is in or affects a 100-year floodplain.
- K. MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT, 16 U.S.C. § 1801 et seq.
The applicant must determine whether a proposed project may adversely affect Essential Fish Habitat (EFH). The National Marine Fisheries Service will make maps and/or other information on the locations of EFH available as well as provide information on ways to promote conservation of EFH, to facilitate this assessment.
- L. MARINE MAMMAL PROTECTION ACT, 16 U.S.C. §§ 1361 et seq.
The applicant must obtain a permit from wildlife officials for the taking of marine mammals.
- M. MIGRATORY BIRD TREATY ACT, 16 U.S.C. §§ 703 et seq.
The applicant shall consult with FWS to determine if the proposed project will affect breeding migratory birds.
- N. NATIONAL HISTORIC PRESERVATION ACT OF 1966, 54 U.S.C. §§ 300101 et seq.
The applicant shall consult with SHPD to determine whether historic properties that are included or are eligible for inclusion on the National Register are in the project area.
- O. PROTECTION OF WETLANDS, EXECUTIVE ORDER 11990, as amended by EXECUTIVE ORDER 12608
The applicant must determine whether their proposed project will be in or will affect a wetland, and whether an alternative will be necessary.
- P. RIVERS AND HARBORS ACT, 33 U.S.C. § 403
The applicant shall consult with the U.S. Army Corps of Engineers if the proposed project requires construction of any structure in or over a navigable water of the U.S. or if structure work will affect the course, location, or condition of a water body.
- Q. SAFE DRINKING WATER ACT, 42 U.S.C. §§ 300f-300j-9
The applicant must determine if their proposed project will affect a sole source aquifer, and whether further investigations will be necessary.
- R. WILD AND SCENIC RIVERS ACT, 16 U.S.C. §§ 1271 et. seq.
This Act currently does not apply to the State of Hawaii.

(2) ECONOMIC POLICY AUTHORITIES:

- A. ADMINISTRATION OF THE CLEAN AIR ACT AND THE WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS OR LOANS, EXECUTIVE ORDER 11738
This Executive Order prohibits assistance to facilities that are not in compliance with either the Clean Water Act or the Clean Air Act unless the purpose of the assistance is to remedy the cause of the violation.
- B. DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, PUB. L. 89-754, AS AMENDED BY 42 USC 3331
DWSRF assistance recipients should submit information describing a proposed project's effect on local development plans to the DWSRF agency.
- C. PROCUREMENT PROHIBITIONS, EXECUTIVE ORDER 11738, SECTION 306 OF THE CLEAN AIR ACT
The recipient of Federal assistance must certify that it will not procure goods, services or materials from suppliers who are on the EPA's list of Clean Air Act violators.
- D. PROCUREMENT PROHIBITIONS, SECTION 508 OF THE CLEAN WATER ACT
The recipient of Federal assistance must certify that it will not procure goods, services or materials from suppliers who are on the EPA's list of Clean Water Act violators.
- E. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT, 2 C.F.R. Part 200.216
The recipient and subrecipients are prohibited from using Federal funds to procure or obtain equipment, systems, or services that use "covered telecommunications equipment or services" identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system as described in section 889 of PUB. L. 115-232.

(3) SOCIAL POLICY AUTHORITIES:

- A. AGE DISCRIMINATION ACT OF 1975, 42 USC 6102
No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- B. CIVIL RIGHTS ACT OF 1964, TITLE VI, 42 USC 2000d
No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- C. EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED
This Executive Order requires all recipients of Federal contracts to include certain non-discrimination and "affirmative action" provisions in all contracts. The provisions commit the contractor or subcontractor to maintain a policy of non-discrimination in the treatment of employees, to make this policy known to employees, and to recruit, hire and train employees without regard to race, color, sex, religion, and national origin.
- D. MINORITY BUSINESS ENTERPRISE DEVELOPMENT, EXECUTIVE ORDER 12432

This executive order sets forth in more detail the responsibilities of Federal agencies for the monitoring, maintaining of data and reporting on the use of minority enterprises.

- E. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE, EXECUTIVE ORDER 11625
This Executive Order directs Federal agencies to promote and encourage the use of minority business enterprises in projects utilizing federal funds.
- F. NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE, EXECUTIVE ORDER 12138
This Executive Order directs each department or agency empowered to extend Federal financial assistance to any program or activity to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprises and to prohibit actions or policies which discriminate against women's business enterprises on the grounds of sex.
- G. REHABILITATION ACT OF 1973, 29 USC 794
No otherwise qualified handicapped individual in the United States shall, solely due to his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- H. SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENT ACT OF 1998, PUB. L. 100-590, SECTION 129
This Amendment directs Federal agencies to promote and encourage the use of small business enterprises in projects utilizing federal funds.
- I. DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND AGENCIES APPROPRIATIONS ACT, 1993, PUB. L. 102-389
The Administrator of the EPA shall, hereafter to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and for leaking underground storage tanks, be made available to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.
- J. DISADVANTAGED BUSINESS ENTERPRISE RULE, 2008, 40 CFR Part 33
This Rule sets forth in detail the responsibilities of entities receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, for the monitoring, maintaining of data and reporting of the use of disadvantaged business enterprises (DBEs). The Applicant shall fully comply with 40 CFR Part 33, entitled "Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements" and ensure that all contracts funded by a DWSRF loan include a term or condition requiring compliance with 40 CFR Part 33.
The applicant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Applicant 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 Applicant 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.

K. DAVIS BACON ACT, TITLE 29, PART 5, CODE OF FEDERAL REGULATIONS

The recipient of Federal assistance shall comply with all labor standards covered under this act including but not limited to:

- (i) Inclusion of the applicable Wage Determination General Decision No. and Modification No. in the executed contract;
- (ii) Payment of the prevailing wage rate;
- (iii) Posting of prevailing wage rates and Davis-Bacon poster at the work site where it can be easily seen by the workers;
- (iv) Maintaining weekly certified payroll records for a period of three years; and
- (v) Scheduling and performing labor standards interviews during the course of construction, based on the applicant's assessment of the risks of non-compliance with applicable wage rates. Standard form 1445 is the acceptable form for documenting wage interviews.

(4) MISCELLANEOUS AUTHORITIES:

A. DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12549

Prior to the award of a consultant or construction contract, the loan recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions" and ensure that any lower tier covered transaction and subsequent lower tier transaction, includes a term or condition requiring compliance with Subpart C. The Applicant shall certify that the General Contractor, Consultant, sub-consultants, subcontractors and suppliers are not on the Excluded Parties List. The Applicant acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of payment, or pursuance of legal remedies, including suspension and debarment. The Applicant may access the Excluded Parties List System at <https://sam.gov/content/exclusions>.

B. UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT, PUB. L. 91-646 (1971), AS AMENDED BY 42 USC 4601-4655

The Act establishes a policy for fair and equitable treatment of persons who are displaced from their homes, farms or businesses to make way for a federally-assisted project.

C. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTOR'S LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS, EXECUTIVE ORDER 13202 (2001), AS AMENDED BY EXECUTIVE ORDER 13208 (2001)

- D. DWSRF assistance recipients must ensure that bid specifications, project agreements, and other controlling documents for construction contracts awarded after February 17, 2001 do not require or prohibit agreements with labor organizations. Further, DWSRF assistance recipients and any construction manager acting upon their behalf must not otherwise discriminate against bidders, offerors, contractors, or subcontractors for entering into, or refusing to enter into, agreements with labor organizations.

II. REQUIRED FEDERAL FORMS AND INFORMATION:

- (1) The applicant shall submit the following EPA form(s) to the Department of Health Safe Drinking Water Branch for each DWSRF loan:

EPA Form 5700-52A (MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance).

- (2) SIGNAGE

Certain projects may be required to comply with EPA signage requirements to increase public awareness of EPA assistance agreements statewide. These signage requirements are not applicable for all projects, only to borrowers and/or projects totaling a funding amount equivalent to the amount of the DWTRLF federal capitalization grant ("equivalency").

If the project is selected to meet equivalency requirements, the applicant will be notified, and the applicant shall provide evidence of compliance with EPA's signage requirement. For compliance, the applicant has the flexibility to implement one or a combination of the following options: standard signage; posters or brochures, newsletter, periodical or press release, insert or pamphlet in water/sewer bill; or online and social media publicity. Although signage does not apply to all projects, the applicant may still choose to notify the public of the project benefits and the role of the DWTRLF.

- (3) The following information must be included in the loan recipient's contract specifications:

- A. American Iron and Steel (AIS) (SDWA §1452(a)(4), as amended)

The following language must be included in contracts for projects funded through the SRF:

Projects funded with monies from the Drinking Water State Revolving Fund are subject to the American Iron and Steel (AIS) requirement, such that all products made primarily of iron or steel must be produced in the United States. The Contractor shall submit certification that the material was produced in the United States or information necessary to verify an approved waiver of the AIS Requirement. Additionally, Contractor shall comply with, and shall execute and submit any written documentation or certification required by the AIS or other applicable law, rule, or regulation. Failure to comply with AIS Requirements 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).

B. Build America, Buy America (BABA) (P.L. 117-58)

The following language must be included in contracts for projects receiving federal funding through the SRF:

Projects funded with federal monies from the Drinking Water State Revolving Fund are subject to the Build America, Buy America (BABA) requirement, such that all iron or steel products, manufactured products, and construction materials used in the project must be produced in the United States. The Contractor shall submit certification that the material was produced in the United States or information necessary to verify an approved waiver of the BABA Requirement. Additionally, Contractor shall comply with, and shall execute and submit any written documentation or certification required by BABA or other applicable law, rule, or regulation. Failure to comply with BABA Requirements 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).

C. Davis-Bacon

- i. The current and appropriate Wage Determination and Modification number must be obtained from the United States Department of Labor (DOL) and included in the contract specifications. The Wage Determination and Modification Number must be that which was in effect on the date up to 10 days before bid opening and no later than 90 days after bid opening. The appropriate Wage Determination may be obtained at: <https://sam.gov/content/wage-determinations>
- ii. Davis Bacon Requirements (See Attached).

“DWSRF BOILERPLATE”
FEDERAL REQUIREMENTS
FOR
CONSULTANTS AND CONTRACTORS



October 2022

FEDERAL REQUIREMENTS FOR CONSULTANTS AND CONTRACTORS

All Consultants, Contractors, and Sub-contractors of a DWSRF funded project must comply with all the federal regulations listed herein.

I. CROSS-CUTTER REGULATIONS

(1) ENVIRONMENTAL AUTHORITIES

A. ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974, 16 USC 469a-1

If potential archaeological or historical resources are discovered during construction, all work in the area shall cease immediately and the construction management consultant shall evaluate the situation and make recommendations to the Hawaii State Historic Preservation Division. The Historic Preservation Officer will determine the necessary actions for construction to proceed.

(2) ECONOMIC AUTHORITIES

A. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT, 2 C.F.R. Part 200.216

The recipient and subrecipients are prohibited from using Federal funds to procure or obtain equipment, systems, or services that use "covered telecommunications equipment or services" identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system as described in section 889 of PUB. L. 115-232.

(3) SOCIAL POLICY AUTHORITIES

A. AGE DISCRIMINATION ACT OF 1975, 42 USC 6102

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

B. CIVIL RIGHTS ACT OF 1964, TITLE VI, 42 USC 2000d

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

C. EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED

The contractor, subcontractor, or consultant for any SRF project shall maintain a policy of non-discrimination in the treatment of employees, shall make this policy known to employees, and shall recruit, hire and train employees without regard to race, color, sex, religion and national origin.

D. REHABILITATION ACT OF 1973, 29 USC 794

No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- E. MINORITY BUSINESS ENTERPRISE DEVELOPMENT, EXECUTIVE ORDER 12432
This executive order sets forth in more detail the responsibilities of Federal agencies for the monitoring, maintaining of data and reporting on the use of minority enterprises.
- F. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE, EXECUTIVE ORDER 11625
This Executive Order directs Federal agencies to promote and encourage the use of minority business enterprises in projects utilizing federal funds.
- G. NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE, EXECUTIVE ORDER 12138
This Executive Order directs each department or agency empowered to extend Federal financial assistance to any program or activity to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprises and to prohibit actions or policies which discriminate against women's business enterprises on the grounds of sex.
- H. SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENT ACT OF 1998, PUB. L. 100-590, SECTION 129
This Amendment directs Federal agencies to promote and encourage the use of small business enterprises in projects utilizing federal funds.
- I. DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND AGENCIES APPROPRIATIONS ACT, 1993, PUB. L. 102-389
The Administrator of the Environmental Protection Agency shall, hereafter to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and for leaking underground storage tanks, be made available to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.
- J. DISADVANTAGED BUSINESS ENTERPRISE RULE, 2008, 40 CFR PART 33
Prior to the award of a consultant or construction contract, the Contractor or Consultant shall fully comply with 40 CFR Part 33, entitled "Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA Financial Assistance Agreements)". The Consultant or Contractor shall notify the County prior to termination of a Disadvantaged Business Enterprise (DBE) subconsultant or subcontractor for convenience by the Contractor. In addition, the Consultant or Contractor shall employ the six good faith efforts listed in 40 CFR 33.301 when soliciting a replacement subconsultant or subcontractor.

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

K. DAVIS BACON ACT, TITLE 29, PART 5, CODE OF FEDERAL REGULATIONS

The consultant or construction contractor shall comply with the labor standards provided under this act, including but not limited to:

1. Payment of the prevailing wage rate;
2. Posting of prevailing wage rates and Davis-Bacon poster at the work site where it can be easily seen by the workers;
3. The following Wage Determination General Decision and Modification numbers apply to this contract:

Wage Determination General Decision No.: _____
(loan recipient to fill in)

Modification No.: _____
(loan recipient to fill in)

(4) MISCELLANEOUS AUTHORITIES

A. DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12549

Prior to the award of a construction or consultant contract, the Contractor or Consultant shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions" and ensure that any lower tier covered transaction and subsequent lower tier transaction, includes a term or condition requiring compliance with Subpart C. The Contractor shall certify that his subcontractors and suppliers are not on the Excluded Parties List when the bid proposals are submitted. The Consultant shall certify that his sub-consultants are not on the Excluded Parties List. The Contractor or Consultant acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of payment, or pursuance of legal remedies, including suspension and debarment. The Contractor or Consultant may access the Excluded Parties List System at <https://sam.gov/content/exclusions>.

B. REQUIRED FEDERAL FORM AND INFORMATION

The following EPA form(s) shall be submitted by the Consultant or Contractor to the recipient for each DWSRF project:

EPA Form 5700-52A (MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance).

D. AMERICAN IRON AND STEEL (AIS) (SDWA §1452(a)(4), as amended)

Projects funded with monies from the drinking water state revolving fund are subject to the American Iron and Steel (AIS) requirement, such that all products made primarily of iron or steel must be produced in the United States. The contractor shall submit certification that the material was produced in the United States or information necessary to verify an approved waiver of the AIS requirement. Additionally, contractor shall comply with, and shall execute and submit any written documentation or certification required by the AIS or other applicable law, rule or regulation. Failure to comply with AIS requirements 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).

C. BUILD AMERICA, BUY AMERICA (Public Law 117-58)

Projects funded with federal monies from the Drinking Water State Revolving Fund are subject to the Build America, Buy America (BABA) requirement, such that all iron or steel products, manufactured products, and construction materials used in the project must be produced in the United States. The Contractor shall submit certification that the material was produced in the United States or information necessary to verify an approved waiver of the BABA Requirement. Additionally, Contractor shall comply with, and shall execute and submit any written documentation or certification required by BABA or other applicable law, rule, or regulation. Failure to comply with BABA Requirements 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).

D. DAVIS BACON

The following information must be included in the contract specifications:

- i. Davis Bacon Requirements (see attached).

DAVIS BACON REQUIREMENTS

(1) Contract and Subcontract provisions.

(a) The Recipient 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 construction project under the DWSRF the following clauses:

(I) Minimum wages.

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

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

(ii) (A) The Recipient, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and

- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Recipient to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.
 - (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the Recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (II) Withholding. The Recipient 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.

(III) Payrolls and basic records.

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

(ii) (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State or EPA. As to each payroll copy received, the Recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).

The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<https://www.dol.gov/agencies/whd/forms/wh347> 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 Recipient for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient.

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(IV) Apprentices and trainees.

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate

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

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (V) 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.
- (VI) 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.
- (VII) 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.
- (VIII) 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.
- (IX) 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 the Recipient, State, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (X) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(2) Contract Provision for Contracts in Excess of \$100,000.

- (a) Contract Work Hours and Safety Standards Act. The Recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Section 1, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
 - (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(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 (b)(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 (b)(1) of this section.
 - (3) Withholding for unpaid wages and liquidated damages. The Recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, 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 (b)(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 (b)(1) through (4) of this section.
- (b) In addition to the clauses contained in Section 1, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall

maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(3) Compliance Verification

- (a) The 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 Recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The 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 Recipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. The Recipient 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 Recipient 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 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 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, if practicable the Recipient shall 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 Recipient must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The 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) The Recipient must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/agencies/whd/contact/local-offices>.