

**SUPPLEMENTAL GENERAL CONDITIONS
FOR
CONSTRUCTION OF DRINKING WATER SYSTEMS
IMPROVEMENTS REVOLVING LOAN FUND PROJECTS**

SGC-1

HDWI077
06/06/2024

TABLE OF CONTENTS

The attached instructions and regulations as listed below shall be incorporated into the Contract Documents.

1.	Special Provisions	SGC-03
2.	General Conditions	SGC-04
	• Price Reduction For Defective Cost Or Pricing Data	
	• Audit - Access To Records	
	• Covenant Against Contingent Fees	
	• Gratuities	
3.	EEO Documents	
	• Notice of Requirement for Affirmative Action	SGC-07
	• Equal Employment Opportunity Clause	SGC-09
	• Goals	SGC-15
	• 40CFR Part 8, Equal Opportunity Requirements	SGC-17
	• EEO Special Notice No. 1	SGC-19
4.	Utilization of Disadvantaged Businesses	SGC-21
	• Sample MBE/WBE Letter	SGC-27
5.	Davis-Bacon and Related Acts	SGC-28
6.	DWSIRLF Project Document Board & Signage	SGC-36
7.	American Iron and Steel Provisions	SGC-37
8.	Build America Buy America Provisions	SGC-3X

Attachments:

DBE Directory

Attachment 1

These Supplemental General conditions shall supersede any conflicting provisions of this contract.

SECTION 1 - SPECIAL PROVISIONS:

- (a) Construction shall be carried out so as to prevent by-passing of wastewater during construction.
- (b) Best Management Practices (BMP's) shall be used for erosion and sediment control on the construction site.
- (c) Disturbed areas shall be restored to the original or better condition.
- (d) It is the duty of the Contractor, the owner and the engineer to insure the construction of the project, including the letting of contracts in connection therewith, complies with all applicable laws and regulations and requirements of the United States of America or any agency thereof, the State of Mississippi or any agency thereof, or any local government or political subdivision to the extent that such requirements do not conflict with Federal laws and regulations and any regulations or policies established by the Local Governments and Rural Water Systems Improvements Board (Board).
- (e) The Contractor agrees to indemnify and save, release and hold harmless the State of Mississippi, the Board, the Mississippi State Department of Health (Department), and all of their employees and officers from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of Contractor or Subcontractor or their agents or employees or any other parties arising out of or incident to, any and all work under the terms of this contract.
- (f) Upon execution of this contract between the Owner and the Contractor, the State of Mississippi, the Board, the Department, and all their employees and officers do not assume any authorities, duties, responsibilities, or liabilities under such contract.
- (g) The State of Mississippi, the Board, the Department and all their employees and officers, do not have any authority, duty, responsibility, or liability in contract claims identification, negotiation, resolution, or any other actions regarding contract claims under this contract.
- (h) No actions taken by the State of Mississippi, the Board, the Department and all their employees and officers either directly or indirectly, in regard to this contract constitute or establish any determinations, authority, duty, responsibility, or liability under this contract.
- (i) The Owner and the Contractor must resolve all claims and contract disputes, as provided in the contract documents, prior to the Owner's submission of any documents regarding DWSIRLF loan participation to the Department.

SECTION 2 - GENERAL CONDITIONS:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

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

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

(Note - Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier sub-agreements, the Contractor may wish to include a clause in each lower tier sub-agreement requiring the lower tier subcontractor to appropriately indemnify the Contractor. It is also expected that any lower tier Subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data submitted by lower tier contractors.)

AUDIT - ACCESS TO RECORDS

- (a) The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance on State funded work under this sub-agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30 in effect on the date of execution of this sub-agreement. The Contractor shall also maintain the financial information and data used in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated sub-agreement or change order and a copy of the cost summary submitted to the Loan Recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the Loan Recipient, and (the State of Mississippi) or any of their authorized representatives shall have access to all such books,

records, documents and either evidence for the purpose of inspection audit and copying during normal business hours. The Contractor shall provide proper facilities for such access and inspection.

- (b) If this is a formally advertised, competitively awarded, fixed price sub-agreement, the Contractor agrees to make paragraphs (a) through (g) of this clause applicable to all negotiated change orders and sub-agreement amendments affecting the sub-agreement price. In the case of all other types of prime sub-agreements, the Contractor agrees to make paragraphs (a) through (g) applicable to all sub-agreements be awarded in excess of \$10,000, at any tier, and to make paragraphs (a) through (g) of this clause applicable to all change orders directly related to project performance.
- (c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency(ies).
- (d) The Contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause to any of the agencies referred to in paragraph (a).
- (e) Records under paragraphs (a) and (b) above shall be maintained by the Contractor during performance on State assisted work under this sub-agreement and for the time periods specified in 40 CFR Part 30. In addition, those records which relate to any controversy arising under a State assistance agreement, litigation, the settlement of claims arising out of such performance or to costs or items to which an audit exception has been taken shall be maintained by the Contractor for the time periods specified in 40 CFR Part 30.
- (f) Access to records is not limited to the required retention periods. The authorized representatives designated in paragraph (a) of this clause shall have access to records at any reasonable time for as long as the records are maintained.
- (g) This right of access clause applies to financial records pertaining to all sub-agreements (except formally advertised competitively awarded, fixed price sub-agreements) and all sub-agreement change orders regardless of the type of sub-agreement, and all sub-agreement amendments regardless of the type of sub-agreement. In addition this right of access applies to all records pertaining to all sub-agreements, sub-agreement change orders and sub-agreement amendments:
 - (1) To the extent the records pertain directly to sub-agreement performance;
 - (2) If there is any indication that fraud, gross abuse or corrupt practices may be involved; or
 - (3) If the sub-agreement is terminated for default or for convenience.

COVENANT AGAINST CONTINGENT FEES

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

GRATUITIES

- (a) If the Loan Recipient finds after a notice and hearing that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Loan Recipient, the State in an attempt to secure a sub-agreement or favorable treatment in awarding, amending or making any determination related to the performance of this sub-agreement, the Loan Recipient may, by written notice to the Contractor, terminate this sub-agreement. The Loan Recipient may also pursue other rights and remedies that the law or this sub-agreement provides. However, the existence of the facts on which the Loan Recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this sub-agreement.
- (b) In the event this sub-agreement is terminated as provided in paragraph (a) the Loan Recipient may pursue the same remedies against the Contractor as it could pursue in the event of a breach of the sub-agreement by the Contractor, and as a penalty, in addition to any other damages to which it may be entitled by law, be entitled to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

SECTION 3 - EEO DOCUMENTS:

EEO Notice

Following is the standard language which must be incorporated into all solicitations for offers and bids on all DWSIRLF Loan Program - assisted construction contracts or subcontracts in excess of \$10,000 to be performed in designated geographical areas:

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

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" which is included in the Nondiscrimination Provision, Labor Standards and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals 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:

Goals for minority participation in each trade:	Goals for female participation in each trade:
Insert goals for each year	6.9%

See Goals:

These goals are applicable to all the Contractor's construction work (whether or not it is DWSIRLF Loan Program assisted) performed in the covered area. 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 established for the geographical area where the contract resulting from this solicitation is to be performed. 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 minority 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 performance.

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; estimated dollar amount of the subcontractor; estimated starting and completion dates of the subcontract; and the geographical area in which the contract 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).

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

SEE LABOR STANDARDS PROVISIONS AND NONDISCRIMINATION PROVISIONS

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION

CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

EEO Specifications

Following is the standard language which must be incorporated into all solicitations for offers and bids on all federal and federally-assisted construction contracts or subcontracts in excess of \$10,000 to be performed in designated geographical areas:

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 Program, 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 7a 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. The Contractor is expected to make substantially uniform progress toward 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 non-working 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 trainee 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 complied 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, lay-off, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foreman, 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 one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, 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 workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 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 effect 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 are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

13. The Contractor, in fulfilling its obligations 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).

GOALS

The following goals for female and minority utilization shall be included in all federal and federally assisted construction contracts and subcontracts in excess of \$10,000.00.

EEO Goals applicable for this project:

Women: 1.1%
 Minorities: 3.1%

Appendix B-80

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all federal or federally assisted construction contracts and subcontracts in excess of \$10,000.00 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor’s total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a federal, federally assisted or non-federally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (See 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this Appendix B-80.

ECONOMIC AREAS

Area	<u>Minority Goal (Percent)</u>
1. MISSISSIPPI COUNTIES LOCATED IN MOBILE, AL AREA: 047 Mobile, AL SMSA Counties 6025 Pascagoula - Moss Point, MS MS – Jackson	16.9
2. MISSISSIPPI COUNTIES LOCATED IN MEMPHIS, TN AREA: 055 Memphis, TN SMSA Counties 4920 Memphis, TN-AR-MS MS - Desoto, Non-SMSA Counties MS - Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Clay, Coahoma, Grenada, Itawamba, Lafayette, Lee, Leflore, Marshall, Monroe, Montgomery, Panola, Pontotoc,	32.3 26.5

Prentiss, Quitman, Sunflower, Tallahatchie,
Tate, Tippah, Tishomingo, Union, Washington,
Webster, Yalobusha

3. MISSISSIPPI:
112 Jackson, MS
SMSA Counties: 30.3
3560 Jackson, MS
MS - Hinds, Rankin
Non-SMSA Counties 32.0
MS - Attala, Choctaw, Claiborne, Clarke,
Copiah, Covington, Franklin, Holmes,
Humphreys, Issaquena, Jasper, Jefferson,
Jefferson Davis, Jones, Kemper, Lauderdale,
Lawrence, Leake, Lincoln, Lowndes, Madison,
Neshoba, Newton
4. MISSISSIPPI COUNTIES LOCATED IN NEW ORLEANS, LA AREA:
113 New Orleans, LA
SMSA Counties: 19.2
0920 Biloxi, Gulfport, MS
MS - Hancock, Harrison, Stone
Non-SMSA Counties 27.7
MS - Forrest, Lamar, Marion, Pearl River,
Perry, Pike, Walthall
5. MISSISSIPPI COUNTIES LOCATED IN BATON ROUGE, LA AREA:
114 Baton Rouge, LA 26.1
Non-SMSA Counties
MS - Adams, Amite, Wilkinson

40 CFR PART 8, EQUAL OPPORTUNITY REQUIREMENTS

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this equal opportunity (federally assisted construction) clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the Contractor's non-compliance with the equal opportunity (federally assisted construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as provided by law.
- (7) The Contractor will include this equal opportunity (federally assisted construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or

orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor, as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentally or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the Agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Agency in the discharge of its primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to the Order with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Order and will carry out such sanctions and penalties for violation of the equal opportunity clause, as may be imposed upon contractors and subcontractors by the Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

SPECIAL NOTICE #1
EEO DOCUMENTATION REQUIRED BY
FEDERAL EXECUTIVE ORDER 11246 AS AMENDED

Federal Executive Order 11246 requires an EEO commitment of the prime contractor and all subcontractors (in excess of \$10,000). EEO Affirmative Action is mandated throughout the duration of the contract.

Failure to submit the required EEO documentation may subject the Contractor to sanctions under Executive Order 11246.

THE LOW, RESPONSIVE, RESPONSIBLE BIDDER MUST FORWARD THE FOLLOWING ITEMS, IN DUPLICATE TO THE OWNER NO LATER THAN 10 DAYS AFTER BID OPENING. THE OWNER SHALL TRANSMIT 1 COPY TO DEQ WITHIN 14 DAYS AFTER BID OPENING.

1. DWSIRLF Project Number. Project Location. Type of Construction.
2. Copy of EEO-1 Report (Employer Information Report, annually submitted to the Equal Employment Opportunity Commission). Required for Firms with 100 employees or more.
3. Copy of the Affirmative Action Plan of the Contractor. Indicate company official responsible for EEO.
4. List of current construction contracts, with dollar amount. List contracting federal agency, if applicable.
5. Statistics concerning company percent workforce, permanent and temporary, by sex, race and trade.
6. List of employment sources for project in question. If union sources are utilized, indicate percentage of minority membership within the union crafts.
7. Anticipated employment needs for this project, by sex, race and trade, with estimate of minority participation in specific trades.
8. List of subcontractors (name, address and telephone) with dollar amount and duration of subcontract. Subcontractors' contracts over \$10,000 must submit items one (1) through eight (8).
9. List of any subcontract work yet to be committed with estimate of dollar amount and duration of contract.
10. Contract Price. Duration of prime contract.

11. Each Contractor shall be required to maintain in their files a CC-257, monthly Employment Utilization Report, for each month of the construction period.

SECTION 4 - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBEs):

It is the policy of the Drinking Water State Revolving Loan Fund and the Environmental Protection Agency (EPA) to promote a “fair share” of sub-agreement awards to small, minority and women’s businesses for equipment, supplies, construction, and services. Compliance with these contract provisions is required in order for project costs to be eligible for DWSRF Funding. Failure on the part of the apparent successful bidder to submit required information to the loan recipient (Owner) may be considered by the owner in evaluation whether the bidder is responsive to bid requirements. This requirement is contained in Appendix E of the DWSIRLF Program Regulations.

The following procedures are to be followed for procurement under DWSIRLF construction loans:

If the successful bidder plans to enter into sub-agreements for construction, equipment, materials and/or supplies the bidder must submit to the owner within 10 days after bid opening, evidence of the affirmative steps taken to utilize small, minority and women’s businesses, as described under the section entitled “Submittal of MBE/WBE Documentation”. The affirmative steps are:

- (1) Ensure DBEs are made aware of contracting opportunities to the extent practicable, including placing DBEs on solicitation lists and soliciting them whenever there are potential sources;
- (2) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. Assure that DBEs businesses are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of DBEs;
- (4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually;
- (5) Utilize the services and assistance of the Department of Economic and Community Development’s Rural Minority Business Development Center and the contract procurement centers (See The Department of Environmental Quality’s Minority and Women Business Enterprises Resource Directory for the locations of these centers);
- (6) Require the subcontractor to take the steps listed above, if the subcontractor awards sub-agreements.

For purposes of clarification:

- The term sub-agreement as used in this section refers to a subcontract for construction work or a purchase order for equipment, supplies and/or materials.
- This requirement applies to any DWSIRLF financially assisted procurement agreement or sub-agreement in excess of \$10,000.
- This requirement mandates two responsibilities; separate solicitations must be made of minority business enterprises and women's business enterprises.
- A minority business is a business, at least 51 percent of which is owned and controlled by minority group members (Black; Hispanic; Asian American; American Indian; and any other designations approved by the Office of Management and Budget). Any specific clarification concerning the ownership and/or control issues will be provided by the Department.
- A women's business is a business, at least 51 percent of which is owned and controlled by one or more women.
- The control determination will revolve around the minority or woman owner's involvement in the day-to-day management of the business enterprise.
- Solicitation should allow adequate time for price analysis; the Department requires that contact be made no later than 10 days before bid opening.
- Prime Contractors must include the project's MBE and WBE fair share objectives percentages in their requests for quotes (solicitations) to MBE and WBE firms.
- Bidders may use the Mississippi Procurement Technical Assistance Program's online Agency Bid Bank (<https://agencybidbank.mississippi.org>) to assist with solicitation of MBE and WBE firms.
- Efforts taken to comply with this requirement must be documented in detail; maintain records of firms contacted, including any negotiation efforts to reach competitive price levels, and awards to the designated firms.
- The prime contractor must utilize the services of "The Rural Minority Business Development Center" (RMBDC) and the "Contract Procurement Center" closest to the project. The RMBDC is operated by the Mississippi Department of Economic and Community Development, Minority Business Enterprise Division under a grant from the United States Department of Commerce - Minority Business Development Agency. The RMBDC provides technical, financial and contracting assistance to minority business enterprises. The U.S. Small Business

Administration and the State of Mississippi jointly fund the Contract Procurement Centers. These centers, upon request, provide a listing of small, minority and women's businesses. They notify these businesses of contracting and subcontracting opportunities. Use of the services provided by centers does not absolve the prime contractors from pursuing additional efforts to comply with this requirement.

- Bidders may rely on written representation by a subcontractor regarding its status as a minority or women's business. However, the Department will require any DBE that has not previously participated in an EPA or DWSIRLF funded project to submit a DBE certification from the Mississippi Department of Economic and Community Development; U.S. Small Business Administration's 8A Program or Mississippi Department of Transportation. If the firm does not have such DBE certification, or if the Department has reasonable cause to believe that a firm doing business is not a legitimate DBE, the Department will require that firm to submit appropriate data to prove ownership and control.
- Challenges to DBE status will not be accepted under the bid protest procedures. Any individual or firm that files a false statement may be prosecuted under U.S.C. 1001. If allegations are made that a firm misrepresented its status as a MBE/WBE, the matter may be investigated by the Office of the Inspector General, and, if appropriate, turned over to the Department of Justice for criminal and/or civil prosecution.
- Credit for DBE participation shall be granted for DBE firms performing a useful business function according to custom and practice in the industry. A DBE firm may further subcontract a portion of the work provided that such further subcontracting is in accordance with these contract documents and that the majority of work is being performed by the MBE or WBE firm having the contract. MBE/WBE participation will not be counted when the MBE and/or the WBE subcontracts back to the prime contractor.
- DBE firms serving as material and equipment suppliers under DWSIRLF funded projects will be credited toward the projects' DBE fair share objectives in accordance with the following definition and conditions:

A supplier is defined as a business which acts as a distributor of materials or equipment, and which provides a commercially useful function when such activity is traditional in the industry manufacturing the material or equipment supplied.

Commercially useful function normally includes:

- (1) Providing technical assistance to the purchaser prior to the purchase, during installation and after the supplies or equipment are placed in service;

- (2) Manufacturing or being first tier below manufacturer of the supplies or equipment supplied;
- (3) Providing functions other than just accepting and referring request for supplies or equipment to another party for direct shipment to a contractor.

DBE suppliers who provide a commercially useful service such as delivery to site, modification or assembly of purchased items at their place of operation or at the job site will have 100% of procurement value credited to the project's DBE fair share objectives;

DBE suppliers who serve as sales representatives of authorized dealers will have 25% of the procurement value credited to the project's DBE fair share objective. Haulers will receive 100% credit if they provide the material that is hauled. No credit will be granted for MBE/WBE suppliers who serve as passive conduits of funds for the purchase of supplies and/or equipment to some other, non-minority firm.

- Expenditures to DBE firms that act as a broker in a transaction will not be counted toward the DBE fair share objectives. A broker is a firm that does not, itself, perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business. A DBE firm will also be considered a broker if it subcontracts 50 percent or more of the work.
- Any proposed changes from the approved Small/Minority/Woman business participation after EEO/DBE approval shall be reported with the reason for the proposed deviation to and approved by the Department prior to initiation of the action.
- During construction of the project the Department may conduct an DBE Utilization Follow-up Review. Prime contractor(s) may be required to provide verification of reported DBE utilization. This verification may include invoices for supplies and/or equipment, pay requests from MBE and WBE subcontractors, etc.
- Each DWSIRLF loan recipient and its prime contractor shall be required to submit a DWSIRLF34 Form, Semi-annual DBE Utilization Report within seven (7) days after the end of each reporting period (April 7th and October 7th).

SUBMITTAL AND APPROVAL OF DBE DOCUMENTATION

The successful bidder shall submit the following documentation of good faith efforts to achieve the project's DBE fair share objectives:

- A. If the fair share objectives were met:

SGC-24

HDWI077
06/06/2024

1. Total dollar amount of proposed contract;
2. Total dollar amount of proposed DBE participation;
3. Percentage of proposed DBE participation;
4. Name, address, telephone number, contact person of each proposed DBE subcontractor and/or supplier, type of proposed subcontract and dollar amount, and identification of each subcontract as a DBE contractor, and;
5. Certification from each DBE firm declaring its status as a DBE firm, if they have not previously participated on a DWSIRLF funded project.

B. If the fair share objectives were not met:

1. Copies of solicitation letters from the successful bidder (delivered by certified mail, return receipt requested) mailed to DBE firms requesting proposals for specific subcontracting opportunities, material or supply needs and encouraging inquiries for further details. Solicitation letters must include the project's MBE and WBE percentages. Solicitation letters should have been sent in a timely manner (post marked no later than 10 days before bids were due). Letters that are general in nature and do not request quotes or proposals for specific subcontracting opportunities, equipment, material and supply needs will not be acceptable as good faith efforts to obtain MBE and WBE participation (See Sample letter from contractor to MBE/WBE firms on page SGC-28).
2. Copies of solicitation letters from the successful bidder to the Mississippi Rural Minority Business Development Center and the Contract Procurement Center closest to the project area requesting their assistance in identifying DBE firms.
3. If the successful bidder, in addition to solicitation letters, chose to use newspaper advertisements to solicit DBE firms (use of newspaper advertisements cannot be substituted for solicitation letters), documentation should include proof of publication of requests for proposals or bids in newspapers in the project's general area.
4. The successful bidder must submit a listing of those DBE firms from whom quotes or proposals were received who were not awarded subcontracts, for construction, equipment, supplies and/or materials. If a DBE did not receive a subcontract, the successful bidder must document that the subcontractor or supplier selected was lower in price than the DBE firm's proposal and that the scope of work or equipment/material purchase was the same as bid on by the DBE and not a reduced portion thereof.

5. If there are any DBE subcontracts (although the fair share objectives were not met) the information specified in Provisions 1-5 of Section A must be provided.
6. Once DBE documentation is submitted, the Department will determine if deficiencies exist in the DBE documentation. If the Department determines that such deficiencies are correctable, the successful bidder will be informed as to what actions must be taken to correct the deficiency. Award of the proposed construction contract will not be approved for loan participation until the corrective action has been taken.

Please be aware that DBE Documentation is a matter of bidder responsibility. Failure on the part of the low bidder to take the required corrective action will cause the loan recipient to determine whether the low bidder satisfied the required responsibility criteria and to reject any bidder that fails to meet the criteria.

**SAMPLE
LETTER FROM CONTRACTOR TO MBE/WBE FIRMS**

(CONTRACTOR'S LETTERHEAD)

Date

(MBE/WBE Name)
(Address)

RE: Project # DWI-L _____

Dear _____:

This company intends to submit a bid on the above referenced project.

We are soliciting a proposal from you for any item or items on this project for which you are qualified to subcontract. You may submit proposals to subcontract items of construction or for project materials and supplies if you are a distributor of materials or equipment. The project's MBE/WBE fair share objectives are _____% MBE and _____%WBE.

A Bid Schedule is attached for your review. You are encouraged to submit proposals on any item(s) for which you are qualified to subcontract. Proposals must be submitted by _____(date) to be considered.

For further details, you are encouraged to call this office at (telephone number) and ask for (person's name) during normal business hours.

Sincerely,

(Name of Contractor)

Enclosure:

SECTION 5 - Davis Bacon and Related Acts Requirements:

Labor Standards Provisions for Federally Assisted Contracts

(a) The Recipient shall insure that the **subrecipient(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) 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.

Loan recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The loan recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall approve 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 loan 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 loan recipient(s) 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. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action 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. (Approved by the Office of Management and Budget under OMB control number 1215-0140)

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the loan recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the State award official, 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. (Approved by the Office of Management and Budget under OMB control number 1215-0140)

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

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

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The loan 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.

(3) Payrolls and basic records.

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

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the loan 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 recipient or EPA. As to each payroll copy received, the loan 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 <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 loan recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting officer or loan 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.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

(a) Contract Work Hours and Safety Standards Act. The loan 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 Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The loan 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 addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the loan 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 loan 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.

5. Compliance Verification

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

(b) The **subrecipient** shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** 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. **Subrecipients** must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. **Subrecipients** shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The **subrecipient** shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The **subrecipient** shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** 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. **Subrecipients** must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the **subrecipient** shall verify evidence of fringe benefit

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

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

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

SECTION 6 - DWSIRLF PROJECT DOCUMENT BOARD & SIGNAGE:

Due to various notice and posting requirements, a suitable document board must be provided on site for all the required posters and other information. Where necessary, document board must be weatherization to protect all the documents.

At a minimum, project document board must be large enough to accommodate the postings of a description of the project (8½ x 11 Sheet), the required wage determinations and Davis Bacon Posters of the Davis Bacon Act (a provision of the federal capitalization grant requirements) the required EEO posters.

SECTION 7 - AMERICAN IRON AND STEEL PROVISIONS

This contract is funded in whole or in part by funds as is established in the Safe Drinking Water Act's State Revolving Loan Funds (42 U.S.C. 300j-12). 42 U.S.C. 300-12(a)(4) states:

(A) funds made available by a State loan fund established pursuant to this section may not be used 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.

(B) 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.

(C) Subparagraph (A) shall be waived 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 –

- (i) Applying subparagraph (A) would be inconsistent with the public interest;
- (ii) Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or
- (iii) Inclusion of iron and steel products in the United States will increase the cost of the overall project by more than 25 percent.

SECTION 8 – BUILD AMERICA BUY AMERICA PROVISIONS

Federal financial infrastructure investments obligated on or after May 14, 2022, must comply with BABA requirements. Absent a waiver, all iron and steel products, manufactured products, and construction materials permanently incorporated into an infrastructure project subject to BABA requirements must be produced in the United States. For more information on the BABA requirements, visit the EPA Office of Water’s dedicated website – <https://ww.epa.gov/cwsrf/build-america-buy-america-baba>.

For details on what iron and steel products, manufactured products, and construction materials are covered by the requirement, see “Section 2: Product Coverage” of EPA’s BABA memorandum (pp5-9). The information provided therein should be helpful in determining items may be required to be certified to be BABA compliant or the need to pursue a project specific waiver for a given component for the bid project. The Owner has the ultimate responsibility for compliance with the BABA requirements, but failure to meet these requirements could result in the funds awarded for the project not being approved for payment. Any project that is funded in whole or in part with federal assistance must comply with the BABA requirements, unless the requirements are otherwise waived.

Note: The BABA requirements for items considered “iron and steel” are equivalent to those covered iron and steel products under the AIS requirements in the Safe Drinking Water Act. EPA views the AIS requirements as meeting the “iron and steel” product requirements of BABA Section 70914, as they both include the key requirements that items made of iron and steel be wholly manufactured in the United States from the point of melting and/or pouring the iron or steel components through final manufacturing step. For Drinking Water SRF funded projects, EPA intends to implement BABA requirements the same way for iron and steel items as it has done for AIS products.

There are basically three ways to document compliance:

1. Ensure and document that all of the iron and steel products, manufactured products, and construction materials used in the project are produced in the U.S.
2. Request and be granted an individual item/project waiver from EPA for foreign produced items
3. Comply and document conformance with an existing categorical/nationwide waiver

Waivers can be based on a) the public interest, b) unavailability of domestic products, or c) 25% total project (not item or contract) cost increase. Public interest waivers are expected to be nationwide, whereas the others are expected to be project/item specific. Who may apply and how to apply for a waiver can be found “Section 4: Waivers” of the EPA BABA memorandum (pp 10-12).

On the basis of public interest, EPA Headquarters has issued a nationwide waiver for *de minimus* components. Products that qualify for being included in a *de minimus* waiver cumulatively may comprise no more than a total of five percent of the total project cost. The five percent threshold can be used for

any products, independent on the purpose of the project. This waiver is not additive with the existing American Iron and Steel national *de minimus* waiver.

Individual waiver requests may be submitted to the MSDH through the Owner and/or their Consulting Engineer. The content of such a request is described in “Section4: Waivers, Q4.1” of EPA’s BABA memorandum. In order to expedite processing, all waiver requests submitted to MSDH must be accompanied by a cover letter which has been notated to clearly identify all specific EPA recommended items are addressed. Once determined complete, the request will be sent to BABA-OLEM@epa.gov and copied to EPA Region IV. Every waiver are required to be also reviewed by the Office of Management and Budget’s Made in America Office (MIAO) whom makes the final decision on the waiver. Please note that the full process could take up to between 45 and 60 days before a final decision is released.

Note: BABA waivers do not release the contract from the AIS requirements. AIS is still a separate requirement and is required for all Drinking Water ARF funded projects.

Attachment 1

DBE Directory