VDH Drinking Water Funding Program Guidance Package #4

PROCUREMENT

I. General

The Recipient's procurement system must be structured to promote free and open competition to the maximum extent possible. It is the Recipient's responsibility to ensure that it receives the required product at the best price and to avoid all unnecessary purchases and expenditures. The Recipient's procurement procedures should also promote, to the maximum extent possible, the use of minority-owned and women-owned businesses. The Recipient must take positive steps to seek out qualified minority-owned and women-owned businesses to directly solicit, or otherwise bring them into the bidding process.

All procurement made during the course of planning, design, and construction of the project must be purchased, acquired or contracted for in accordance with Chapter 43, Title 2.2-4300, Code of Virginia, and known as the Virginia Public Procurement Act (Act) and Code of Federal Regulations Title 40 Part 31.36.

This program requires all participants to follow the provisions of the Virginia Public Procurement Act as revised by the 2018 General Assembly Session **with no exceptions recognized for localities under 3,500 in population.**

II. Definitions

Recipient – Eligible water system receiving financial assistance.

Prime Contractor – A business concern that enters into written agreements directly with Recipient. **The term prime contractor** includes agreements to provide services (such as engineering and legal), supplies, equipment and construction.

Subcontractor – A business concern that enters into written agreement directly with the Prime Contractor. Subcontractor includes agreements to provide services (such as engineering and legal), supplies, equipment and construction.

Minority-Owned Business Enterprise (MBE) - A business concern with at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.

Woman-Owned Business Enterprise (WBE) - A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the

equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.

III. MBE/WBE

A. Six (6) Good Faith Efforts

The Code of Federal Regulations Title 40 Part 31.36(e), "Procurement," requires the Recipient and Prime Contractor to take all necessary affirmative steps to assure that minority-owned and women-owned businesses are afforded contracting opportunities. **This requirement applies to all contracts, subcontracts and procurements for services (including engineering and legal), supplies, equipment, and construction.** The goal is to make MBE/WBE firms aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. To achieve this goal, the affirmative steps, otherwise known as "six good faith efforts," that must be followed are:

1. Include qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Ensure that small and minority and women's businesses are solicited whenever they are potential sources of products or services to be bid;
3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority and women's businesses (i.e. provide alternative bidding scenarios);
4. Establish delivery schedules to encourage participation by small and minority and women businesses (i.e. timing and flexibility);
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency, U.S. Department of Commerce; and
6. Require the Prime Contractor to take affirmative steps as outlined in items one through five above to subcontract with small and minority and women's businesses, <u>if they award subcontracts.</u>

B. "Good Faith" Effort Compliance Documentation

The Recipient and Prime Contractors <u>must provide documentation</u> to support a "good faith" effort in the solicitation of MBE and WBE firms <u>only</u>. **A Prime Contractor is a business concern that enters into written agreement directly with the Recipient and includes agreements to provide services (engineering and legal), supplies, equipment, and construction**. The submission of documentation to support a "good faith" effort in the solicitation of Small Business Enterprise is not required. However, the Recipient and Prime Contractors must maintain this documentation in their files for possible future reference. Documentation may include the following:

1. Copies of announcements/postings in newspapers or other media for specific contracting/subcontracting opportunities. Include language in announcements/postings that MBE/WBE firms are encouraged to bid.

2. Copies of announcements/postings of contracting/subcontracting opportunities in trade publications or minority media that target MBE and/or WBE firms.
3. Documentation of sources used to identify potential MBE/WBE firms.
4. Documentation of contacts with MBE/WBE firms, including the name, address, telephone number, dates of phone calls, letters, emails, and the contact results.
5. Copies of direct solicitation letters/emails sent to all MBE/WBE firms.
6. Copies of the MBE/WBE certification documentation for ALL proposed prime and subcontractor MBE/WBE firms.
7. Documentation showing Prime Contractor has made the six good faith efforts to seek qualified MBE/WBE subcontracts - to the extent they use subcontractors.

Attachment 1 - MBE/WBE Compliance Checklist has been developed to assist in documenting compliance with MBE/WBE requirements and must be submitted to VDH.

C. Additional Guidance on Conducting Outreach

1. **Possible sources for identifying MBE/WBE firms:**
   (a). Virginia's Department of Small Business and Supplier Diversity's website. http://sbsd.virginia.gov/
   - At Department of Small Business and Supplier Diversity's website click on "SWaM Vendors Search" tab.
     EXAMPLES:
     - A search for vendors with commodity code 92500 – Engineering Services and 92533 – Engineer Services, Professional yields a list of registered firms.
     - A search for vendors with commodity code 91874 – Legal Consulting and 96149 – Legal Services, Attorney yields a list of registered firms.
     - A search for vendors with commodity code 91356 – Construction, Utility/Underground Projects and 91360 Construction, Water System, Main and Service Line yields of list of registered firms.
     - Select the link to National Institute of Governmental Purchasing (NIGP) to get the listing of commodity codes
   - http://sbsd.virginia.gov/ At Department of Small Business and Supplier Diversity's website click on "DBE Directory" for alphabetically list of construction related registered firms. This listing will contain VDOT work codes and descriptions.

(b). Virginia's Department of Transportation's website. http://www.vdot.virginia.gov/

- http://www.virginiadot.org/business/small_business_enterprise_program.asp At the Virginia Department of Transportation's website click on "Contractor Firms (PDF)" under VSBEP Directory.

(c). Federal Government's federal contracts database known as the System for Award Management (SAM) www.sam.gov, which replaced the Central Contractor Registry (CCR, www.ccr.gov). SAM is the primary vendor database for the federal government. Both current and potential government vendors must register in SAM in order to be awarded federal government contracts.

These various searches yield a list of potentially qualified MBE/WBE businesses. From these lists, identify those businesses in your area/region to directly solicit. Solicit businesses that you would reasonably expect to respond and submit a quote.

To ensure the Recipient is given credit for good-faith outreach efforts, the Recipient documents the searches executed and the results of the searches, describes criteria used to determine who on the list(s) to directly solicit (probably area code or distance) and describes any other resources used to seek qualified MBE/WBE firms to solicit.

The Recipient must give a copy of this outreach guidance (PG #4) to Prime Contractors because they are likewise required to make good faith outreach efforts when searching for MBE/WBE subcontractors. Prime Contractors are also required to document their outreach efforts just as project owners are.

2. **Possible minority publications to consider when advertising (when it is believed that advertisement may increase MBE/WBE participation :**

Alexandria, Virginia	Metro Herald	(703) 548-8891
Alexandria, Virginia	Omaid Weekly	(703) 922-6321
Annandale, Virginia	Latino Impacto	(703) 847-0810
Arlington, Virginia	El Tiempo Latino	(703) 527-7860
Centreville, Virginia	Asian Fortune	(703) 968-0202
Falls Church, Virginia	Pho Nho Vietnamese	(703) 533-0264
Fredericksburg, Virginia	LaConexion	(540) 368-5055
Hampton Roads, Virginia	Hampton Roads Voice	(757) 244-5654
Harrisonburg, Virginia	Shenandoah Valley Hit	(540) 432-0416
Harrisonburg, Virginia	Nuevas Raices	(540) 271-0799
Norfolk, Virginia	Norfolk New Journal and Guide	(757) 543-6531
Richmond, Virginia	Richmond Free Press	(804) 644-0496
Richmond, Virginia	Richmond Voice	(804) 644-5617
Roanoke, Virginia	Roanoke Tribune	(540) 343-0336

D. MBE/WBE "Fair Share" Goals

It is a federal requirement that MBE and WBE firms be provided the opportunity to participate in contract awards for projects. EPA requires that VDH establish MBE and WBE fair share percentage goals for four procurement categories to include: supplies, equipment, services, and construction. A fair share does not constitute an absolute goal, but a commitment on the part of the Recipient and Prime Contractor to attempt to use MBE/WBE firms by carrying out the six good faith effort steps. Recipients and Prime Contractors are not required to award contracts to MBE/WBE firms. However, Recipients and Prime Contractors must document good faith efforts to afford MBE/WBE firms the opportunity for a contract award.

The Recipient is required to monitor and maintain records regarding the Recipient's and Prime Contractor's efforts to meet and fulfill our good faith effort/fair share goals. The Recipient must discuss at pre-bid conference and incorporate into the bid package contract specifications the: **Attachment 2** - Instruction to Bidders/Offerors: MBE/WBE Requirements of 40 CFR 33.240; **Attachment 3 -** Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity, and **Attachment 4 -** Subpart Inserts containing 11 mandatory subparts (Subpart A-K). The VDH will provide the Recipient with its fair share goals to be included in Subpart C of the Contract Inserts prior to solicitation of bids.

Upon receipt of bids, the Recipient shall ascertain submittal of apparent low bidder's documentation to support his or her efforts in the solicitation and recruitment of MBE/WBE contractors, subcontractors, and/or equipment suppliers, etc. The Recipient must evaluate the low bidder's good faith efforts regarding MBE/WBE solicitation prior to contract award.

All MBE/WBE solicitation and recruitment documentation must be submitted for VDH approval along with the bid documents. The MBE/WBE compliance checklist will be part of, and will aid in submittals.

Immediately following contract award, the Recipient shall complete and submit to VDH **Attachment 5 -** MBE/WBE Utilization Reporting Form identifying the selection, if any, of minority and female-owned businesses to be utilized during construction of the facility.

The Recipient is also required to submit the MBE/WBE Utilization Reporting Form on a **quarterly** basis during the construction period. In addition, the **Prime Contractor** must submit its MBE/WBE Utilization Reporting Form firms to the Recipient on a quarterly basis during the construction period utilizing Attachment 5. The Recipient must compile these MBE/WBE Utilization Reports and submit them by the 15th of the month following the end of each fiscal quarter to VDH at the following address:

Virginia Department of Health
Office of Drinking Water, 6th Floor
109 Governor Street
Richmond, Virginia 23219

E. Bidders List

In accordance with the Code of Federal Regulation Title 40, Section 33.501(b) and (c) a recipient of an identified loan through the DWSRF is required to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The list must include all firms that bid or quote on prime contracts or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

(1) Entity's name with point of contact

(2) Entity's mailing address, telephone number, and e-mail address

(3) The procurement on which the entity bid or quoted, and when

(4) Entity's status as an MBE/WBE or non-MBE/WBE.

IV. Methods of Procurement

Competitive sealed bidding or competitive negotiation may be used for the purchase or lease of equipment, supplies, materials, services, and construction, under public contract. Professional services may be procured by competitive negotiation. Competitive negotiation may be used for procurement of other than professional services when it has been determined, and documented in writing, that competitive sealed bidding is not practical or advantageous to the public. The procedures for these and other eligible procurement methods are discussed below.

Competitive Sealed Bids

Procurement under this method includes the following procedures or steps. A formal public announcement is made that sealed bids will be received for the specified work, or a solicitation for bids is placed in newspapers and publications with wide distribution. The announcement should be published at least 30 days prior to the bid opening so that the project receives maximum exposure to potential contractors. Potential qualified MBE/WBE firms must be identified and directly solicited.

All bids must be opened at the same time and all non-responsive bids should be rejected immediately. A responsive bidder is one whose bid has followed all requirements of the bidding

document specifications, and is one who can provide documentation to support good faith efforts to solicit MBE/WBE participation. Bids are then evaluated in accordance with criteria established by the Recipient in the bid document to determine the lowest, responsive, responsible bidder. A responsible bidder is one who has the financial and technical resources to perform the scope-of-work. Further, a responsible bidder has a satisfactory performance record, is willing to comply with federal labor requirements and standards, and has an adequate accounting system to document compliance.

Once the bids and bidders have been evaluated and the lowest, responsive, responsible contractor has been determined, the contract can be awarded. Award of the contract will also follow the method described in the contract documents. Award of the contract cannot be made to a contractor who has been debarred and/or suspended from bidding on any federal or state funded project. The contractor is required to take the first five (5) good faith effort steps outlined above.

Competitive Negotiation

Procedures for this type of procurement require posting of a public notice and an advertisement in a newspaper of general circulation. The notice and advertisement must identify the needed services and request that proposals be submitted. It should be published so that it receives wide circulation and appears at least 30 days prior to the deadline for receiving proposals. The notice will include the scope of services; the method by which documents associated with the services can be obtained or examined; the criteria to be used to evaluate each proposal; and the deadline and place for submitting the proposals. Contact VDH for approval to publish the advertisement for less than 30 days prior to the deadline for receiving proposals. Potential qualified MBE/WBE firms must be identified and directly solicited.

Once the proposals are received, they are to be evaluated uniformly in accordance with criteria established in the notice to determine the qualified offerors and acceptable proposals. The Recipient then determines the list of the best qualified firms, and negotiation with these firms begin. Negotiations are to be conducted in a manner that does not identify or disclose any information regarding competing firms. Once a proposal is determined to be the most advantageous to the Recipient, considering price and evaluation criteria, the contract can be awarded.

Noncompetitive Negotiation

Award of a contract or sub-agreement under noncompetitive negotiation methods may occur only when an item is available from a single source, a public emergency exists requiring immediate action, or after solicitation from a number of sources, competition is determined to be inadequate. A written determination by the public body shall document the availability of only the sole source or emergency situation. Authorization from VDH must be obtained for procurement through noncompetitive negotiation.

Small Purchases

Section 2.2-4303(G) of the Act allows for the establishment of purchase procedures, if adopted in writing, not requiring competitive sealed bids for competitive negotiation for single or term contracts for **goods and services**, other than professional services if the aggregate or the sum of all phases is not expected to exceed $200,000; however, such small purchases procedures must provide for competition whenever practicable. For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed $80,000.

Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

Documentation of the procedures followed in small purchases procurement must be kept by the Recipient. **Attachment 7** - Small Purchase Procurement Requirements has been developed to assist with documentation and to be submitted to VDH.

Cost and Price Consideration

In competitive negotiation, cost is one of the evaluation factors used in the selection process. Detailed cost data should be obtained from the firms involved in the negotiation process. Pricing should be evaluated based on the complexity of the work and the prices charged in the surrounding geographical area.

The two types of costing/pricing which are typically preferred for service type contracts are *Fixed Price* or *Lump Sum*, and *Cost Plus Fixed Fee*. The fixed price arrangements are used when the scope-of-work can be clearly defined and a fixed price or lump sum cost can be negotiated. Under this type of sub-agreement, the final cost cannot be changed unless a formal change in the scope of the work is negotiated.

The cost plus fixed fee pricing arrangement is used when it is difficult to define accurately the complete scope-of-work. Under this type of sub-agreement, a cost ceiling or upper limit is established along with a fixed fee or profit for the work. If costs increase for additional work within the original scope-of-work, the contractor does not receive any increase in the fixed fee.

The acceptable methods of obtaining the cost for construction services are "Unit Price" bids and "Lump Sum" bids. In lump sum bidding, the entire scope-of- work is grouped together as a single item and the contractor provides a price which will accomplish the entire scope. In unit price bidding, each individual task or item is broken out by linear feet, cubic yards, etc., and a cost is given per unit specified, along with the total cost of all units required for the task identified.

V. Reporting Requirements

A. Prior to the award of construction contracts, the Recipient will be able to determine if an increase or decrease is needed for the funding commitments to reflect the actual project costs. The Recipient shall provide for VDH's approval copies of the following information and documents:

- The updated or "as-bid" costs for all tasks/elements involved with the project. This budgeting summary should include, and break out individually, the construction cost, equipment cost, fees for inspection and engineering services, etc., which will require outlay during the construction of the project.

- Evidence of bid advertisement/announcement/postings [See **Attachment 8** for General Language]
- The Bid Form(s) or Bid Proposal(s).
- The Bid Tabulation(s).
- Anticipated construction start date.
- Identification and direct solicitation of MBE/WBE firms
- Attachment #1 – MBE/WBE Compliance Checklist
- All bonds (*bid, payment, and performance*).

B. For procurement of professional services other than construction contracts, (*i.e., architectural/engineering/legal/bond counsel*) the Recipient will submit for VDH's approval the following information (unless procured using small purchase procedures under $80,000 (see Attachment 7):

- Copy of RFP to include scope of services, evaluation criteria, and contact info
- Proof of date RFP or RFQ was issued (copy of advertisement/announcement/ posting [see Attachment 8 for General language]
- Identification and direct solicitation of MBE/WBE firms
- Attachment #1 – MBE/WBE Compliance Checklist
- Copy of executed contract
- Ranking of respondents
- Statement detailing with whom negotiations were conducted

C. All documentation and support information concerning the procurement of service and goods shall be retained in the Recipient's project files and will be available for inspection by VDH or their authorized agent.

VI. Nondiscrimination Provisions

The Recipient shall maintain records of all executed nondiscrimination (EEO compliance) certifications filed.

VII. Supplemental Procurement Guidance

Copies of the Professional Services Procurement Review Checklist and the Construction Contract Bid Review Checklist are provided for your reference. These forms outline the criteria used for review and approval of procurement efforts.

VDH Financial and Construction Assistance Programs
PROFESSIONAL SERVICES PROCUREMENT REVIEW CHECKLIST

**This form must be completed in full and submitted with the required documentation to Mr. Howard Eckstein, Project Officer, at 109 Governor Street, 6th Floor, Richmond, Virginia 23219, to satisfy Professional Services Procurement Procedures.*

Project No. :_____ Date: _____

Project Name: _____

Submitted by: _____

I: Firm Information

Firm name: _____

Address: _____

Phone number: _____

Service Provided: _____

Date RFP Issued: _____ Contract Date:_____

Date for Receipt of Proposals:_____ Contract Amount: $ _____
(At least 30 calendar days from date RFP issued)

Verified federal debarment status (Y/N). Attach print screen: _____. Verified state debarment status (Y/N).

II: Required Documentation

If procured via competitive negotiations (all items are required)

Advertisement	
Certification of Publication/Advertisement with MBE/WBE language	☐
RFP to include scope of services desired, evaluation criteria, and contact information	☐
MBE/WBE Requirements	
Documentation of MBE/WBE contractor search (DMBE website printout)	☐
Copies of direct solicitations to MBE/WBE firms (certified letters/receipts, e-mails, fax receipts)	☐
Evaluation of Respondents	
Scoring sheets with evaluation criteria	☐
Ranking of qualified respondents	☐
Statement detailing with whom negotiations were conducted (at least two respondents) (this may be in the form of Board meeting minutes)	☐
Contract (to be submitted after VDH has approved procurement procedure)	
Executed contract with top ranked respondent for fixed price amount (For term contracts please provide general terms and task order; the fixed price amount for the task order cannot exceed $100,000)	☐

If procured via a small purchase procedure for purchases under $80,000 (all items are required)

Procurement Requirements for Small Purchases Form	☐
MBE/WBE Requirements	
Documentation of MBE/WBE contractor search (website printout)	☐
Copies of direct solicitations to MBE/WBE firms (certified letters/receipts, e-mails, fax receipts)	☐
Contract (to be submitted after VDH has approved procurement procedure)	
Executed contract with top ranked respondent for fixed price amount	☐

VDH Financial and Construction Assistance Programs
CONSTRUCTION CONTRACT BID REVIEW CHECKLIST

**Please complete this form in full and submit with the required documentation to Mr. Howard Eckstein, Project Officer, at 109 Governor Street, 6th Floor, Richmond, Virginia 23219, to satisfy Construction Contract Procurement Procedures.*

Project No. :_____ Date: _____

Project Name: _____

Submitted by: _____

I: Lowest Responsive and Responsible Bidder Information

Firm name: _____
Address: _____

Phone number: _____

Proposed Contract Amount: $ _____

Service Provided: _____

_____

II: Advertisement for Bids Information

Date AFB issued: _____ Date of bid opening :_____
(At least 30 calendar days from date IFB issued)

Contract Date:_____

III: Required Documentation

If procured via competitive sealed bidding (all items are required)

Advertisement	
Certification of Publication/Advertisement with required language	☐
MBE/WBE Requirements	
Documentation of MBE/WBE contractor search (website printout)	☐
Copies of direct solicitations to MBE/WBE firms (certified letters/receipts, e-mails, fax receipts)	☐
Documentation to support Prime Contractors six good faith efforts to solicit MBE/WBE firms (must include copies of direct solicitations)	
Documentation regarding contractor selection	
Statement detailing bid opening and anticipated construction start date	☐
Certified Bid Tabulation (signed by Consulting Engineer)	☐
Bid Proposal/Forms and Bid Bond of the apparent low bidder	☐
Updated Total Project Budget (to include all funding sources)	☐

If procured via small purchase procedure for purchases under $200,000 (all items are required)

Procurement Requirements for Small Purchases Form	☐
MBE/WBE Requirements	
Documentation of MBE/WBE contractor search (website printout)	☐
Copies of direct solicitations to MBE/WBE firms (certified letters/receipts, e-mails, fax receipts,)	☐
Documentation to support Prime Contractors six good faith efforts to solicit MBE/WBE firms (must include copies of direct solicitations)	☐
Proposal of the apparent low bidder	☐
Updated Total Project Budget (to include all funding sources)	☐

CONTRACT INSERTS

The Recipient is to fully explain all of the items listed below at the pre-bid conference.

Copies of the Contract Inserts (the following 13 attachments) that must be incorporated verbatim in all construction and service contracts, as applicable, are as follows:

1. Attachment No. 1 – MBE/WBE Compliance Checklist

2. Attachment No. 2 – Instruction to Bidders/Offerors

3. Attachment No. 3 – Bidder certification regarding EEO compliance

4. Attachment No. 4 – "Subparts" (12 subparts)

    a. Subpart A – containing the Federal/State Nondiscrimination Provisions for Equal Employment Opportunities applicable to all construction and service contracts

    b. Subpart B – containing the notice to the prime contractor relative to certification on non-segregational facilities

    c. Subpart C – setting forth the good faith requirements for the contractors and subcontractors for work involving any construction trade in excess of $10,000

    d. Subpart D – containing the Civil Rights Act of 1964

    e. Subpart E – setting forth requirements of Age Discrimination Act of 1975, Rehabilitation Act of 1973

    f. Subpart F – setting forth requirements under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act for contracts and subcontracts in excess of $100,000

    g. Subpart G – procurement of goods and materials from Small Businesses in Rural Areas of the Commonwealth of Virginia whenever practical and feasible

    h. Subpart H – provides that a contractor or subcontractor maintain a drug-free workplace during the performance of contract duties for any water revolving loan-assisted project

    i. Subpart I – provides that a contractor comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 with regards to suspension and debarment

    j. Subpart J – requirements of Davis-Bacon Act for contracts and subcontracts in excess of $2,000, and the Contract Work Hours and Safety Standards Act (OSHA) for contracts and subcontracts in excess of $100,000

    k. Subpart K– provides that applicable requirements of 40 CFR Part 33 are carried out and that Subpart K (Appendix A to 40 CFR Part 33 - Term and Condition) is included in all procurement contracts signed by the funding recipient and its primary contractors (construction, engineering, supplier, etc.)

    l. Subpart L – Requirements for American Iron and Steel (AIS) provisions in Section 436 of P. L. 113-76 of the Consolidated Appropriations Act, 2014

5. Attachment No. 5 – MBE/WBE Utilization Reporting

6. Attachment No. 6 – Small Purchase Procurement Requirements

7. Attachment No. 7 – General Language for Advertisements/Postings

8. Attachment No. 8 – Wage Determinations

9. Attachment No. 9 – Davis-Bacon Payroll Certification, Form WH – 347

10. Attachment No. 10 – American Iron and Steel Initial Certification Statement

11. Attachment No. 11 – American Iron and Steel Waiver Request

12. Attachment No. 12 – American Iron and Steel Waiver Request Checklist

13. Attachment No. 13 – American Iron and Steel Final Certification Statement

ATTACHMENT 1 (2 pages)

Virginia Department of Health
Drinking Water Funding
MBE/WBE Compliance Checklist

Name of Recipient/Prime Contractor: _____

Project Name: _____ **Project Number:** _____

Check Procurement Type: (Check applicable box)

- ☐ Services – Engineering
- ☐ Services – Legal
- ☐ Supplies/Materials
- ☐ Construction Contractor (Prime)
- ☐ Construction Contractor (Subcontract)
- ☐ Equipment

In order to be in compliance with federal procurement requirements, funding recipients and contractors are obligated to make reasonable efforts, otherwise known as "the 6 good faith efforts," to solicit Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) in their procurement methods. This checklist only applies to MBE/WBE efforts. EPA does not have goals for Small (only) Business Enterprises.

The goal of this good faith effort is to increase contracting opportunities for MBE/WBE firms. It is not sufficient to just have a competitive bidding process that is open to MBE/WBE firms. Funding recipients and contractors must seek out qualified MBE/WBE firms.

Funding Recipient responsibility – Recipients are required to include provisions in their bid documents and take affirmative steps to solicit MBE/WBE firm participation in procuring services, supplies, equipment, and in awarding a construction contract. The VDH SRF Engineer will advise the recipient as to when a good faith effort is required for the procurement of supplies, materials, and equipment (For example, Force Account projects).

Prime Contractor responsibility – The successful prime contractor must also seek MBE/WBE firm participation when obtaining subcontracts for construction work **prior to bid submittal**. (See the first check box below for more information).

Demonstration of good faith efforts must be documented. This checklist is designed to facilitate and document compliance with "good faith efforts" and **must be** submitted to VDH **prior to contract award**. Failure to comply with MBE/WBE procurement requirements will result in the recipient incurring costs that are ineligible for reimbursement from the DWSRF Program.

Please check boxes where activities are completed and provide documentation; explain unchecked boxes in comments below and use additional pages if necessary:

- ☐ I reviewed the bid documents (For Prime Contractors). I plan to perform 100% of the work. I do not plan on using sub-contractors on this project. (If this box is checked, you do not have to make a good faith effort for the procurement of subcontractors. However, if the situation changes after contract award and the prime contractor needs to hire a subcontractor for any reason, then the prime contractor must make a good faith effort to solicit MBE/WBE firms.)

  _____

  _____

- ☐ Certified Affidavit of Publication of Newspaper advertisement soliciting MBE/WBE participation. (Suggested advertisement language: Minority Owned Businesses (MBEs) and Women Owned Businesses (WBEs) are encouraged to respond.)

  _____

☐ Your advertisements from publications that target MBE/WBE firms. (Only consider when it is believed that this advertisement may increase MBE/WBE participation.)

☐ Obtain current lists of MBE/WBE firms. (Documentation must be on file and available for examination. Please forward lists to VDH.) Possible resources include: http://sbsd.virginia.gov/, https://www.sbsd.virginia.gov/directory/

☐ List sources used to identify MBE/WBE firms:

☐ Identify potential MBE/WBE firms for direct solicitation. Provide a printout directly from the website that you used to identify these firms. This print out should contain certification numbers for the firms, expiration dates (if applicable), and a brief description of the work that the firm can perform (e.g. – commodity codes, NIGP, NAICS, etc.).

☐ Directly solicit a minimum of 3-4 MBE/WBE firms. Provide list of MBE/WBE firms solicited and solicitation letters sent to all MBE/WBE firms. (Solicit those MBE/WBE firms that you would reasonably expect to respond and submit a quote. If you are unable to locate and solicit the minimum number, provide an explanation.)

☐ Description of contacts (i.e. emails, faxes, telephone calls) and dates of contacts with MBE/WBE firms.

☐ Perform and submit analysis to identify portions of work that can be divided and performed by qualified MBE/WBE firms. (Reduced contract size/quantities when economically feasible to permit maximum participation of MBE/WBE firms.)

Successful bidders/offerors should take reasonable affirmative steps to subcontract with MBE and WBE firms whenever additional subcontracting opportunities arise during the performance of the contract.

Comments:

Recipient/Contractor's Signature **Date**

Instruction to Bidders/Offerors

Disadvantaged Business Enterprise (DBE) Requirements of 40 CFR 33

In order to be in compliance with federal procurement requirements, funding recipients and contractors are obligated to make reasonable efforts, otherwise known as "good faith efforts," to solicit Minority-Owned Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) now collectively called Disadvantaged Business Enterprises (DBE) in their procurement methods. The Bidder/Offeror is responsible for the completing the following as part of bid submission:

Bidder/Offeror Responsibilities

A. Six Good Faith Efforts: Activities during preparation of bids and offers.

Bidders/Offerors shall make a good faith effort to solicit DBE firms in compliance with the regulations, prior to submission of bids or closing date for receipt of initial offers, to encourage participation in projects by DBEs. Such efforts include:

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

B. Bidders/offerors must demonstrate compliance with DBE requirements to be deemed responsible. Demonstration of compliance may include the following information; however the recipient may specify other methods of demonstrating compliance:

1. Names, addresses and phone numbers of DBEs expected to perform work;
2. Work to be performed by the DBEs;

3. Aggregate dollar amount of work to be performed by DBEs, showing aggregate to MBEs and aggregate to WBEs separately;
4. Description of contacts to DBE organizations, agencies and associations which service DBEs, including names of organizations, agencies and associations and dates of contacts;

5. Descriptions of contacts to DBEs, including number of contacts, fields (i.e., equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.

C. Successful bidders/offerors should make reasonable good faith efforts to subcontract with DBE firms whenever additional subcontracting opportunities arise during the performance of the contract.

Failure to comply with the submission of appropriate DBE documentation may result in the determination of bidder as non-responsible and shall be cause for the bid to be rejected.

BIDDER COMPLIANCE STATEMENT/CERTIFICATION
REGARDING EQUAL EMPLOYMENT OPPORTUNITY

Applicability: Bid exceeding ten thousand dollars for construction contract/subcontract of unlimited amount and non-construction contract/subcontract of less than one million dollars.

This statement relates to a proposed contract between _____ and _____
(Public Body) (Contractor)
or (subcontract) between _____ and _____
(Contractor) (Sub-contractor)

to be funded under a federally assisted project. Pursuant to Executive Order 11246 and its implementing regulations at 41 CFR 60-1.7 (b) (1), as the undersigned bidder; I certify that:

1) Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause. _____ Yes _____ No

2) Bidder has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR 60-2 (applies only to non-construction contractor). _____ Yes _____ No

3) Bidder has filed with the Joint Reporting Committee, the Director (Office of Federal Contract Compliance Programs, U.S. Department of Labor), and agency, or the Equal Employment Opportunity Commission, all reports due under the applicable filing requirements.
_____ Yes _____ No

I understand that if I have failed to file any compliance reports which have been required of me, or have failed to develop and have on file at each establishment affirmative action programs pursuant to 41 CFR 60-2, when required, I am not eligible to have my bid or proposal considered, or to enter into the proposed contract.

I further understand that if awarded the proposed contract, and the contract for the FIRST time brings me under the filing requirements or the written affirmative action programs that I will, as applicable: (a) within 30 days file with the Public Body Standard Form 100 (EEO-1); and (b) within 120 days from the commencement of the contract develop and submit to the Director of OFCCP for approval a Written Affirmative Action Plan.

NAME AND ADDRESS OF BIDDER (Include ZIP Code):

NAME AND TITLE OF SIGNER (Please Type):

SIGNATURE: DATE:

SUBPART A

EQUAL EMPLOYMENT OPPORTUNITY

Executive Order 11246 (Contracts/subcontracts above $10,000)

During the performance of this contract, the contractor and all subcontractors agree to the following.

(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 nondiscrimination 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 considerations 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 another contract or understanding, a notice to be provided advising the said labor union or workers' representatives 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 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 11246 of September 24, 1965, and by 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 contractors' noncompliance with the nondiscrimination clauses 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 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 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.

SUBPART B

NOTICE TO PRIME CONTRACTOR OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

Bidders and offerors are cautioned as follows: By signing this bid or offer, the bidder or offeror will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this solicitation. The certification provides that the bidder or offeror does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that he will not maintain such segregated facilities.

SUBPART C

CONSTRUCTION CONTRACTORS FAIR SHARE ACTION REQUIREMENTS

1. 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 good faith efforts action goals for minority and women participation and which is set forth in the solicitations from which this contract resulted.

2. The applicable Minority Business Enterprise (MBE)/Women's Business Enterprise (WBE) "fair share" goals and dollar objectives are established as follows:

	MBE%	WBE%
Construction	2.8	1.2
Equipment	1.7	2.6
Services	2.0	1.0
Supplies	0.6	0.2

3. The MBE/WBE goals set forth in this contract are shown in #2 above. The Contractor should make every reasonable attempt to achieve the goals as stated. The prime contractor is required to make a good faith effort in the procurement of a subcontractor(s), if a subcontractor(s) will be used on the project. In addition, it is recommended that the prime contractor make a good faith effort in the procurement of equipment, services, and supplies.

4. When so notified by the Recipient, the apparent low bidder shall provide a listing of MBE and WBE subcontractor(s) that they propose to use on this project. Should the bidder fail to meet the aforementioned objectives they shall provide complete documentation which demonstrates the positive efforts made. Failure to satisfy this requirement to the satisfaction of the Recipient shall constitute a non-responsible bid and shall be cause for the owner to reject the bid.

5. The contractor shall implement the specific good faith action steps as provided in the Special Notice under the Instructions to Bidders section of these specifications.

6. The Contractor and all Subcontractors must perform and document good faith efforts to solicit MBE/WBE firms. With bid submittal, the contractor must furnish to the Recipient all pertinent documentation which evidences or documents a good faith effort in MBE/WBE solicitations and projected utilization. **Failure to comply with the submission of appropriate MBE/WBE documentation may result in the determination of a bidder as non-responsible and shall be cause for the bid to be rejected**.

EPA's Disadvantaged Business Enterprise Program rule applies to contract procurements funded in part or whole by EPA funds. The rule is found at Federal Regulation Title 40, Part 33. Specific responsibilities are highlighted below.

Prime Contractor Responsibilities:

- Employ the Good Faith Effort steps in paragraphs (a) through (e) (below) of § 33.301 if the prime contractor awards subcontracts (§ 33.301(f)).

    a. ***Ensure awareness of contracting opportunities to fullest extent PRACTICABLE, including placing DBE's on solicitation lists;***

    b. ***Make information on forthcoming opportunities available to DBEs. Adjust time frames and delivery schedules to encourage participation by DBEs. Advertise for bids and proposals for at least 30 days before closing date;***

    c. ***Divide total requirements when ECONOMICALLY FEASIBLE to permit maximum DBE participation;***

    d. ***Encourage DBE consortiums for large contracts;***

    e. ***Use the Department of Small Business and Supplier Diversity to obtain lists of proposed minority and women-owned firms (MBE/WBE);***

- Pay subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient (§33.302(a)).

- Notify the recipient in writing prior to prime contractor termination of a DBE subcontractor for convenience (§33.302(b)).

- Employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason (§33.302).

- Employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of Part 33 (§33.302(d)).

- Semiannually inform loan recipient of DBE participation achieved (§33.502).

- Maintain records documenting compliance with the requirements of Title 40 Part 33, including documentation of good faith efforts (§33.501(a)).

7. Immediately following the award of contracts and continuing through the construction stage, all records of MBE/WBE utilization shall be maintained and reported in accordance with the

Virginia Department of Health MBE/WBE Utilization Reporting Form (Attachment 5). A MBE/WBE Utilization Reporting Form shall be completed and submitted during the construction period to the Recipient by the 15th of the month following the end of the previous quarter.

SUBPART D

CIVIL RIGHTS ACT OF 1964

The Contractor and any subcontractors shall not, on the grounds of race, color, or national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination, any person under any program or activity receiving federal financial assistance.

SUBPART E

REHABILITATION ACT OF 1973; PL 93-112, AND AGE DISCRIMINATION ACT OF 1975

The Contractor and any subcontractors shall not on the grounds of race, color, national origin, or sex, exclude from participation in, deny the benefits of, or subject to discrimination any person under any program or activity funded in whole or in part with Federal funds. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1073 shall also apply to any such program or activity.

SUBPART F

COMPLIANCE WITH SECTION 306 OF THE CLEAN AIR ACT AND SECTION 508 OF THE CLEAN WATER ACT (CONTRACTS AND SUBCONTRACTS IN EXCESS OF $100,000)

The Contractor agrees that:

1. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.

2. The Contractor and Subcontractors will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued there under.

3. The Contractor will promptly notify the loan Recipient and the Virginia Department of Health of any notification received from the Director of the Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

SUBPART G

UTILIZATION OF SMALL BUSINESSES IN RURAL AREAS

The contractor and its subcontractors shall maintain a small business solicitation list and make appropriate attempts to procure needed equipment, supplies and material from small businesses in rural areas of the Commonwealth of Virginia whenever they are a practical source for solicitation.

SUBPART H

SECTION 11-51.1, to CHAPTER 417 RELATING TO THE PROCUREMENT PRACTICES OF ALL PUBLIC BODIES

For every contract over $10,000 the contractor must maintain a drug-free workplace. During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

SUBPART I

COMPLIANCE WITH SUSPENSION AND DEBARMENT

By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm which has an interest in the contractor's firm is disbarred or suspended from bidding or working on a federally funded project. No part of this contract will be subcontracted to any person or firm who has been debarred or suspended from bidding or working on a federally funded project.

The contractor shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The contractor is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The contractor acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

When the contractor enters into a covered transaction with another person at the next lower tier, he or she must verify that the person with whom they intend to do business is not excluded or disqualified. Do this by:

(a) Checking the Excluded Parties List System (EPLS); or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

The contractor may access the EPLS at https://www.sam.gov/portal/public/SAM/ .

The contractor may access the Virginia Department of General Services Debarment & Prohibited list at http://www.eva.virginia.gov/library/files/buyers/debarred.pdf .

SUBPART J

COMPLIANCE WITH DAVIS-BACON ACT PAYROLL REVIEW

The contractor and its subcontractors shall comply with provisions of the Davis-Bacon Act and Related Acts. The Davis-Bacon Act stipulates that all laborers and mechanics employed by the contractor or subcontractors on federally assisted projects shall be paid wages at rates not less than those prevailing on similar construction in the area as determined by the Secretary of Labor. The contractor and its subcontractors shall comply with provisions of the Contract Work Hours and Safety Standards Act generally applicable to any contracts is excess of $100,000.

Wage rates specified in the applicable wage determination (Attachment 8) for this construction trade and geographic area are included in the contract specifications immediately following these contract inserts. The wage determination(s) must be posted at the site of the work in a prominent and accessible place. The contractor will also post the Department of Labor poster "Employee Rights under the Davis-Bacon Act" (www.wagehours.dol.gov). The contractor or subcontractor shall insert in any subcontract the clauses included in 29 CFR 5.5 (a) (1) through (12) (Contract Provisions and Related Matters) including the applicable wage rates and a clause requiring the subcontractor include these clauses in any lower tier subcontract. The prime contractor will be responsible for compliance by any subcontractor or lower tier subcontractor with all contract clauses in 29 CFR 5.5 (see Department of Labor website or a Federal regulations website).

Any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage decision. Additional classifications shall be requested from the Department of Labor as specified in 29 CFR 5.5 or as amended (see Department of Labor Website for forms and instructions). Upon issuance of an additional classification the new wage rate including fringe benefits where appropriate shall be paid to all workers performing the work in the additional classification from the first day on which work is performed in the classification. The Department of Labor 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.

1) Payroll(s)

All mechanics and laborers employed upon the site of the work will be paid unconditionally and not less than once a week without subsequent deduction or rebate on any account the full amounts of wages and bona fide fringe benefits or cash equivalents thereof except as provided for by Department of Labor regulations issued in accordance with provisions of the Copeland Act. The payment shall be computed at wage rates not less than those contained in the "wage determination" included in these specifications regardless of any contractual relationship alleged to exist between the contractor or its subcontractors and such laborers and mechanics.

Each contractor and subcontractor shall furnish each week, in which any contract work is performed, to the loan recipient (owner) a payroll of wages paid to each of its employees engaged on work during the preceding weekly payroll period. The payroll submitted shall set out accurately and completely all of the information required to be maintained in the Records section below. Each payroll* submitted shall be accompanied by a Statement of Compliance* signed by the contractor or subcontractor or his/her agent who pays and supervises the payment of persons employed under the contract and shall certify the following:

1) that the payroll for the payroll period contains the information noted above and that such information is true and complete,

2) that such laborer or mechanic employed on the contract during the payroll period has been paid the full weekly wage 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 federal regulation(s), and,

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

*DOL WH Form WH – 347 (Attachment 9) is included as an example payroll and certification statement. If a different reporting form is used, it must provide the information contained in the DOL form.

Laborers and mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the actual time worked therein, provided, that the employee's payroll records accurately set forth the time spent in each classification in which work is performed.

Whenever the minimum 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 classification or pay another bona fide fringe benefit or an hourly cash equivalent thereof. If the contractor does not make payment 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 may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. Contributions made or cost reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions above as well as regular contributions made or costs incurred for more than a weekly period (but not less 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.

2) Records

Payrolls and basic records shall be maintained by the contractor and each subcontractor for a period covering three years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work. Payrolls will include the name; his or her correct classification; hourly rates paid as wages paid including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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 wages of any laborer or mechanic include the amount of 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 the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, **that the plan or program has been communicated in writing to the laborers or mechanics affected**, and records 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.

3) Penalties and Withholding

Falsification of a payroll certification 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. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or delegated agent 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 guaranteed of funds.

The contractor or subcontractor shall make the payroll records required available for inspection, copying, or transcription by authorized representatives of the owner, the Virginia Department of Health, EPA, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. Failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CR 5.12.

A breach of the these contract clauses or the clauses continued 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.

The governing body, shall upon its own actions or upon written request of an authorized representative of the Department of Labor withhold from the contractor under this contract or any other federal contract with the same prime contractor, or any other 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 and subcontractor, the full amount of wages required by the contract. In the event of failure to pay any laborer or a 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 State or the Department of Labor 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 guaranteed of funds.

SUBPART K

APPENDIX A TO 40 CFR PART 33-TERM AND CONDITION

The contractor shall not discriminate on the basis of race, color, and national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

SUBPART L

AMERICAN IRON AND STEEL
SECTION 436 OF P. L. 113-76

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Virginia Drinking Water State Revolving Fund (VDWSRF) assistance recipients (owner) to use iron and steel products that are produced in the United States (US) for projects for the construction, alteration, maintenance, or repair of a public water system. Additional details and a description of AIS requirements are available on EPA's website at:

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

The prime contractor must provide documentation that all iron and steel products which are retained as part of the project are American Iron and Steel (AIS) per the definitions contained in section "1" below. Production in the US of the iron or steel products requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. The prime contractor must certify, section "2" below, that all iron and steel products which are retained as part of the project for which they are contracted to construct or supply materials or goods satisfy Section 436 of the Act except those waivered by EPA, section "3", or they are included as Approved National Waivers, section "4". The prime contractor must submit to the owner AIS certifications for individual components supplied or installed by the prime contractor as well as components supplied or installed by all subcontractors, section "5". The prime contractor must include the AIS requirements in any subcontracts or purchase agreements made by the prime contractor and require subcontractors or suppliers of AIS of AIS products to also require their subcontractors or suppliers to include AIS requirements in any subcontracts or purchase agreements they enter into. The owner may refuse payment for any AIS component until a satisfactory AIS certification is received. The VDWSRF may withhold reimbursement request payment on any AIS components for which certification is not available upon request by VDWSRF.

i. Definition of American Iron and Steel

An iron or steel product is one of the following made primarily (greater than 50% measured by material cost) of iron or steel that is permanently incorporated into the project and is included as a Listed Product, Municipal Casting, Construction Material, or Structural Steel described below, items 1a-1d. **Iron and steel products not listed below do not have to satisfy the AIS requirement.**

Steel is an alloy that is at least 50% iron, between .02 and 2 percent carbon, and may include other elements such as chromium, nickel, molybdenum, manganese, and silicon added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel, and other specialty steels. Production in the US of iron and steel used in a listed product requires that all manufacturing take place in the US except metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating, and coating. Raw materials such as iron ore, scrap iron or steel, limestone and other raw components used in steel production do not have to be of domestic origin.

In determining whether a product listed below is less than 50% iron and steel by cost, the cost of the individual iron and/or steel components and the cost of the non-iron and steel components must be determined prior to assembly of the product. Assembly of the components is not considered, only material costs. Declaring a listed product as less than 50% iron and steel will require a certification from the manufacturer explaining the materials cost determination.

a. Listed Products: Lined or unlined pipes or fittings, manhole covers, hydrants, tanks, flanges, pipe clamps and restraints, valves, and reinforced precast concrete. Rebar and wire in reinforced precast products are counted separately from the finished product. The rebar and wire MUST be American made. Additionally, the casting of the concrete product must take place in the US. Cement and other raw materials used in production of reinforced precast concrete products do not have to be of domestic origin.

b. Municipal Castings: Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are: access hatches; ballast screen; benches (iron or steel); bollards; cast bases; cast iron hinged hatches, square and rectangular; cast iron riser rings; catch basin inlet; cleanout/monument boxes; construction covers and frames; curb and corner guards; curb openings; detectable warning plates; downspout shoes (boot, inlet); drainage grates, frames and curb inlets; inlets; junction boxes; lampposts; manhole covers, rings and frames, risers; meter boxes; service boxes; steel hinged hatches, square and rectangular; steel riser rings; trash receptacles; tree grates; tree guards; trench grates; and valve boxes, covers and risers.

c. Construction Materials: Construction materials are those articles, materials, or supplies made primarily (greater than 50% materials cost) of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and

systems (defined below in item 1e). Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

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

e. Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

f. Trench boxes, scaffolding, or equipment used on site which will be removed before completion of the project are not subject to the AIS requirements.

2. General Certifications

Within no more than 21 days after determination of the apparent low bidder, the contractor must submit to the owner (funding recipient) the certification included as **Attachment 10 (AIS Initial Certification Statement)**. The owner may consider requiring bidders to submit **Attachment 10** with their bid. At the conclusion of the project, the contractor will certify with their final payment request that the original certification is still valid or document any changes or substitutions. For this certification, the contractor must submit to the owner **Attachment 13 (AIS Final Certification Statement)**. If changes or substitutions are disallowed by EPA, part or all of the assistance funding may be forfeited by the owner. As State or Federal law permits the owner may seek damages from the contractor.

3. EPA Waiver

EPA has sole authority to approve waivers to the AIS provisions of the Act. The owner may seek a waiver at any point before, during, or after the bid process if one or a combination of the three conditions below are met. The prime contractor may suggest to the owner waivers not listed in the bid document. The owner (funding recipient) has sole discretion on the decision whether or not to request a suggested waiver. The waiver request(s) must satisfy one of the following conditions and be approved by EPA:

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

The waiver request must include proper and sufficient documentation to support the request. Attachment 11 is a sample Waiver Request Form. A "Request Checklist for Waiver Review" is provided as Attachment 12 to assist the contractor and owner in preparation of a waiver request. The information requested must be included with the waiver request letter. The checklist is mandatory. The waiver request and checklist will be submitted to the Virginia DWSRF program. The Virginia DWSRF program will review the request for completeness and send on to EPA Headquarters. EPA Headquarters shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. Upon approval of the waiver request by EPA Headquarters, EPA Headquarters will notify the owner and the State SRF program directly.

4. Approved National Waivers

The EPA has a list of approved national waivers on their website.

(https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-approved-national-waivers-0)

If an approved national waiver appears to be applicable to your project, please contact the Virginia DWSRF program as soon as possible to discuss this.

In this section, the National Product Waiver for Minor Components in Iron and Steel Products (with Cost Ceiling), dated October 27, 2015, and the De Minimis Waiver Pursuant to Section 436 of P.L. 113-76 Consolidated Appropriations Act, dated April 15, 2014, are discussed. For information on additional approved national waivers or additional details on these waivers please refer to EPA's website.

a. National Product Waiver for Minor Components in Iron and Steel Products (with Cost Ceiling)

The items covered under this waiver include miscellaneous components within iron and steel products as defined the in the AIS provisions of the Acts. The specific minor components in covered iron and steel products will vary by product and manufacturer. Pursuant to this waiver, non-domestically produced miscellaneous minor components comprising up to 5 percent of the total material cost of an otherwise domestically produced iron and steel product may be used. This waiver does not exempt the whole product from the AIS requirement, and the primary iron or steel components of the product must be produced domestically. Unless subject to a separate waiver, all other iron and steel components in these products must still meet the AIS requirements. Valves and hydrants are also subject to the cost ceiling requirements described here.

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

For this waiver, the manufacturer must certify that the non-domestically produced minor components are 5 percent or less of the total material cost of an otherwise domestically produced iron and/or steel product. The manufacturer should also reference "the National Product Waiver for Minor Components in Iron and Steel Products" in their certification letter as well as stating that they have complied with all of the AIS requirements. The Virginia DWSRF program reserves the right to request cost information from the manufacturer <u>to verify</u> that the non-domestically produced minor component is 5 percent or less of the total material cost of an otherwise domestically produced iron and/or steel product. If cost information is requested, then the manufacturer must provide it to the EPA or the Virginia DWSRF program. **If the manufacturer prefers that this cost information be keep confidential**, **then please do not send a copy to the Virginia DWSRF program.** The Virginia DWSRF program can request that the information be sent directly to the EPA and they can keep it confidential. Alternatively, the Virginia DWSRF program can arrange a meeting to review this information, without retaining a copy for the project files.

b. De Minimis Waiver Pursuant to Section 436 of P.L. 113-76, Consolidated Appropriations Act

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

Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project. Contractors who wish to use this waiver should determine the costs of all items supplied or installed in the project. The contractor must retain relevant documentation (i.e., invoices) for each of these items in their project files, and must summarize in reports to the owner; the total cost of all AIS components, the total cost of incidental components, and the calculations by which they determined the percentage of incidental products supplied or installed in the project. None of the products specifically listed in above items 1a-1d are incidental. None of the items identified in detail in the technical specifications are considered incidental.

5. Certification Documentation

a. The prime contractor must provide manufacturer certifications to the owner that all iron and steel products are produced in the United States. The prime contractor is responsible for gathering all manufacturer certifications for all components supplied or installed by subcontractors, and for submitting these to the owner. As noted above, the contractor will provide a final general certification statement (Attachment 13) with their final payment request attesting that all American Iron and Steel requirements of this subpart have been met.

b. All manufacturer certifications must contain, at a minimum the following information: **(1) project name and location; (2) a list/description of the iron/steel material(s) used on this project; (3) manufacturing location(s) (City, State, USA); (4) a statement that says that the material is compliant with EPA's American Iron & Steel requirements; and (5) a signature by an approved representative of the manufacturer.**

VIRGINIA DRINKING WATER FUNDING
MBE/WBE UTILIZATION REPORTING

Mail, fax or email completed form to: VDH Office of Drinking Water
109 Governor Street, 6th Floor
Richmond, Virginia 23219
Reporting Contact: Ms. Kelly Ward
(804) 864-7201 | Fax: (804) 864-7521 | kelly.ward@vdh.virginia.gov

PART I.

A. Year _____

Reporting Quarter (Check One)

1st (Oct.-Dec.)	**____ due Jan. 15th**	**2nd (Jan.-Mar.)**	**____ due Apr. 15th**
3rd (Apr.-Jun.)	**____ due Jul. 15th**	**4th (Jul.-Sept.)**	**____ due Oct. 15th**

B. Name of Recipient: _____

Recipient Project No. and/or Name: _____

C. Prime Contractor: _____

Is your company a MBE firm? Yes _____ No _____

Is your company a WBE firm? Yes _____ No _____

If yes to either question, provide Federal Identification Number (FIN #) _____

D. Contract Number: _____

Date for Start of Construction: _____

E. Have you subcontracted with an MBE or WBE firm in this quarter? Yes _____ No _____

If yes, provide information on Part II and sign and date form.

If no, please sign and date form.

_____
Recipient/Contractor

_____
Name

_____ _____
Date **Phone**

If an MBE/WBE subcontract is rescinded, please give a name of firm, date of rescission and amount of rescission.

_____ _____ _____
Name of firm **Date of Rescission** **Amount**

MBE/WBE PROCUREMENTS MADE DURING QUARTER

PART II.

Procurement Made By			Business Enterprise		$ Value of Procurement	Date of Award MM/DD/YY	Type of Product Or Service[1] (Enter Code)	Name/Address/Phone Number of MBE/WBE Contractor or Vendor
Recipient	Sub-Recipient and/or SRF Loan Recipient	Prime	Minority	Women				

[1]Type of product or service codes:

1 – Construction 2 – Supplies 3 – Services 4 - Equipment

THE VIRGINIA PUBLIC PROCUREMENT ACT (the "Act")
PROCUREMENT REQUIREMENTS FOR SMALL PURCHASES

The Drinking Water Revolving Fund Program and Water Supply Assistance Grant Fund Program require all recipients to follow the provisions of the Act. **Section 2.2-4303 (G) of the Act** allows for the establishment of purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed $200,000; however, such small purchase procedures shall provide for competition wherever practicable. For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed $80,000. Completion and signing of this document acknowledges adoption and compliance with the Act and following conforming procedures.

Project Number and Name: _____

A. Contract Information:

Name and Address of Bidder/
Offeror Selected: _____
_____
_____
_____

Amount of Contract: _____
(Attach copy of contract)

Date of Contract: _____

Describe goods or services to be provided: _____
_____
_____

B. Documentation of Procurement Efforts:

List bidders/offerors. Written informal solicitation of a minimum of four bidders/offerors is required. Also date contacted, method of solicitation (e.g., written informal letter, fax or e-mail describing goods or services to be purchased with bid request or informal solicitation via telephone), and whether a response was given to the solicitation. Indicate price quoted for goods and services, if a response was received. It is noted that the Act requires that you solicit bidders/offerors; the Act does not require that you receive a response to your solicitation.

MBE/WBE firms must be included as part of the solicitations. Attach documentation to support direct solicitations and price information received, if available.

	Bidder/Offeror	Date Contacted	Method of Solicitation	Response? (Yes/No)	Price (if applicable)
1)					
2)					
3)					
4)					

For professional services contracts only: Indicate at least three criteria (other than cost) considered in your selection of the firm/offeror (e.g., knowledge of waterworks, past record of performance at your waterworks, experience of key persons assigned to the project, etc.). Please attach additional information.

_____
_____

_____ **Authorized Signature**

_____ **Date**

General Language for
Advertisements/Announcements/Postings

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1. Legal services.

(ENTITY)

REQUEST FOR QUALIFICATIONS STATEMENTS FOR LEGAL SERVICES

The (Entity) is seeking legal services for (describe generally the type of project). These services include (briefly describe the nature of the services).

Please submit your proposal of services and a statement of qualifications for these proposed services to the (Official Representative). Proposals must be received no later than 4:00 p.m., (date), to be considered. The (Entity) reserves the right to negotiate with any and all individuals or firms submitting proposals, in accordance with 40 CFR 31.36. (See 40 CFR 31.36 at http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr31 02.html)

The (Entity) is an Equal Opportunity Employer. Small, minority, and women-owned firms are encouraged to submit proposals.

(Official Representative)

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2. Construction.

Required Language in Advertisement for Bids

MBE/WBE firms are encouraged to submit bids. Bidders must comply with the following: the President's Executive Order # 11246 prohibiting discrimination in employment regarding race, color, creed, sex, or national origin; the President's Executive Orders # 12138 and 11625 regarding utilization of MBE/WBE firms; the Civil Rights Act of 1964; the Davis-Bacon Act; and Section 436 of P. L. 113-76, American Iron and Steel. Bidders must certify that they do not or will not maintain or provide for their employees any facilities that are segregated on the basis of race, color, creed, or national origin.

ATTACHMENT 8

WAGE DETERMINATION(S)

Applicable wage determinations for the construction trade and geographic area of the project are provided in the next few pages (source: https://beta.sam.gov/)

ATTACHMENT 9

DAVIS-BACON PAYROLL CERTIFICATION, FORM WH-347

The fillable DOL form WH-347 is inserted below. A hard copy is also provided on the next two pages. Instructions for filling out this form is also provided in this section. Refer to the U.S. Department of Labor's webpage for additional information: https://www.dol.gov/agencies/whd/forms/wh347

DOL WH347 FORM.pdf

U.S. Department of Labor
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

U.S. Wage and Hour Division
Rev. Dec. 2008

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS | OMB No.: 1235-0008 Expires: 04/30/2021

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE / HOURS WORKED EACH DAY							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Date _____

I, _____ _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

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Instructions For Completing Payroll Form, WH-347

WH-347 (PDF)

OMB Control No. 1235-0008, Expires 04/30/2021.

General: Form WH-347has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll No.: Beginning with the number "1", list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 - Hours worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "$12.25/.40" would reflect a $12.25 base hourly rate plus $0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds $100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "$163.00/$420.00" would reflect the earnings of a worker who earned $163.00 on a Federally assisted construction project during a week in which $420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the

attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "***See*** Deductions column in this payroll." ***See*** "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the WH-347 payroll form to indicate the payment. Note any exceptions in section 4(c).

Contractors who pay no fringe benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly

amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

Public Burden Statement: We estimate that it will take an average of 55 minutes to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Note: In order to view, fill out, and print PDF forms, you need Adobe® Acrobat® Reader® version 5 or later, which you may download for free at www.adobe.com/products/acrobat/readstep2.html.

Wage and Hour Division

An agency within the U.S. Department of Labor

200 Constitution Ave NW
Washington, DC 20210
1-866-4-US-WAGE
1-866-487-9243

www.dol.gov

AMERICAN IRON AND STEEL (AIS) INITIAL CERTIFICATION STATEMENT

Upon execution of this certification, the selected Contractor, Subcontractor, Materials Supplier, or Service Provider hereby certifies that all of the iron and steel products used in the project are produced in the United States or appropriate waiver(s) has been approved by the U.S. Environmental Protection Agency.

A waiver may be requested from the American Iron and Steel requirements if one of the following exceptions apply in a particular case:

1) Applying the American Iron and Steel (AIS) requirements of the Consolidated Appropriations Act would be inconsistent with the public interest;

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

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

If the owner (funding recipient) requests a waiver, documentation of at least one of the cases above must be provided with a list of the materials that cannot comply with the American Iron and Steel (AIS) requirements of the Consolidated Appropriations Act of 2014. Waivers request are not official until approved by EPA Headquarters.

This statement relates to a proposed contract between _____
(contractor)

and _____ or between
(owner)

_____ and _____
(subcontractor) (contractor)

in conjunction with _____
(project name)

to be funded with monies made available by the Virginia Drinking Water State Revolving Fund.

_____
Signature Date

_____
Name and Title of Signer (Please type)

AMERICAN IRON AND STEEL (AIS) WAIVER REQUEST

A waiver from the American Iron and Steel (AIS) requirements of the Consolidated Appropriations Act of 2014 is requested for the following reason(s):

_____(1) Applying the American Iron and Steel (AIS) requirements of the DWSRF funding would be inconsistent with the public interest;

_____(2) Iron, steel, and relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

_____(3) Inclusion of iron and steel products produced on the United Sates will increase cost of the overall project by more than 25%.

Relevant documentation to this request is enclosed. No materials will be installed prior to approval of this waiver request by EPA.

_____Additional sheets attached

This waiver request relates to a proposed contract between _____ and _____
(contractor) (owner)

in conjunction with _____
(project)

to be funded with monies made available by the Virginia Drinking Water State Revolving Fund.

_____
Signature Date

_____
Name and Title of Signer (Please type)

Review Checklist for Waiver Request

Review Items	Yes	Comments
General • Waiver request includes the following information: — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the State's instructions to SRF assistance recipients • Assistance recipient (owner) made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor		
Cost Waiver Requests • Waiver request includes the following information: — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products (See Table 1) — Relevant excerpts from the bid documents used by the prime contractor to complete the Price Comparison Worksheet — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers		
Availability Waiver Requests • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient's (owner's) efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?		

Table 1: American Iron and Steel (AIS) Price Comparison Worksheet

Instructions: To be completed by the prime contractor. In column a), enter all iron and steel products required to build the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter the cost estimate for each component for which waivers are requested, as supplied by foreign sources.

(a) Iron and Steel Product	Unit of Measure	Quantity	(b) Price – Domestic Material*	(c) Price – Foreign Material*
			(d) Total Domestic Project Cost:	(e) Total Foreign Project Cost:

*Include all delivery costs to the construction site

AMERICAN IRON AND STEEL (AIS) FINAL CERTIFICATION STATEMENT

Upon execution of this certification, the selected Contractor, Subcontractor, Materials Supplier, or Service Provider hereby certifies that all of the iron and steel products used in the project were produced in the United States or appropriate waiver(s) have been approved by the U.S. Environmental Protection Agency and that no changes or substitutions to the individual certifications provided by the contractor were made.

This statement relates to a proposed contract between _____
(contractor)

and _____ or between
(owner)

_____ and _____
(subcontractor) (contractor)

in conjunction with _____
(project name)

to be funded with monies made available by the Virginia Drinking Water State Revolving Fund.

_____
Signature Date

_____
Name and Title of Signer (Please type)