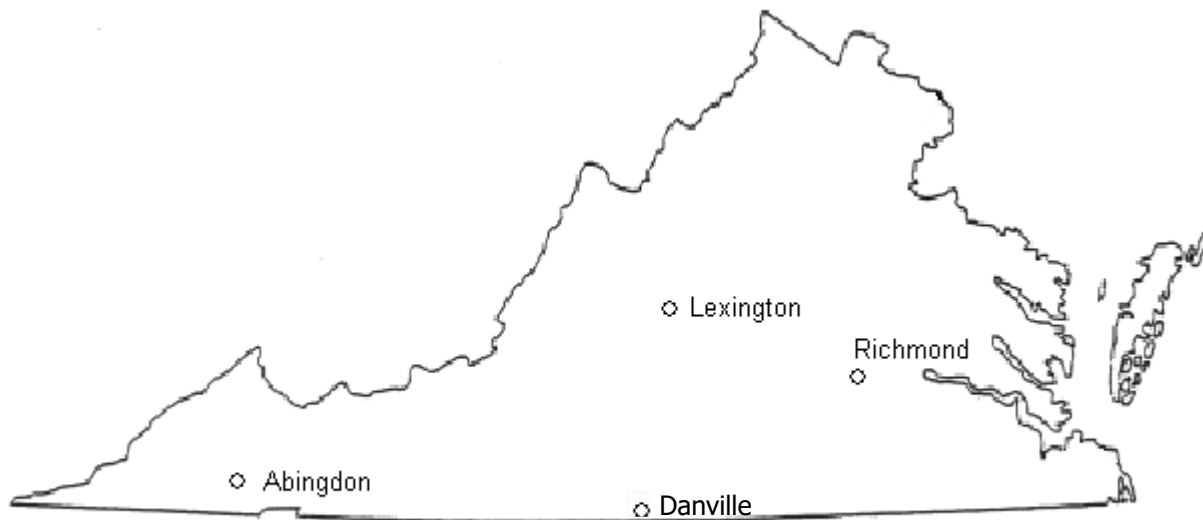


**PROCEDURAL GUIDELINES
FOR
DRINKING WATER FUNDING RECIPIENTS**



Virginia Department of Health

Office of Drinking Water



www.vdh.virginia.gov

DATE: June 1, 2023

<https://www.vdh.virginia.gov/drinking-water/procedural-guidelines/>

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General Overview

Introduction

To ensure compliance with program policies and requirements, VDH offers assistance to Recipients from the time of application to project completion. The Program Guidance Packages included in these Procedural Guidelines are intended as the first step of this assistance by providing the following information:

- policies and procedures regarding eligible expenses and the flow of monies;
- loan and construction management requirements and recommended methodologies for complying with these requirements;
- VDH activities related to assistance and program oversight throughout the project.

This general overview provides a summary of the activities involved in the planning, design, and construction of a project including program requirements and recommendations for the successful completion of a project are discussed. Individual Program Guidance Packages will be referenced for additional details on specific topics.

Project Management

Managing a successful waterworks construction project is a major undertaking. For many Recipients, the project will be one of the largest (if not the largest) in which they have been involved. Good project planning and management is essential and will likely result in a successful construction project.

A key to good project management is to designate a project manager to represent the Recipient in all loan and project-related activities. This person should be an employee of the Recipient, available to deal with project matters, and given the necessary authority to oversee and coordinate all project activities. The project manager leads the project management "team" that provides the administrative, technical, financial, and legal support for the project.

The size and structure of the project management team will depend on the size and complexity of the project, but the required functions are the same whether the project is small or large. These functions include:

Administration - Planning; application completion; organization; scheduling; record keeping; filing; procurement; change order processing; claims management; overall coordination and management.

Technical - Preparation of engineering documents; cost estimating; construction inspection and oversight; change order review; project start-up and operation & maintenance (O&M) training; overall technical support.

Financial - Identifying and arranging financing; budgeting; accounting and reporting; cash flow projection; processing receipts and disbursements; disbursement request preparation.

Legal - Contract development, review and interpretation; procurement review; negotiation; advice on land, easement, permit, and license and title acquisition; bond counsel; litigation; overall legal support.

The Recipient should either have or acquire qualified staff to carry out these support functions. The administrative functions are typically carried out by the project manager, although the Recipient may elect to delegate some duties to other employees. The technical functions are performed by the consulting engineering firm hired by the Recipient, and this selection is extremely important to the success of the project. Financial functions may be partially assumed by the project manager, with certain financing and accounting duties carried out by other staff or contracted out to a professional accountant. Legal functions are normally carried out by a designated attorney on the staff of or retained by the Recipient.

These procedural guidelines provide a number of Program Guidance Packages (PGs) relating to project management. Essential elements in the management of a funded project include an understanding of what costs are eligible under the program and how the project's cash flow will be handled. *Eligibility of Expenses* (PG #1) and *Funding Disbursement and Loan Repayment* (PG #2) discuss these two topics. A *Financial Management System* for accountability of monies is discussed in PG #3. *Procurement* (PG #4) provides information regarding how goods and services involved in the project must be obtained in order to comply with program requirements and State law. *Filing and Record Keeping* (PG #6) discusses the objectives and recommended organization of those systems.

Planning and Design

The planning phase of the project is extremely important because its goal is to set forth the most cost-effective, environmentally sound, and implementable project for the Recipient. Planning documents are reviewed and approved before the project moves into the design stage as outlined in PG #8.

The documents assess the current situation, projects future needs, develops alternatives, assesses the environmental impact of the alternatives (for those projects not categorically excluded) along with the monetary costs, and presents a selected plan. These documents are normally prepared by the consulting engineering firm hired by the Recipient. To be eligible for funding the procurement of professional engineering services must be in accordance with the Virginia Public Procurement Act (PG #4).

The design phase of the project, which involves the development of plans and specifications for the facilities to be constructed, is the next step. The Commonwealth of Virginia *Waterworks Regulations* detail the State standards which must be met in the design. Close contact with the field office of VDH is helpful to reduce delays at this stage. A Preliminary Engineering Conference is strongly recommended prior to full scale design, particularly for complex or large projects. In addition to the *Waterworks Regulations* requirements, the specifications must include the specific Contract Inserts, and the Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals (discussed in PG #4).

Upon completion, the plans and specifications must be submitted to VDH for review, comment, and final approval. Processing of the plans and specifications will proceed as outlined in the *Waterworks Regulations* and as further described in PG #8, with ultimate issuance of a Construction Permit.

Construction

Upon issuance of the Construction Permit, and receipt of approval from the VDH Funding Staff, the Recipient may proceed to advertise for bids for construction. The procurement requirements called for in the Virginia Public Procurement Act must be followed in procuring construction contracts (see PG #4). A pre-bid conference is recommended so that the engineer can present the project to bidders and answer any questions they may have. It is also recommended that the recipient select and begin discussions with their project to bidders and answer any questions they may have. It is also recommended that the Recipient select and begin discussions with their bond counsel at this time. Prior to the award of the contract, the Recipient must submit to VDH evidence of bid advertising, the bid tabulations, bid selection documentation, the bid bond, the low bid proposal, and adequate documentation of MBE/WBE solicitation/intended utilization. At this time, the final project budget should be finalized and presented to VDH. Following satisfaction of all closing and program requirements, loan closing can occur.

Prior to construction, the recipient's project manager should plan and implement record keeping, filing (PG #6), and financial management systems (PG #3) for the project. The Recipient should also provide a disbursement schedule to VDH at this time. The recipient's project manager should ensure that all necessary permits have been obtained, that the contractor's bonding and insurance is in place, and that all necessary land and easements are secured. These and other topics should be discussed in the *Preconstruction Conference* (PG #9) which should be held after contract award and prior to the beginning of construction. At the time of the Preconstruction Conference, VDH staff will meet with the Recipient to discuss project construction as it relates to the funding.

During construction the Recipient must provide for full time project inspection. Inspections, carried out by staff of the Recipient's consulting engineering firm or hired directly by the Recipient, will keep the Recipient aware of construction progress, quality, and conformance with plans and specifications. Inspections are very valuable in claim resolution, change order negotiation and ensuring that payments are made for work-in- place. Inspections should be documented with reports that can be reviewed by VDH during on-site monitoring. The Recipient should also provide VDH with the MBE/WBE report on a quarterly basis. VDH will conduct on-site evaluations to assess project management and construction (*State Construction Oversight-PG #10*).

The Recipient should submit fully supported disbursement requests, certified by the consulting engineer, to VDH and make prompt payments to the construction contractor. The disbursement schedule should be updated to VDH as needed.

The Recipient should have an established and fully understood procedure to process change order requests from the contractor. The procedure should, at a minimum, involve submission of fully supported change order proposal from the contractor; an independent estimate of the change order costs from the consulting engineer; a negotiation of a fair and reasonable price and time extension, as appropriate; a formal agreement to the contract changes; and notification to VDH of the change orders. Change orders must be sent to the VDH for approval, as required by the *Waterworks Regulations*. They will also be reviewed for loan eligibility during the on-site evaluations by VDH.

Project Completion

As a final step before the construction contractor is released, the recipient's project manager should conduct a final walk through the facility with the consulting engineer, the contractor, and other key individuals to ensure that all work has been completed. Once the Recipient and engineer are satisfied with the project's completion, they should submit the Statement of Completion of Construction referenced in the *Waterworks Regulations* and request a final construction inspection by VDH (see PG #10).

VDH Drinking Water Funding Program Guidance Package #1

ELIGIBILITY OF EXPENSES

The program has been designed so that any cost determined to be reasonable and necessary in the planning, design and/or construction of needed waterworks improvements is eligible. Funds can be requested to cover most of the needed expenses for the Recipient's approved system improvement program. VDH may reduce eligibility and the scope and size of a project to insure the greatest financial benefit to as many communities as possible.

Sizing

It is extremely important that the proposed size of the treatment facilities, distribution systems, or other waterworks appurtenances be supported and justified in the planning stage of the project. Sizing of a system and its appurtenances should be in conformance with established procedures as outlined in the *Waterworks Regulations* and with generally accepted engineering practices. VDH will reduce the amount of funding for any project proposing unreasonable growth.

Pre-Closing

Expenses incurred on an approved project prior to the execution of a loan agreement are eligible costs under the program; provided they meet the following conditions:

- *Costs are necessary and attributable to the project approved for assistance.*
- *Refinancing of a municipality's debt that was incurred after July 1, 1993.*
- *Procurement was carried out in conformance with the Virginia Public Procurement Act and other EPA requirements (MBE/WBE solicitation).*

Prior expenditures will be considered on a case-by-case basis. The work performed or accomplished must be in conformance with the requirements governing the program or brought into compliance before it can be allowed.

Waterworks Eligible for Funding

Waterworks that are eligible for assistance are community waterworks, both privately and publicly owned and nonprofit noncommunity waterworks. Federally-owned systems are not eligible to receive assistance.

Waterworks that have components of their waterworks in a State other than Virginia are eligible to receive funding. However, the waterworks can only apply to receive loan or other assistance for the portion of the waterworks that provides service in Virginia.

Projects Eligible for Funding

1. Compliance and Public Health

The VDH may provide assistance for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the VDH has determined will facilitate compliance with national primary drinking water regulations applicable to the waterworks under the Safe Drinking Water Act (SDWA) or otherwise significantly further the health protection objectives of this title.

Capital investments to upgrade or replace infrastructure in order to continue providing the public with safe drinking water are eligible for assistance.

Projects which address an exceedance of SDWA health standards or prevent future violations of the rules are eligible for funding. These include projects to maintain compliance with existing regulations for contaminants with acute health effects (i.e., the Surface Water Treatment Rule, the Total Coliform Rule, and nitrate standard) and regulations for contaminants with chronic health effects (i.e., Lead and Copper Rule, Phases I, II, and V rules, and safety standards for total trihalomethanes, arsenic, barium, cadmium, chromium, fluoride, mercury, selenium, combined radium-226, -228, and gross alpha particle activity).

Projects to replace aging infrastructure are also eligible. Examples of these include projects to:

- rehabilitate or develop sources to replace contaminated sources;
- install or upgrade treatment facilities if the project would improve the quality of drinking water to comply with primary or secondary standards;
- install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the water system; and,
- install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels.
- Replace lead service lines (LSL).

Projects to consolidate waterworks -- for example, when individual homes or other waterworks have a water source that is contaminated, or the waterworks is unable to maintain compliance for financial or managerial reasons -- are eligible for assistance.

The purchase of a portion of another waterworks capacity is eligible for funding assistance, if the system to be purchased is a small waterworks which is part of a consolidation plan to bring the system into compliance, and it is the most cost-effective solution for that small waterworks, when considering the buy-in fee and user fees.

2. Land acquisition

Land is eligible only if it is integral to a project. In this instance, integral is defined to include only the land needed to locate eligible project. In addition, the acquisition has to be from a willing seller who receives not less than fair market value for the land. Land that is necessary for

source water protection may be eligible to receive funding assistance under section 1452(k) of the SDWA.

The cost of complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) is an eligible cost to be included in the VDH assistance.

3. Planning and design of a drinking water project

The VDH may provide assistance for the costs of project planning, design and other related costs. The provision of assistance for design and planning costs does not guarantee a waterworks that the VDH program will provide funding for the construction of the project. VDH may choose to combine the funding for planning and design with the funding for construction.

4. Restructuring of waterworks that are in noncompliance or that lack the technical, managerial and financial capability to maintain the waterworks

The VDH may provide assistance to an eligible waterworks to consolidate with other waterworks only if the assistance will ensure that the waterworks returns to and maintains compliance with SDWA requirements.

If the waterworks does not have the technical, managerial, and/or financial capability to ensure compliance, or is in significant noncompliance, the waterworks may receive assistance only if (1) the assistance will ensure compliance, or (2) the owner or operator of the waterworks agrees to undertake appropriate changes in operations. These changes include consolidation or management changes that will ensure that the waterworks has the technical, managerial, and financial capability to ensure and maintain compliance with SDWA requirements.

Costs associated with consolidation, such as legal fees and water buy-in fees, are eligible for funding.

Projects Not Eligible For Funding

The VDH's federally funded SRF cannot be used to fund the following projects and activities; however VDH, from time to time, may have other funds usable for some of these activities.

- Laboratory fees for monitoring.
- Operation and maintenance expenses.
- Projects needed mainly for fire protection.
- Waterworks that lack adequate technical, managerial and financial capability, unless the project will ensure compliance.
- Waterworks in significant noncompliance, unless funding will ensure compliance.
- Projects primarily intended to serve future growth.
- Construction of dams or reservoirs, except for finished water reservoirs.
- Land necessary for the construction or storage of water related to reservoirs or dams, except for finished water reservoirs.
- Water rights.

Lack of technical, managerial, and financial capability

The VDH may not provide any type of assistance to a waterworks that lacks the technical, managerial or financial capability to maintain SDWA compliance, unless the VDH determines that the financial assistance from the VDH will allow the waterworks to maintain long-term capability to stay in compliance.

Significant noncompliance

The VDH may not provide assistance to any waterworks that is in significant noncompliance with any national drinking water regulation or variance unless the VDH conducts a review and determines that the project will enable the waterworks to return to compliance and the waterworks will maintain an adequate level of technical, managerial and financial capability to maintain compliance.

Growth

The VDH cannot provide assistance to finance the expansion of any waterworks in anticipation of future population growth, if the primary purpose is to supply or attract growth. If the primary purpose is to solve compliance or public health problems, the entire project including the portion necessary to accommodate a reasonable amount of growth over its useful life, is eligible.

Interest

Interest costs associated with funds borrowed for the planning, design, or construction of the project will not be reimbursed by VDH.

Changes in Project Scope

Unapproved changes in the approved project scope or change orders not attributable to the waterworks improvement project or involving duplication of effort or work will be disallowed construction costs. Any cost or expenditure that is determined to be unnecessary and/or unreasonable will be disallowed.

Roadwork

Costs for roadwork will be limited to access roads necessary for and directly associated with access to the facilities and minimum repair work directly associated with the installation of water lines.

Water User Agreements

Water User Agreements are required for projects in which the scope of work involves adding new service connections to a water system.

VDH Drinking Water Funding Program Guidance Package #2

FUNDING DISBURSEMENT AND LOAN PAYMENTS

Staff at VDH will receive the disbursement requests, conduct a review of the documentation, and authorize payment.

Disbursement of Funds

Following completion of the closing process and execution of the financing agreement, the disbursement process can begin. The first disbursement of proceeds will be made at loan closing. The request can cover costs incurred prior to the agreement (such as planning, design, legal and administrative costs, etc.) as long as these costs have been identified previously as part of the approved project's scope-of-work. VDH funds can also cover modifications and/or redesign to a previous project with proper supporting documentation. Since this could be a potential problem area, the Recipient should check with the VDH to determine eligibility prior to finalizing the financing agreement and requesting reimbursement.

Disbursements are made on an actual cost basis. The costs must have been incurred prior to submitting the disbursement request. However, the costs may be paid prior to or after receipt of the funds by the locality. The requests for disbursements are made using the letter entitled Request for Disbursement which is part of the Financing Agreement. The letter Request must also include Schedule 1 (Schedule to Accompany Requests for Disbursement) and the Certificate of the Consulting Engineer (*all documents attached*). Submit all requests to VDH at the following address with a copy sent to the appropriate VDH Project Manager and others as directed.

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

The request form is to be supported by invoices and/or other documentation of costs incurred for the approved project. Other documentation will include verified copies of the contractor's payment request, invoices from the engineer and/or lawyer, equipment invoices, etc. Since the financing agreement is with the Recipient, all disbursement requests must be executed by the Recipient. Likewise, all disbursements will be made payable to the Recipient.

VDH will process all valid (supported) disbursement requests within 5 working days of receipt. **Any incomplete or invalid requests cannot be honored on the 5-day basis.** Requests should be calculated on the basis of invoiced or incurred cost less any contractual or specified payment retainage, unless retainage is escrowed.

The Recipient will need to receive a disbursement at closing for project costs incurred up to that time. This can only be accomplished if a valid disbursement request is submitted to the VDH **at least two weeks prior to the closing date.**

The Recipient should review its internal payment procedures to accommodate this reimbursement procedure. It is recommended that the procedures allow for payment to the contractor at least 30 days from receipt of the contractor's pay request unless other time frames are designated in specifications. For example, an invoice received by the 1st of the month could be paid on the 30th of the month. Assuming timely submission on the part of the Recipient, this procedure should allow for documentation of all costs incurred, enable VDH to concur with the validity of the request, and permit prompt disbursement. The purpose of this procedure is to minimize the extent to which the Recipient has to support the payment up front prior to reimbursement.

It is important to note that disbursements will be held to the 95% level (95% of the total amount) until a satisfactory final project evaluation and a final financial evaluation has been completed.

Reimbursement for Refinancing Efforts

Disbursement procedures may differ somewhat for approved projects involving a refinancing effort as these would normally involve a one-time disbursement request for all eligible costs incurred during previous construction. VDH will need to review the Recipient's financial and project records prior to approving and authorizing disbursement. Since this may involve an on-site review, approximately 45 days should be allowed for this type of reimbursement.

Disbursement Scheduling

The disbursement schedule must include the complete budget for the project and should be updated periodically by the Recipient. Updates would occur after award of the construction contract to incorporate the contractor's anticipated requests to the Recipient. Changes to the project's completion schedule or significant (10%) deviations from the disbursement schedule would also necessitate an update.

Loan Payment

Payment must be made annually, beginning no later than one year after completion of the construction. Thus, payments will begin within the year following completion of construction activities as specified in the financing agreement, or as negotiated based on the Recipient's anticipated revenue flow.

Payments will include principal and interest, where applicable, and loans must be fully amortized within 20 years or 30 years for eligible projects. Payment can be on a semiannual or annual basis following negotiations. Working within these guidelines, payment provisions can be negotiated that will be acceptable to the Recipient. Payments will be based on the schedule agreed to by all parties and sent to the address specified in the financing agreement.

[LETTERHEAD OF BORROWER]

[Date]

Ms. Kelly Ward, Director
Office of Drinking Water, 6th Floor
Virginia Department of Health
109 Governor Street
Richmond, VA 23219

Re: Virginia Water Supply Revolving Fund
[NAME OF BORROWER]
Loan No. WSL/BIL-[XXX-XX]

Dear Ms. Ward:

This requisition, Number ____, is submitted in connection with the Financing Agreement dated as of [MONTH] 1, [YEAR] (the “Financing Agreement”) between the Virginia Resources Authority, as Administrator of the Virginia Water Supply Revolving Fund (the “Fund”), and the [NAME OF BORROWER] (the “Borrower”). Unless otherwise defined in this requisition, all capitalized terms used herein shall have the meaning set forth in Article I of the Financing Agreement. The undersigned Authorized Representative of the Borrower hereby requests disbursement of loan proceeds under the Financing Agreement in the amount of \$_____, for the purposes of payment of the Project Costs as set forth on Schedule 1 attached hereto.

Attached hereto are invoices relating to the items for which payment is requested.

The undersigned certifies that (a) the amounts requested by this requisition will be applied solely and exclusively to the payment, or the reimbursement of the Borrower for the payment, of Project Costs, and (b) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of the requisition. In addition, the undersigned certifies that the Borrower has conducted adequate oversight for compliance with the Davis-Bacon Act and related acts through (a) the review of payrolls and associated certifications, and (b) the posting of all wage determinations and additional classifications (as appropriate) on the work site, and through this oversight, the Borrower has determined to the best of its ability that the Project complies with the requirements of the Davis-Bacon Act and related acts. The Borrower further certifies that all products included in this request satisfy the appropriate provisions of the American Iron and Steel requirements and/or the Build America, Buy America Act requirements included in the agreement.

The undersigned further certifies that (a) no Event of Default or Default has occurred and is continuing, and no condition exists which, with the passing of time or with the giving of notice or both, would constitute an Event of Default hereunder, and (b) the representations and warranties of the Borrower contained in the Agreements are true, correct and complete and the Borrower has performed all of its obligations thereunder required to be performed as of the date hereof.

This requisition includes an accompanying Certificate of the Consulting Engineer as to the performance of the work.

Sincerely,

(Authorized Representative of the Borrower)

Attachments

cc: VDH Project Manager (with all attachments)

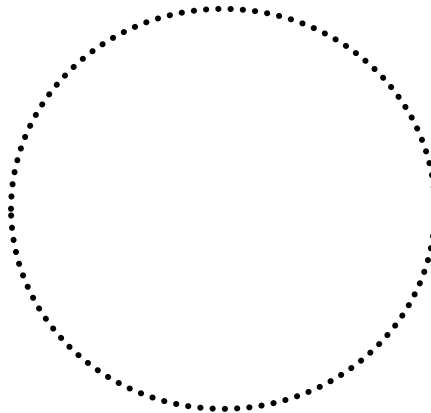
CERTIFICATE OF THE CONSULTING ENGINEER

FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

Loan No. WSL/BIL-[XXX-XX]

This Certificate is submitted in connection with Requisition Number _____, dated _____, 202[X], submitted by the [BORROWER]. Capitalization terms used herein shall have the same meanings set forth in Article I of the Financing Agreement referred to in the Requisition.

The undersigned Consulting Engineer for the Borrower hereby certifies that insofar as the amounts covered by this Requisition include payments for labor or to contractors, builders or materialmen, such work was actually performed or such materials, supplies or equipment were actually furnished to or installed in the Project.



SEAL

[Consulting Engineer]

Date: _____

SCHEDULE 1
VIRGINIA WATER SUPPLY REVOLVING FUND
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

REQUISITION # _____

BORROWER: [NAME OF BORROWER]

LOAN NUMBER: WSL/BIL-[XXX-XX]

DATE: _____

CERTIFYING SIGNATURE: _____

TITLE: _____

Cost Category	Amount Budgeted	Previous Disbursements	Expenditures This Period	Total Expenditures to Date	Net Balance Remaining
TOTALS:					

Total Funding Amount \$ _____
Previous Disbursements \$ _____
This Request \$ _____
Proceeds Remaining \$ _____

VDH Drinking Water Funding Program Guidance Package #3

FINANCIAL MANAGEMENT

It is essential that all Recipients maintain a financial management/control system for complete accountability of monies. An accountability system requires:

- 1) the overall ability to track and control activities.*
- 2) a sound accounting system.*
- 3) good internal controls.*
- 4) compliance with all applicable guidelines.*
- 5) proper procurement procedures.*

This guidance is designed to assist the Recipient in reviewing existing capabilities and to provide some procedures/guidelines to ensure an adequate accounting system.

The Virginia Public Procurement Act provides the legal basis by which all procurements are to be made in the Commonwealth including procurement for engineering and legal professional services, nonprofessional services, construction, equipment, materials, and supplies.

The Uniform Financial Report Manual issued by the Virginia Auditor of Public Accounts pursuant to Section 15.1-66, Code of Virginia (1950), establishes accounting principles and requirements that must be followed by Virginia Recipients.

Guidelines for property management, budget requirements and audit requirements are included in the **40 CFR Parts 30, 31 and 33, and Office of Management and Budget; Circular A-133, “Audit of States, Local Governments and Non-Profit Organizations” and Single Audit Act Amendments of 1996.**

The financial management function is comprised of various parts that must be carried out in an effective, coordinated manner to achieve goals and produce results in a timely and efficient manner.

By accepting the funding, the Recipient accepts responsibility for controlling the funds it will receive. Commonly accepted standards for an adequate financial management system provide for accurate and complete reporting of finances in accordance with state accounting and reporting requirements. Records that identify the source and application of funds pertaining to awards, obligations, assets, liabilities, outlays, and income should be maintained. Effective control over and accountability for all funds, property, and other assets in the form of audits must be established. Further, a systematic method to assure timely and appropriate resolution of audit findings and recommendations must be in place.

Accounting Systems

According to the Uniform Financial Reporting Manual, all Recipients are required to comply with Generally Accepted Accounting Principles (GAAP) which mandates that government resources shall be organized and accounted for on a fund basis.

The accounting system itself should be double entry. A general ledger supported by a cash receipts journal, a cash disbursements journal, a journal voucher or general journal, and a fixed assets ledger comprise the minimum requirements. Other ledgers the Recipient should keep include accounts receivable and accounts payable ledgers, as well as budget/expenditures control and cash control subsidiary ledgers.

Budgeting

The budget is the document by which projected resources are allocated on the basis of need. Budgets also provide a source of control for ensuring that resources are not overspent. The use of a subsidiary budget/expenditure ledger as the basis of comparison and control is an accepted method. Expenditures and encumbrances should be posted in such a manner as to reflect the unencumbered balance available for expenditure.

Procurement Systems

In general, the objectives of a procurement system are to promote to the maximum extent possible free and open competition, and to ensure that the Recipient is receiving the required product at the best price. The system should also be structured to avoid unnecessary expenditures and to provide written guidelines for purchases made by the Recipient. Provisions to promote maximum usage of minority and women owned businesses must also be incorporated in the Recipient's procurement process.

The Public Procurement Act sets forth the guidelines for the procurement of goods and services in the state. The Recipient should establish a written set of procedures that detail how procurements will be made and by whom. *Specific procurement information and guidance is provided in Procedural Guidelines #4.*

Property Management Systems

The property management system should provide records which include a description of the non-expendable items (property), including:

- date acquired,
- title rights (if applicable),
- source,
- labeling,
- or identification codes (serial number, model),
- cost or value of the item, and,
- the vendor from which the item was purchased.

The Recipient should make inventories periodically. Any differences between physical and book inventories should be immediately reviewed and reconciled.

Internal Controls

Internal control is the means by which the Recipient's accounting, procurement, and other management systems are regulated. It serves to assure management those proper procedures are followed with respect to all project operations, including receipt and disbursement of public funds. Internal controls should include segregation and rotation of duties among employees so that one person does not have complete control over all phases of any transaction. Yearly audits should be made at the Recipient's initiative, and systematic methods established to assure timely and appropriate resolution of audit findings and recommendations. All assets and records should be properly protected through the use of appropriate security measures.

Audit Compliance

The Recipient must comply with the Single Audit Act (SAA) by contracting for audits that are in compliance with the SAA and establishing methods for the timely resolution of audit findings.

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.**

Reference is made in this guidance to the VDH Contract Inserts and the Attachments therein (Guidance Packages #13 and #15). Note that there are two distinct sets of Contract Inserts:

- 1) Contract Inserts for Projects Subject to American Iron and Steel (AIS) Requirements
- 2) Contract Inserts for Projects Subject to Build America, Buy America (BABA) Act Requirements

The FCAP Project Manager can verify which set of Contract Inserts is to be used.

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, if they award subcontracts.

B. “Good Faith” Effort Compliance Documentation

The Recipient and Prime Contractors must provide documentation to support a “good faith” effort in the solicitation of MBE and WBE firms only. **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.

Contract Inserts 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: Contract Inserts **Attachment 2** - Instruction to Bidders/Offerors: MBE/WBE Requirements of 40 CFR 33.240; Contract Inserts **Attachment 3** - Bidder Compliance Statement/Certification Regarding Equal Employment Opportunity, and Contract Inserts **Attachment 4** - Subpart Inserts containing 12 mandatory subparts (Subpart A-L). 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 Contract Inserts **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 Contract Inserts 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. Contract Inserts **Attachment 6** - 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 Contract Inserts Attachment 7 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
 - Contract Inserts 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 Contract Inserts Attachment 6)):
- 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 Contract Inserts Attachment 7 for General language])
 - Identification and direct solicitation of MBE/WBE firms
 - Contract Inserts 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	<input type="checkbox"/>
RFP to include scope of services desired, evaluation criteria, and contact information	<input type="checkbox"/>
MBE/WBE Requirements	
Documentation of MBE/WBE contractor search (DMBE website printout)	<input type="checkbox"/>
Copies of direct solicitations to MBE/WBE firms (certified letters/receipts, e-mails, fax receipts)	<input type="checkbox"/>
Evaluation of Respondents	
Scoring sheets with evaluation criteria	<input type="checkbox"/>
Ranking of qualified respondents	<input type="checkbox"/>
Statement detailing with whom negotiations were conducted (at least two respondents) (this may be in the form of Board meeting minutes)	<input type="checkbox"/>
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)	<input type="checkbox"/>

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

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

**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	<input type="checkbox"/>
MBE/WBE Requirements	
Documentation of MBE/WBE contractor search (website printout)	<input type="checkbox"/>
Copies of direct solicitations to MBE/WBE firms (certified letters/receipts, e-mails, fax receipts)	<input type="checkbox"/>
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	<input type="checkbox"/>
Certified Bid Tabulation (signed by Consulting Engineer)	<input type="checkbox"/>
Bid Proposal/Forms and Bid Bond of the apparent low bidder	<input type="checkbox"/>
Updated Total Project Budget (to include all funding sources)	<input type="checkbox"/>

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

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

VDH Drinking Water Funding Program Guidance Package #5

FORCE ACCOUNT WORK USE OF EQUIPMENT AND PERSONNEL/PURCHASE OF MATERIALS

The Virginia Department of Health (VDH) encourages the use of competitive procurement methods in all phases of projects. In some cases, the Recipient may wish to pursue the accomplishment of portions of the project through the use of their own equipment and personnel through force account. VDH will consider and may support such requests if it is determined to be beneficial to the program.

Force Account work should be limited to water line construction. We recommend that construction of a treatment plant or other large projects should be done by an independent contractor, because most water treatment plants exceed the capabilities of force account workforces. Also, any problems that may occur during the first year of operation which would normally be covered by a contractor's warranty will have to be corrected as an additional cost to the recipient. Costs associated with personnel and equipment usage and purchase of materials are eligible if the Recipient complies with the following guidelines.

Prior Approval

The Recipient **MUST** submit a request in writing to the appropriate VDH Project Manager with a copy to the Project Officer and receive VDH approval in writing from the FCAP Division for any material purchases, personnel requirements, and equipment usage **PRIOR** to the purchase and/or performance of the work. When requesting prior approval, the following information must be submitted to the VDH Project Manager:

1. Specific information clearly describing the nature and scope of the proposed work.
2. Discussion of the reason for using force account in lieu of competitive bidding, including information comparing force account costs versus costs reasonably expected for the same work under competitive procurement methods. Include a detailed budget for the proposed force account work. Documentation of any emergency circumstances dictating use of force account.
3. Documentation verifying that existing employees and/or equipment are of sufficient number and qualification to perform the proposed work and to perform this work in a timely fashion (i.e. details of similar work previously performed, special skills of employees, etc.) and/or documentation of need for additional equipment/personnel. Include a project construction schedule for the proposed work.
4. Documentation of approved employee wages and fringe benefits.
5. A list of all current and forthcoming projects the recipient is performing force account work for. This should include a brief description and estimated start and completion dates.
6. A list of all materials to be purchased and equipment to be installed.
7. A list of all equipment to be used including the rate to be charged and its correlating Virginia Department of Transportation (VDOT) class code. The rates must not be higher

than rates established by FCAP (based on VDOT 2011 rental rates adjusted by the Army Corps of Engineers Civil Works Construction Cost Index System).

8. In the absence of any type of performance bond, the recipient must identify the measures to assure quality performance and acceptability.
9. Documentation of adequate insurance including fire and extended coverage, workman's compensation, public liability and property damage, and "all risk" in accordance with local and/or State Law.
10. Administrative approval of a sample request for reimbursement to include documentation appropriate for force account projects. Recently submitted satisfactory force account reimbursements may satisfy this requirement. An example of a properly completed VDH Force Account Time Sheet is attached. Active worksheets and sample disbursement packages will be provided upon request.

Materials Purchased

Only materials installed into the construction project may be eligible for reimbursement. Materials are typically the items included on Plans and Specifications. All materials must be procured in accordance with the Virginia Public Procurement Act. Adequate documentation to establish compliance with procurement regulations, and MBE/WBE good faith efforts where applicable will be required prior to reimbursement. See PG #4 for additional procurement and MBE/WBE utilization guidelines. In certain instances, VDH may require submission and approval of specifications relative to material purchases. Necessity for submission of specifications will be decided on a case-by-case basis. Material invoices with substantiating documentation must be submitted for material purchase reimbursement. Material invoiced to a recipient's warehouse must be supported in the same manner, with invoices from suppliers. Materials used on force account projects will be subject to FCAP program requirements for American Iron and Steel (AIS) and/or Build America, Buy America (BABA) Act. For this reason, stock items should not be used unless manufacturer's certifications can be provided.

To be considered for reimbursement all cost items must be eligible under program guidelines, specific to the project, and necessary for the infrastructural improvement. Costs determined to be associated with any type of operation and maintenance activities are ineligible.

Examples of eligible expenses: pipe and all applicable apparatus, concrete, gravel, lumber, seed, meters, fencing.

Use of Vehicles and Construction Equipment

Vehicles and construction equipment owned by the Recipient and used on projects can be reimbursed on the basis of the **actual hours used** times the accepted hourly rate. The hourly rate cannot exceed the rental rates established by VDOT. This rate encompasses all fixed and operational cost, such as maintenance, repair, insurance, and fuel. For reimbursement of vehicles or equipment without an established VDOT rental rate the recipient must solicit rental rates from area dealers to establish a prevailing market rate¹.

No construction equipment can be purchased with VDH funds. Use of construction equipment may be eligible for reimbursement based on actual hours used. Equipment used herein is defined as equipment primarily used for waterline construction, and/or listed as eligible equipment in the Rental Rate Blue Book.

Rental rates will be solicited from area firms on a monthly basis. Rental equipment should only be used when equipment owned by the recipient is not available. Proper procurement procedures, as discussed in PG #4, must be followed when equipment is rented.

Verified time records, usage rates, and VDOT class code must be submitted for each vehicle or equipment reimbursement. Vehicle or equipment usage is limited to time when vehicle is performing a function. Presence on the jobsite does not constitute valid use of a vehicle or piece of equipment.

Miscellaneous Expenses

Reimbursement for miscellaneous expenses may be eligible if deemed necessary for the completion of construction. Miscellaneous expenses are those expenses incidental to or not included in the project Plans and Specifications. Reimbursement will not be granted for items the recipient is expected to have on hand on a regular basis.

Examples of eligible miscellaneous expenses: portable toilets, erosion and sediment control materials, and non-routine testing.

Examples of ineligible expenses: fuel, oil, construction tools, vehicle or equipment parts, vehicle or equipment repair expenses, drug testing, radios, safety equipment, traffic control devices, insurance, etc.

Compensation for Personnel Services

The Recipient must provide the following documentation:

1. Approved salary scales and job classifications for all individuals performing work under force account procedures. (Eligible personnel will be individuals who are customarily employees of the Recipient's utility system.)
2. Any indirect cost rate utilized and its method of allocation.
 - a) Indirect Cost Rates require separate approval.
3. Procedures for timekeeping and time checking.

Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that total compensation for individual employees:

1. Is reasonable for services rendered;
2. Follows an appointment made in accordance with State or local government laws and rules and which meets merit system or other requirements, where applicable; and

3. is determined and supported as provided by approved VDH Force Account Timesheets.

Compensation for employees engaged in State assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the local government. In cases where the kinds of employees required are not found in the other activities of the local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

Amounts charged for personnel services will be based on payrolls documented and approved in accordance with generally accepted practice of the local agency. Payrolls MUST be supported by time and attendance records for individual employees. Salaries and wages of employees chargeable to more than one funding source or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort. Overtime hours charged to the project will be those hours in excess of 8 hours of project related work per day, or in excess of 40 hours of project related work per week, whichever is the common practice of the employer.

Costs identified under this item are allowable to the extent that total compensation for employees is reasonable as defined above.

1. Employee benefits in the form of regular compensation paid to employees during periods of authorized absence from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (a) provided pursuant to an approved leave system, and (b) the cost thereof is equitably allocated to all related activities, including the grant.
2. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workman's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

Personnel service expenses must be documented on a Time Sheet for VDH Force Account (see attached) showing hours worked each week which are charged to the VDH project.

Employees working on VDH funded projects are responsible for preparing their own timesheets and the following procedures must be followed:

1. Employee must be provided clear descriptions of the work to be performed and the job number (name) to be charged;
2. Time sheets must be recorded in ink;
3. Timesheets must be filled out as work is performed, but no less often than daily;
4. All hours must be recorded on the timesheet;
5. Timesheets must be signed by the employee, their supervisor, the payroll clerk and an authorized representative of the recipient;

6. Each employee is to prepare only one timesheet per pay period; and
7. The time period covered by the timesheet and the payroll period must be the same.

Requests for Disbursement

In addition to the documents required for standard reimbursements as described in PG #2-Fund Disbursement and Loan Payments, Recipients will be required to submit additional documentation, similar in function to a contracted construction project. Acceptable submissions shall include:

- Time and attendance reports customarily used for payroll and equipment usage by the Recipient (see above);
- Time Sheet for VDH Force Account, detailing individual employee time expended on the force account project, and equipment used in that week;
- Summary of project Equipment and Labor for each employee during the invoice period; and
- Copies of original invoices and summaries of Materials and Miscellaneous/Supplies.

An example of a properly completed VDH Force Account Time Sheet is attached. Active worksheets and sample disbursement packages will be provided upon request.

Force Account pay requests that consist of more than one month's invoicing may result in delayed reimbursement.

Employee WEEKLY TIME SHEET FOR VDH FORCE ACCOUNT								
Week of:	7/8/2015	to	7/10/2015	Employee's Name: James Madison				
Project Name:	SAMPLE			Pay Class: Salary				
Project Number:	WSL 00 00			Job Title/Grade: Operator/Skilled Labor				
	Brief Description of Work Performed	Equipment Used	VDOT Class Code	Rate Per Hour	Hours Used	Total Equipment Charges	Reg. Hrs. Charged to VDH	O.T. Hrs. Charged to VDH
MONDAY	Installed 82' of 6" Line	Cat Backhoe 420	335G	\$ 26.28	4.00	\$ 105.12	8.00	1.75
		Cat Loader	338	\$ 13.85	1.00	\$ 13.85		
		Sweeper	692	\$ 12.19	1.00	\$ 12.19		
		Freightliner DT	864A	\$ 14.82	3.00	\$ 44.46		
	Launch					\$ -		
TUESDAY	Installed 80' of 6" Line	Cat Backhoe 420	335G	\$ 26.28	4.00	\$ 105.12	8.00	1.75
		Cat Loader	338	\$ 13.85	1.00	\$ 13.85		
		Sweeper	692	\$ 12.19	1.00	\$ 12.19		
		Freightliner DT	864A	\$ 14.82	4.00	\$ 59.28		
	Launch					\$ -		
WEDNESDAY	Installed 130' of 6" Line	Cat Backhoe 420	335G	\$ 26.28	4.00	\$ 105.12	8.00	0.75
		Freightliner DT			4.00	\$ 59.28		
						\$ -		
						\$ -		
	Launch					\$ -		
THURSDAY	Installed 130' of 6" Line			\$ 26.28	3.00	\$ 78.84	8.00	0.50
	Installed (1) 6" Gate Valve			\$ 13.85	1.00	\$ 13.85		
			692	\$ 12.19	1.00	\$ 12.19		
			864A	\$ 14.82	3.00	\$ 44.46		
	Launch					\$ -		
FRIDAY	Made Tap for Sample Station	420	335G	\$ 26.28	3.00	\$ 78.84	7.50	
	Repaired Leak	Freightliner DT	864A	\$ 14.82	3.00	\$ 44.46		
						\$ -		
						\$ -		
	Launch					\$ -		
SATURDAY						\$ -		
SUNDAY						\$ -		
Total Equipment Cost =						\$ 803.10	39.50	4.75
Total Equipment Cost to VDH		\$ 803.10	Regular Rate x Reg. Hours		13.73	=	\$ 542.34	
Total Labor Cost to VDH		\$ 624.89	OT Rate x OT Hours		13.73	=	\$ 65.22	
Total Cost to VDH		\$ 1,427.99	Gross Pay				\$ 607.55	
			Fringes as % of RT		42.39%	=	\$ 16.74	
			Fringes as % of OT		12.55%	=	\$ 0.60	
			Total Labor				\$ 624.89	
I CERTIFY ALL RATES PER HOUR, WAGES PAID AND TOTAL LABOR COST CALCULATIONS ARE CORRECT.				I CERTIFY HOURS WORKED ARE CORRECT.				
Payroll Clerk's Signature				Employee's Signature				
TO THE BEST OF MY KNOWLEDGE I CERTIFY THE INFORMATION PROVIDED ABOVE IS CORRECT.				I CERTIFY HOURS WORKED AND EQUIPMENT USED IS CORRECT.				
Owner's Authorized Representative Signature				Supervisor's Signature				

Example

VDH Drinking Water Funding Program Guidance Package #6

FILING AND RECORD KEEPING

Adequate filing and record keeping systems are essential for ensuring project accountability, proper coordination and overall project management. Further, these systems will provide the support documentation needed during final close out and audit. The complexity of the Recipient's individual filing and record keeping systems will depend on the project. Implementation of the record keeping and filing systems should begin with the receipt of this package and include any prior documentation and information related to the project.

The main objectives of good record keeping and filing systems are to provide documentation and organization. Written accounts of all transactions, meetings, negotiations, procurements, agreements, construction activities, and telephone conversations should be maintained. Files should be complete, logically arranged, readily accessible, protected from fire, theft and other potential damage, and clearly distinguished from other files. The records and files should be arranged according to topical area (*i.e., planning, design, construction, project management*) of the project and labeled or coded in a manner to clearly identify each specific topic. A master index or mini- tracking system should also be developed to provide easy reference for items associated with various topics.

The Recipient must maintain all records pertinent to the project for a period of three years unless:

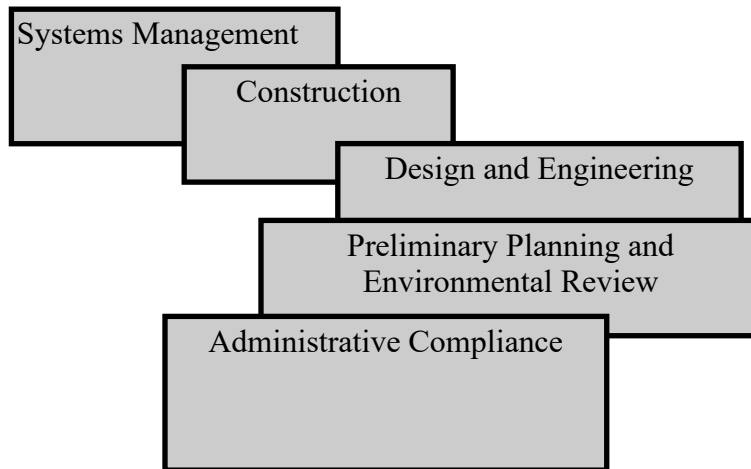
Any litigation is started before the end of the three-year period, and then all records shall be retained until completion or resolution of any litigation or claim.

The records are for nonexpendable property and those must be retained for three years after its final disposition.

The three-year period shall begin at the acceptance of the final audit or the resolution of any audit findings, whichever is the last to occur.

A sample filing system which may be of assistance in organizing the project files is attached.

Example Filing System



MAJOR HEADINGS

I. Administrative Compliance

II. Preliminary Planning and Environmental Review

III. Design and Engineering

IV. Construction

V. Systems Management

System should accommodate the information that would be contained under the headings referenced above and more detailed subheadings and elements listed on the next page.

Detailed Contents for Recordkeeping

I. Administrative Compliance

A. Program Design Manual

B. Procedural Guidelines

C. Funding application

D. Financing agreement and conditions

E. Miscellaneous administrative information

F. General correspondence

G. Financial management

- 1- Narrative of accounting procedures
- 2- Assignment of duties
- 3- Procurement procedures, small purchase procedure
- 4- Budget
- 5- Procurements; advertising for bids, awards, etc.
- 6- Request for payment projected schedule
- 7- Payment request log
 - a) general ledger
 - b) cash receipts journal
 - c) cash disbursements journal
 - d) fixed assets ledger
 - e) subsidiary ledgers: accounts receivable, accounts payable, budget/expenditure control, cash control
- 8- Invoices, pay estimates, administrative expenses
- 9- Time sheets; force account record
- 10- Audit reports; method of procurement of auditors

H. Land Acquisition Process

II. Preliminary Planning and Environmental Review

- A. Professional service contracts and amendments**
- B. Comprehensive Business Plan**
- C. Preliminary Engineering Report**
- D. Environmental Assessment**
- E. Public participation; public hearings**
- F. State/Federal review comments**
- G. State Environmental Review**
- H. General correspondence**
- I. State approvals**
- J. Procurement (including MBE/WBE)**

III. Design and Engineering

- A. Professional service contracts and amendments**
- B. Plans and specifications, addenda**
- C. Approvals**
- D. General correspondence**
- E. Procurement (including MBE/WBE)**

IV. Construction

- A. Bid tabulations; bid bonds; performance bonds; notices of award; notices to proceed**
- B. Construction contracts**
- C. Listing of subcontractors**
- D. Construction permits, construction schedules, photos**
- E. Right-of-way; easements acquired**

- F. Change orders with back up, approvals**
- G. Inspection reports**
- H. Test reports, material certification**
- I. Shop drawings**
- J. Civil rights compliance certifications**
- K. Procurement (including MBE/WBE goals and affirmative action)**
- L. Quarterly MBE/WBE utilization reports**
- M. Contractor's submitted Weekly Payrolls and review documentation**
- N. AIS and/or BABA certification letters and documentation**

V. Systems Management

- A. Permits**
- B. Insurance policies, equipment information, etc.**
- C. Signed Water User Agreements**

VDH Drinking Water Funding Program Guidance Package #7

ENVIRONMENTAL REVIEW

One of the most important planning level requirements of the project funding agencies is that every project must undergo an Environmental Review (ER) before loan or grant closing can occur. The ER requirement is intended to ensure that water projects funded through the various funding programs are environmentally sound.

This procedure should satisfy the environmental review requirements of the following funding agencies:

- Financial & Construction Assistance Programs administered by the Virginia Department of Health – Office of Drinking Water
- United States Department of Agriculture-Rural Development
- Virginia Department of Housing and Community Development
- Virginia Department of Mines, Minerals, and Energy.

Each of these agencies may have varying public notice requirements that are specific to their particular program.

There are three levels of Environmental Review in the program and the required level will depend on the project's potential for significant environmental impact. The most frequently utilized are the relatively simple Categorical Exclusion (CE) and the more detailed Environmental Assessment (EA). Rarely will a project have such significant environmental impact that an Environmental Impact Statement (EIS) would be required.

Categorical Exclusions from Environmental Assessment Requirement

Recipients may request an exclusion from the environmental assessment requirement if the project meets any of the following conditions as applicable to that project:

1. An upgrade in level of treatment or facility improvements of an existing treatment works on the existing site of the works. The proposed action will result in a modest change in size, use, capacity, or purpose of the original location and is being designed predominately to serve residential users.
2. An expansion of an existing treatment works on the existing site of the works which would result in no more than a 20% increase to the existing service population.
3. Water line replacement/rehabilitation to correct exfiltration water loss problems or problems associated with inadequate water pressure. Rehabilitation of drinking water facilities such as reservoirs and storage facilities.
4. Replacement of existing equipment or structures at their present location. These activities also include reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements.
5. Installation of on-site treatment technologies (e.g., filters, ion exchange, iron removal).

6. Minor extensions of water lines, which will be located within road rights-of-way or otherwise previously disturbed areas.

The exclusion request is to be transmitted to the appropriate funding agency representative and should include a description of the project, a discussion of how the project meets one or more of the exclusion conditions and support documentation. The funding agency will review the request and issue a Categorical Exclusion, if appropriate. The Recipient must then public notice the CE in a local newspaper for a minimum of 30 days. The public notice must be published by the Recipient at least once per week for two consecutive weeks in a newspaper of general weekly circulation or published three consecutive days in a paper of general daily circulation in the service area involved in the project. For localities anticipating request of a categorical exclusion, contact with the funding agency staff is recommended early in the planning process to receive preliminary indication of acceptability. This may reduce project delays resulting from non-concurrence with funding agency requirements.

Environmental Assessment

Projects not falling into one or more of the categories for potential exclusion must undergo an Environmental Assessment. Also, projects that will use explosives during construction and projects over 100 acres in size will undergo an Environmental Assessment. The Environmental Assessment must identify the purpose and need for the project as well as providing a brief description and site location maps.

The Environmental Assessment must summarize and compare reasonable project alternatives. The comparison of project alternatives will include a cost analysis of each alternative showing capital and operation and maintenance costs.

The assessment must address and consider both the direct and indirect environmental impacts of the selected alternative. Accordingly, both adverse and beneficial impacts need to be identified and considered. Direct impacts are caused by the construction of the treatment works, and indirect impacts are caused by the development made possible by the project. The assessment must also evaluate and discuss the impacts that would result without the project (a take-no-action alternative).

The following is a list of environmental concerns and effects, which must be addressed through the environmental assessment. Any adverse effect should be identified as short term or long term (short term means while under construction), and any protective measures to reduce or eliminate their impact should also be identified.

1. Effects, destruction and/or displacement of wildlife and marine life, including endangered species, and their habitats, or food chain.
2. Destruction or disturbance of marshland or wetlands.
 - If appropriate, state the amount of wetlands to be physically affected by construction of the proposed project, status of any wetland permits, and show the location of the wetlands in relation to the project;
 - If appropriate, justify why there is no alternative to construction in wetlands;
 - Describe proposed mitigation measures to avoid or minimize impacts to wetlands.
3. Displacement of households, businesses, or services.

4. Land Use Issues
 - a. General Land Use
 - Describe existing zoning ordinances and land use plans of project area;
 - Describe current land classification of proposed project area i.e. residential, commercial, agricultural, rangeland, forest land, etc.;
 - b. Important Farmland, Prime Forest Land, and Prime Rangeland Information
 - Must comply with the Farmland Protection Policy Act (FPPA);
 - Show the areas of important farmland and prime rangeland and forest land affected by the project and the amount of area to be disturbed;
 - Contact local Natural Resources Conservation Service office for soil survey maps and consultation to determine if the project area is classified as Prime Rangeland or Important Farmland and if the proposed project area is farmland subject to FPPA;
 - Contact United States Forest Service office for consultation to determine if the project area is classified as Prime Forest Land.
 - c. Formally Classified Lands
 - Formally classified lands are properties that are either administered by Federal, State, or local agencies or have been given special protection through formal legislative designation;
 - Describe the amount of each type of formally classified land that will be affected by the proposed project and alternatives considered;
 - Visual impacts to formally classified lands needs to be considered and described;
 - Formally classified lands include but are not necessarily limited to:
 - National parks and monuments;
 - National natural landmarks;
 - National battlefield park sites;
 - National historic sites and parks;
 - Wilderness areas;
 - Wild and scenic and recreational rivers;
 - Wildlife refuges;
 - National seashores, lake shores, and trails;
 - State parks;
 - Bureau of Land Management (BLM) administered lands;
 - National forests and grasslands;
 - Native American owned lands and lease administered by the Bureau of Indian Affairs (BIA)
5. Effects on land having archeological significance.
6. Destruction or disturbance of areas of historical significance.
 - Comply with Section 106 of the National Historic Preservation Act of 1966 (NHPA)
7. Use of irretrievable resources.
8. Noise.
9. Traffic circulation and traffic pattern disruption.
10. Odor/air quality.
11. Damage and/or pollution of surface water resulting from erosion, discharge(s), or other sources.
12. Aesthetic concerns and visual impacts.

13. Effects on designated wild, scenic, and/or recreational rivers.
14. Socio-economic changes and environmental justice issues.
 - Include an analysis of the potential impact of a proposed project that may cause a disproportionately high and adverse human health or environmental effect to minority and low-income residents within the project area. If the project will have no disproportionate effects, that should be stated. If the project will have or may be perceived to have disproportionate effects to minority or low-income residents, the analysis should describe efforts to get these residents in the public review and comment process;
 - If there is no alternative to locating a project in a minority or low-income community and if there will be disproportionately high human health or environmental effects, the discussion must include a discussion of the mitigation measures evaluated that would off-set or minimize the effects.
15. Floodplain impacts
 - Include copies of the applicable Federal Emergency Management Agency (FEMA) Floodplain Insurance Rate Maps (FIRM) with the project facilities identified;
 - Determine if the proposed project or any portion is located in a 100-year or 500-year floodplain;
 - Identify and define the area of the floodplain to be affected by the proposed project and evaluate the impacts to the floodplain;
 - Identify and evaluate practical alternatives to locating facilities in a 100-year floodplain;
 - Identify critical facilities of the proposed project that would be located in a 500-year floodplain. Critical facilities are facilities whose loss would disrupt utility service for an extended time or would disrupt utility service to critical structures such as hospitals. Critical facilities would include water treatment plants, large pump stations, and centralized operations or communication facilities.
 - If there is no practical alternative to locating a facility or portion of a facility in the floodplain, document the justification and identify and develop measures to minimize the impacts and restore /preserve floodplain values.
16. Availability of raw water during periods of drought.
17. Water Quality Information – The types of information that must be provided include:
 - Identification and location of waterways that may be receiving streams for effluent discharges or used for water appropriations for potable water;
 - Handling of wastewater disposal for facilities;
 - Identification of all aquifers utilized as a supply for potable or that may be impacted from runoff, infiltration by or any operational activities from wastewater and solid waste facilities;
 - Groundwater protection programs for sole source aquifers or recharge areas should be noted;
 - If the watershed that the proposed project is located in is under a management plan, the plans and the proposed project's compliance with the plan should be noted; and
 - Potential water quality degradation caused by temporary construction activities and any mitigation measures that are proposed to avoid or minimize any adverse environmental effects.
18. Impact on fisheries from surface water intakes.
19. Impacts to coastal zones and coastal barrier resource systems (CBRS).
 - Identify portions of the proposed project which will be located in the coastal zone or CBRS units or which will affect these areas;
 - If appropriate, include correspondence with the State coastal management program office concerning the projects consistency determination;

- Describe mitigation measures necessary to achieve consistency with the State's coastal management program, if necessary.

The impacts of the selected alternative should be summarized. Particular attention must be paid to unavoidable adverse impacts resulting from the project, and the relationship between short-term impacts on the environmental and long-term maintenance and enhancement of environmental quality or elimination of public health risks. This section must also include, as appropriate, the steps that will be taken to avoid or minimize the adverse impacts, as well as structural and nonstructural methods of mitigating unavoidable impacts and who will be responsible for these mitigation activities.

The Environmental Review procedures are discussed below:

1. If the Recipient feels they are eligible for a categorical exclusion from the environmental assessment, they should submit the request, with appropriate documentation, to the funding agency as discussed earlier. If the funding agency concurs with the request, then the concurrence will be transmitted to the Recipient for local public notification for a 30-day comment period. If there are no significant adverse public comments, the funding agency will issue an environmental clearance letter and the project may proceed to closing. If the funding agency does not concur with the request, or significant adverse public comment is received as a result of the notification, then the project must proceed through Steps #2-7.
2. A written request for an environmental review and comment must be forwarded to all review agencies. A list of these agencies is attached. Sample review agency transmittal letters are shown in Exhibit A. The written review request transmittal should include a description of the purpose and need of the proposed project, a written description of the proposed project location and boundaries, and the proposed project scope of work. The request should also include a USGS topographic map with 1:24000 scale (also referred to as a 7.5 minute series) to show the limits of the project and potential environmental effects. The agencies must be given a minimum of 30 days for review and comment. If no written response is received within the requested time period the recipient should re-contact the agency by telephone to again request a written response. Written documentation of follow-up telephone conversations must be provided in the environmental assessment. The Recipient must retain copies of the transmittal letters as well as all review comments received. The environmental assessment is prepared after review agency written responses are received.

The Department of Historic Resources (DHR) requires an archive search first. Their project review form must be filled out after the archive search results are received. This information should be forwarded to DHR along with the information described in the paragraph above. For more information on DHR's 106 review, refer to their website, <http://www.dhr.virginia.gov>.

3. The environmental assessment will address the previously mentioned environmental concerns and effects and resolve any issues to the commenting review agency's satisfaction.
4. The recipient must hold a public hearing for the purpose of discussing the project, alternatives considered, environmental impact, project costs, and associated user charge impact. The Public hearing must not be held until after the end of the 30-day agency review referenced in #2 above and after the environmental assessment is prepared. Public notice must be made at least 30 days prior to the hearing and must be published by the Recipient at least once per week for two consecutive weeks in a newspaper of general weekly circulation or published three consecutive days in a paper of general daily circulation in the service area involved in the project. A Public Notice Verification Sheet must be completed by the newspaper, submitted to the recipient, with two copies to the funding agency representative. The Environmental Assessment must be made

available for public review prior to the hearing. A record of the hearing proceedings shall be kept.

5. The Recipient must provide the funding agency representative with two copies of the environmental assessment, and two copies each of all review agency transmittal letters and all comments received from the appropriate agencies as well as two copies of the notices of the public hearing and the public hearing records. The comments provided must be addressed, with any project changes made as deemed appropriate, based on environmental effects, monetary and other resource costs, and overall feasibility and reliability. The recipient will provide USDA-Rural Development with two copies of all documents when USDA-Rural Development is a funding agency for the project.
6. The funding agency will review the submittal from the funding recipient and determine whether a Finding of No Significant Impact (FONSI) should be issued. If the environmental assessment indicates that a significant environmental impact may occur and that the impact cannot be mitigated through changes in the project, then an Environmental Impact Statement must be prepared. Steps for preparing an Environmental Impact Statement will be provided to the Recipient once an EIS determination is made. Otherwise, the funding agency will prepare and issue the FONSI. On projects funded by the Virginia Department of Housing and Community Development (VDHCD), VDHCD will issue a written concurrence with the FONSI prepared by the recipient.
7. The FONSI will be forwarded to the Recipient for publishing locally and in an appropriate newspaper of general circulation in the area in which the project is to be built. The FONSI must be noticed for a minimum period of 30 days and must be published by the Recipient at least once per week for two consecutive weeks in a newspaper of general weekly circulation or published three consecutive days in a paper of general daily circulation in the service area involved in the project. A sample FONSI Notice is shown in Exhibit B. The funding agency representative must be provided with two copies of the Public Notice Verification Sheet signed by the newspaper in which the notice was published. If no significant adverse comments are received from the public, the funding agency will issue a clearance letter completing the environmental review.

Funding Agencies' Environmental Review Contacts:

VDH-Office of Drinking Water

Mr. Matt Beyer
Program Support Technician
131 Walker Street
Lexington, VA 24450
Phone: (540) 463-0406
Email: matt.beyer@vdh.virginia.gov

Mr. Anthony Hess, MBA
Project Manager
131 Walker St.
Lexington, VA 24450
Phone: (540) 463-0419
Email: anthony.hess@vdh.virginia.gov

Mr. Keith Kornegay, P.E.
Project Team Leader
131 Walker St.
Lexington, VA 24450
Phone: (540) 463-0420
Email: keith.kornegay@vdh.virginia.gov

Mr. Jack Hinshelwood, P.E.
Project Manager
407 E. Main St., Ste. 2
Abingdon, VA 24210
Phone: (276) 525-6167
Email: jack.hinshelwood@vdh.virginia.gov

Mr. Brad Humphrey
Project Manager
407 E. Main St., Suite 2
Abingdon, VA 24210
Phone: (804) 337-7178
Email: brad.humphrey@vdh.virginia.gov

Ms. May Fornari
Project Manager
109 Governor Street, 6th Floor
Richmond, VA 23219
Phone (804) 584-8412
Email: may.fornari@vdh.virginia.gov

Ms. Tamara Anderson
Project Manager
211 Nor Dan Drive, Suite 1040
Danville, VA 24540
Phone: (804) 370-2439
Email: tamara.anderson@vdh.virginia.gov

USDA-Rural Development

Mr. James P. Warner
State Environmental /
Civil Rights Coordinator
140 Highland Drive, Suite 5
Lebanon, VA 24266
Phone: (276) 415-3518
Email: james.warner2@usda.gov

Department of Mines, Minerals and Energy

Mr. Rodney Baker
Water Quality Section Supervisor
Division of Mined Land Reclamation
3405 Mountain Empire Road
Big Stone Gap, VA 24219
Phone: (276) 523-8159
Email: rodney.baker@dmme.virginia.gov

Virginia Department of Housing and Community Development

Mr. Matt Weaver, Associate Director of Community Development Policy
Community Development
600 East Main St, Suite 300
Richmond, Virginia 23219
Phone: (804) 371-7000
Email: matthew.weaver@dhcd.virginia.gov

ENVIRONMENTAL REVIEW AGENCIES

The agencies listed below are typically involved in the environmental review. Project circumstances may be such that environmental review input may be needed from other agencies than those listed here. As an example, if important farmland is affected, the USDA Natural Resources Conservation Service (NRCS) would have to be contacted. NRCS can be contacted at www.va.nrcs.usda.gov/. On occasions, including when Abandoned Mine Land (AML) funds are part of the project funds, the U. S. Fish and Wildlife Service (USFWS) will need to participate in the environmental review.

1. Department of Transportation

Ms. Angel Deem, Division Administrator
Environmental Division
1201 East Broad Street
Richmond, Virginia 23219
Phone: (804) 371-6756
Email: angel.deem@vdot.virginia.gov

2. Department of Historic Resources

Mr. Roger Kirchen, Director

2801 Kensington Avenue

Richmond, Virginia 23221

Phone: (804) 482-6091

Email: roger.kirchen@dhr.virginia.gov

Please submit all projects for review through ePIX at <https://epix.dhr.virginia.gov/>

Also send a cc: to:

Jenny Bellville-Marrion, Archaeologist

Phone: (804) 482-8091

Email: jennifer.bellville-marrion@dhr.virginia.gov

Adrienne Birge-Wilson, Architectural Historian

Phone: (804) 482-6092

Email: adrienne.birge-wilson@dhr.virginia.gov

3. Virginia Marine Resources Commission

Project review should be sent to the Environmental Engineer in the appropriate region (Figure 1)

Norfolk Area

Ms. Allison Lay

Phone: (757) 247-2254

Central Virginia

Mr. Mark Eversole

Phone: (757) 247-8028

Northern Virginia

Mr. Jay Woodward

Phone: (757) 247-8032

South Central Virginia

Mr. Mike Johnson

Phone: (757) 247-2255

Southwest Virginia

Mr. Jeff Madden

Phone: (757) 247-2276

East Central Virginia

Mr. Randy Owen

Phone: (757) 247-2251

Southeast Virginia

Mr. Justin Worrell

Phone: (757) 247-8063

4. Local Wetlands Boards: Contact Virginia Marine Resources Commission obtain the address and telephone number of the Local Wetlands Board

Phone: (757) 247-2252

Email: beth.howell@mrc.virginia.gov

5. Department of Wildlife Resources

Mr. Ray Fernald, Manager

Environmental Services

P.O. Box 90778,

Henrico, VA 23228

Phone: (804) 367-8364

Email: ray.fernald@dwr.virginia.gov

Attention: Amy Ewing or Ernie Aschenbach

Amy Ewing

Phone: (804) 367-2211

Email: amy.ewing@dwr.virginia.gov

Ernie Aschenbach
Phone: (804) 367-2733
Email: ernie.aschenbach@dwr.virginia.gov

6. Department of Conservation and Recreation

Ms. Robbie Rhur, Environmental Impact Review Coordinator
Recreational Planning
600 E Main St
Richmond, Virginia 23219
Phone: (804) 371-2594
Email: robbie.rhur@dcr.virginia.gov (electronic submittal preferred)

7. U. S. Army Corps of Engineers, Norfolk District

Mr. William T. (Tom) Walker, Regulatory Branch Chief
803 Front Street
Norfolk, Virginia 23510
Phone: (757) 647-9843
Email: William.T.Walker@usace.army.mil

8. Department of Agriculture & Consumer Services

Mr. Kevin Schmidt
Office of Policy, Planning and Research
P.O. Box 1163
Richmond, Virginia 23219
Phone: (804) 786-1346
Email: kevin.schmidt@vdacs.virginia.gov
CC: Dr. Jewel H. Bronaugh, Commissioner
Phone: (804) 786-3501
Email: jewel.bronaugh@vdacs.virginia.gov

9. The Virginia Coastal Resource Management Program is administered by the Virginia Marine Resources Commission. See #3 above for contact information

10. U. S. Fish and Wildlife Service

Mr. Troy Andersen, Supervisory Fish & Wildlife Biologist
Ecological Services, Virginia field office
6669 Short Lane
Gloucester, VA 23061
Phone: (804) 693-6694 ext. 2428
Email: troy_andersen@fws.gov
https://www.fws.gov/northeast/virginiafield/endangered/projectreviews_step1.html

11. Department of Environmental Quality

Document submission guidelines:
<https://www.deq.virginia.gov/Programs/EnvironmentalImpactReview/DocumentSubmissions.aspx>

Send one copy to the appropriate DEQ regional contact:

Southwest Regional Office

Mr. Michael Hutchinson
Department of Environmental Quality
355-A Deadmore St.
Abingdon, Virginia 24210
Phone: (276) 676-4800
Email: michael.hutchison@deq.virginia.gov

Blue Ridge Regional Office

Mr. Kevin A. Harlow
901 Russell Drive
Salem, Virginia 24153
Phone: (540) 562-6700
Email: kevin.harlow@deq.virginia.gov

Valley Regional Office

Mr. Keith Fowler
4411 Early Road
P.O. Box 3000
Harrisonburg, Virginia 22801
Phone: (540) 574-7800
Email: keith.fowler@deq.virginia.gov

Northern Regional Office

13901 Crown Court
Woodbridge, VA 22193
Phone: (703) 583-3800
Email: eir@deq.virginia.gov

Piedmont Regional Office

4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5020
Email: eir@deq.virginia.gov

Tidewater Regional Office

5636 Southern Blvd.
Virginia Beach, VA 23462
Phone: (757) 518-2000
Email: eir@deq.virginia.gov

VMRC Environmental Engineer Territory Map

	Allison Lay 757-247-2254		Justin Worrell 757-247-8063		Randy Owen 757-247-2251
	Jay Woodward 757-247-8032		Mark Eversole 757-247-8028		
	Jeff Madden 757-247-2276		Mike Johnson 757-247-2255		

Independent Cities:

- | | | |
|--------------------|-------------------|-------------------|
| 1.Alexandria | 15.Fredericksburg | 29.Poquoson |
| 2.Bedford | 16.Galax | 30.Portsmouth |
| 3.Bristol | 17.Hampton | 31.Radford |
| 4.Buena Vista | 18.Harrisonburg | 32.Richmond |
| 5. Charlottesville | 19.Hopewell | 33.Roanoke |
| 6. Chesapeake | 20.Lexington | 34.Salem |
| 7.Clifton Forge | 21.Lynchburg | 35.Staunton |
| 8.Colonial Heights | 22.Manassas | 36.Suffolk |
| 9.Covington | 23.Manassas Park | 37.Virginia Beach |
| 10.Danville | 24.Martinsville | 38.Waynesboro |
| 11.Emporia | 25.Newport News | 39.Williamsburg |
| 12.Fairfax | 26.Norfolk | 40.Winchester |
| 13.Falls Church | 27.Norton | |
| 14.Franklin | 28.Petersburg | |

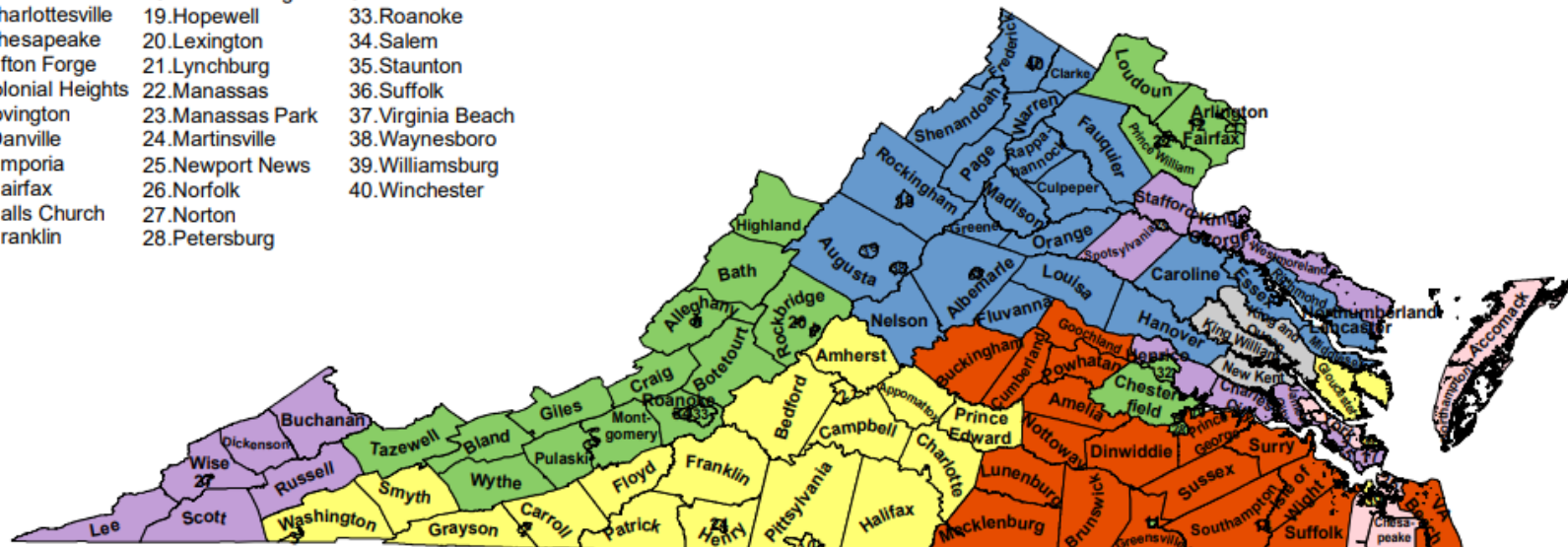


Exhibit A – Agency Correspondence for Information Gathering

Included in this exhibit are sample letters directed to a variety of Federal and State agencies that are normally contacted during the preparation of an ER. These examples are designed to provide guidance to the funding recipients in preparing information requests to environmental regulatory agencies. Individual letters should be tailored to the nature of the specific project and the issues involved. At times a briefer format may be reasonable, while in other instances a more detailed explanation may be necessary.

A.1 State Historic Preservation Officer Letter Concerning Cultural Resources

"The (Recipient's name) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the (appropriate funding agency) in order that it may assess the environmental impacts of (description of the project)¹ in (county), (State). The project is being proposed to (give a brief statement supporting project needs). Enclosed is a U.S. Geological Survey map(s) that depicts the proposed project's area of potential effect for all construction activities and a description of the work involved².

(Recipient's name) requests the assistance of your office in identifying historic properties that are listed or eligible for listing by on the National Register of Historic Places and that may be affected by the project. Please provide any recommendations you may have to mitigate or avoid these impacts, to properties that may be affected.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (name) at (telephone number)."

¹Recipients could provide a complete project description as an attachment to this letter. In order for the SHPO to provide appropriate project reviews, the project descriptions submitted need to be explicit in the types and locations of all construction activities that are being proposed (see footnote 2).

²In order to expedite SHPO reviews, the recipient should submit maps of an appropriate scale that will show the proposed project's area of potential effect. These areas should cover all proposed construction including easements, staging areas, etc. Recipients should consider submitting photographs of these areas with letters.

A.2 U.S. Fish and Wildlife Service or National Marine Fisheries Service Letter Concerning Endangered Species

"The (Recipient's name) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the (appropriate funding agency) in order that it may assess the environmental impacts of (description of the project)¹ in (county), (State). The project is being proposed to (give a brief statement supporting project needs). Enclosed is a U.S. Geological Survey map(s) that depicts the proposed project's area of potential effect for all construction activities and a description of the work involved.

The proposed project does not represent a "Major construction activity" as defined in 50 CFR 402.02. We request a list of any Federally listed or proposed threatened or endangered species and designated or proposed critical habitat that may be present in the project area. In addition, please advise us of any present concerns you may have related to possible effects of the project listed above on such species or critical habitat, as well as any other wildlife concerns.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (name) at (telephone number)."

¹Recipients could provide a complete project description as an attachment to this letter. In order for the USFWS to provide appropriate project reviews, the project descriptions submitted need to be explicit in the types and locations of all construction activities that are being proposed.

A.3 Natural Resources Conservation Service (State or field office) Letter Concerning Important Farmland

"The (Recipient's name) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the (appropriate funding agency) in order that it may assess the environmental impacts of (description of the project)¹ in (county), (State). The project is being proposed to (give a brief statement supporting project needs). Enclosed is a U.S. Geological Survey map(s) that depicts the proposed project's construction activities and a description of the work involved.

We are requesting information on the possible effects of the proposed project on important farmland and prime rangeland and any recommendations you have to minimize or avoid these effects. We also seek your assessment of the compatibility of the proposed project with State and local government of any private programs and policies to protect important farmland.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (name) at (telephone number)."

¹Recipients could provide a complete project description as an attachment to this letter. In order for NRCS to provide appropriate project reviews, the project descriptions submitted need to be explicit in the types and locations of all construction activities that are being proposed.

A.4 State Coastal Management Program Agency Letter Concerning Coastal Zone Management Issues

"The (Recipient's name) is in the process of performing an environmental review pursuant to the National Environmental Policy Act for the (appropriate funding agency) in order that it may assess the environmental impacts of (description of the project)¹ in (county), (State). The project is being proposed to (give a brief statement supporting project needs). Enclosed is a U.S. Geological Survey map(s) that depicts the proposed project's construction activities and a description of the work involved.

Please advise us if the proposed project is within areas of the State's Coastal Management Program. If so, we request your review of this project so that you may assist us in ensuring that our construction activities will be consistent with program goals. Any other information you may wish to provide regarding environmental impacts of suggestions for mitigating impacts will be appreciated and taken into consideration.

We would appreciate a response within 30 days. If you need any further information or wish to discuss the project, please contact (name) at (telephone number)."

¹Applicants could provide a complete project description as an attachment to this letter. In order for the State CMP agency to provide appropriate project reviews, the project descriptions submitted need to be explicit in the types and locations of all construction activities that are being proposed.

Exhibit B – Finding of No Significant Impact Notice

The recipient shall publish a public notice informing the public of (the approval funding agency) determination of a FONSI for the proposed project.

Notice of a Finding of No Significant Impact

"The (funding agency) has received an application for financial assistance from (insert recipient's name). The proposed project consists of (itemize the project's construction activities and locations; include information regarding any conversion(s) of (insert issue¹).

As required by the National Environmental Policy Act, the (funding agency) has assessed the potential environmental effects of the proposed project and has determined that the proposal will not have a significant effect on the human environment and for which an Environment Impact Statement will not be prepared. The basis of this determination is (briefly summarize reasons). (Add if necessary) in order to avoid or minimize any adverse environmental impacts, the (funding agency) will require the applicant to incorporate the following mitigation measures into the proposed project's design (briefly summarize all proposed mitigation measures and locations). Prior to implementing construction, all applicable permits and approvals must be obtained.

Copies of the Environmental Assessment can be reviewed or obtained at (insert the funding agency office location and telephone number). For further information, please contact (insert the funding agency official's name and telephone number).

Any person interested in commenting on this FONSI may submit comments to the address above by (have newspaper insert date that is 15 days from the publication of this notice)."

¹Important Farmland, Wetland, Floodplain, or an "Adverse Effect to a Cultural Resource"

VDH Drinking Water Funding Program Guidance Package #8

PLANNING AND DESIGN

Aside from the Environmental Review (See PG #7), the project evaluation process is a five-part process consisting of an Application-Notification of Intent, a Preliminary Engineering Conference, a Waterworks Business Operations Plan (if applicable) a Preliminary Engineering Report, and final plans and specifications. These project processing stages assist waterworks owners and their consulting engineers in identifying and solving problems as early in the project evaluation process as possible. Each successive phase expedites the final approval of the project. The technical project evaluation process will be performed by VDH engineering staff.

Permit Application - Notification of Intent

This form is submitted by waterworks owners to initiate the project evaluation process. The *Code of Virginia* Section 32.1-172B requires a person to apply to the VDH prior to the establishment, construction or operation of a waterworks. Applications also may be completed by telephone and signed during the Preliminary Engineering Conference.

Preliminary Engineering Conference (PEC)

The PEC provides for an exchange of information between all parties. The envisioned project will be discussed in its entirety. The applicant's engineer shall be prepared to set forth water supply problems and the proposed solution in such a manner as to support the conclusions and recommendations. Discussions regarding system problems and technical design standards and construction requirements and ongoing financial commitments will help determine if the project is feasible and, if so, the scope of work for the envisioned project.

This effort will enable the owner to consider many elements that will affect the long-term economic viability necessary to ensure stability of the project. Preliminary thoughts for design exceptions should be formulated at this step.

PECs are required for all projects involving treatment processes or complex hydraulics. For routine waterline extensions, a telephone conference may suffice at the discretion of VDH.

Waterworks Business Operations Plan (WBOP)

The program restricts assistance to a waterworks that lacks the technical, managerial or financial capability to maintain compliance with the SDWA and the *Waterworks Regulations* (See PG #1).

In addition, Section 32.1-172 of the *Code of Virginia* states that "an application for a permit shall include a comprehensive business plan detailing the technical, managerial, and financial commitments to be made by the owner in order to assure that the waterworks' performance requirements for providing the water supply will be met over the long term".

In addition, the *Code* allows for waiving the comprehensive business plan portion if an applicant has demonstrated an acceptable history of compliance with the *Waterworks Regulations*.

The VDH Capacity Development Program and the field office staff will determine whether a Waterworks Business Operations Plan or another form of certification of technical, managerial and financial capability is required of the applicant.

If a Waterworks Business Operations Plan is required of the applicant, the Capacity Development Program or the field office staff will provide a document outlining the requirements of such a plan.

Preliminary Engineer Report (PER)

A PER is normally required for all projects involving treatment processes or complex hydraulics. The Field Director has the discretion of waiving the requirement for a PER. Information required in the PER is listed in 12 VAC 5-590-200C of the *Waterworks Regulations*. Reports submitted for approval shall be prepared by or under the supervision of a licensed professional engineer legally qualified to practice in Virginia.

Plans and Specifications

Plans and specifications based on the approved PER is required of all projects. Information required in the plans and specifications is listed in 12 VAC 5-590-200 D, E & F of the *Waterworks Regulations*. Plans and specifications submitted for approval shall be prepared by or under the supervision of a licensed professional engineer legally qualified to practice in Virginia.

VDH Drinking Water Funding Program Guidance Package #9

PRECONSTRUCTION CONFERENCE

Prior to the initiation of construction, the Recipient must hold a Preconstruction Conference. This will be the first formal meeting of those involved in construction of the project and should be attended by all parties. The conference will provide a better understanding of the roles and responsibilities during construction of the project, as well as procedures for complying with rules and regulations governing the program.

Attendees

Attendees other than VDH should include the contractor, subcontractors, if known; representatives from utility and railroad companies (as appropriate); the Virginia Department of Transportation (as appropriate); the Recipient and its engineering firm; and any other funding agency which will be involved in construction of the project. The Recipient, or its engineer, is responsible for contacting all parties involved and advising them of the conference date, time and location. **The Recipient must contact VDH as soon as the Preconstruction Conference is scheduled so that a representative can be in attendance.** VDH will then establish a Preconstruction Meeting with the Recipient around the same time as the Preconstruction Conference to discuss VDH requirements related to the construction phase, as well as VDH's role and responsibilities during this phase.

Topics for Discussion

To ensure that the project proceeds according to schedule and the requirements contained in the contract documents are met, communication and contact points, along with the organizational affiliation, responsibilities and authority of each participant should be established.

Overall project schedules and coordination between the contractors, utility companies, railroads, and the Virginia Department of Transportation should be addressed. This would include any permits required or advance notices to be given by the contractor to those impacted for roadway or railway crossings.

Any remaining questions regarding the plans, specifications or other contract documents should be addressed during the Preconstruction Conference. Procedures for submittal of items such as shop drawings, change orders, and information for the Operation and Maintenance Manual should be discussed.

The procedures for the contractor to request payment, including forms, timing, methods of establishing quantities, documentation, and retainage, should be detailed.

MBE/WBE reporting requirements and continuing good faith efforts to solicit MBE/WBE firms should be discussed.

Frequency of VDH inspections, as well as progress meetings between the contractor and other interested parties, must be highlighted.

The names, addresses and telephone numbers of those responsible during emergencies should be exchanged by or made available to everyone involved.

A system for handling citizen (landowner) complaints and personal property damage should be set up. This would also cover procedures for notifying landowners of needed access to a work site, disruption of services as a result of construction, and other actions which are likely to cause inconvenience.

Contractor responsibilities regarding compliance with local, state and federal laws and regulations should be covered. Access to the site and inspection of project records by VDH must be addressed.

Employment regulations such as affirmative action programs, nondiscrimination policies, required nonsegregated facilities for employees, and hiring practices must be discussed.

These topics only identify major areas which should be discussed at the Preconstruction Conference. Establishing a checklist is recommended to ensure that all items applicable to your project are addressed.

Follow up to the Preconstruction Conference

Minutes or a written summary should be prepared following the meeting. Copies should be sent to all attendees, as well as involved parties who were unable to attend. The list of contacts for each party involved should also be prepared and provided to each.

Proper coordination and discussion of these, and other appropriate topics, will alleviate many problems that can delay the project and lead to increased costs.

VDH Drinking Water Funding Program Guidance Package #10

STATE CONSTRUCTION OVERSIGHT

During the construction phase of projects, the Virginia Department of Health (VDH) will maintain off-site construction monitoring and conduct periodic on-site evaluations of construction activities. The purposes of the state oversight program are as follows:

To provide assistance to Recipients in all aspects of Program requirements and construction management in order to enhance management effectiveness and efficiency so the project is successfully completed.

To assess the project's compliance with applicable federal and state requirements and funding conditions.

To ensure that Recipients maintain appropriate financial and records management systems.

To ensure that the project is constructed in substantial accordance with approved plans, specifications, and change orders.

To verify that payments are being made for work-in-place and to enhance the processing of disbursement requests.

The oversight program includes continuous off-site monitoring, interim project evaluations, a final construction inspection, administrative reviews, a final project evaluation, and a final financial evaluation. The extent and frequency of monitoring will depend on the size and complexity of the project and the needs and performance of the Recipient and its project management team.

Off-Site Monitoring

VDH will conduct off-site monitoring through the review of evaluation reports, change orders, correspondence and review and approval of disbursement requests. Copies of these documents should be provided to VDH, as appropriate, for this purpose. This information will provide an indication of the adequacy and progress of construction and may form the basis for establishing or adjusting the frequency of on-site monitoring activities.

Interim Project Evaluations (IPE)

Interim project evaluations are conducted periodically during the construction phase of the project. Their frequency will be determined by the size and complexity of the project, the rate of progress being achieved, and the nature and frequency of problems/issues arising during construction. The evaluations normally occur once every couple of months and include observation of construction progress, as well as review of specific areas of project management.

(i.e., project files, procurement, change order management, etc.).

Principal areas reviewed during IPE's are as follows:

- Construction/Contract Accounting and Management
- Disbursements (including Schedule)
- Change Order Management
- Construction Monitoring/Administration
- Construction Review
- Davis-Bacon Act
- American Iron and Steel and/or Build America, Buy America Act
- Compliance with all Funding Conditions

An IPE Report is prepared which includes the evaluation findings and conclusions, as well as VDH recommendations, to assist the Recipient in complying with project requirements in order to achieve a successful project.

After receiving a statement of completion of construction, a final construction inspection will be performed by VDH.

Administrative Reviews

Administrative Reviews will also be conducted during the construction of the project. These reviews will focus on the financial and record management systems maintained by the Recipient and will cover the following areas:

- Files and Records
- Project Implementation
- Financial Management
- Internal Controls
- Professional Services Procurement
- Small Purchase Procedures

Final Project Evaluation

VDH will conduct a final project evaluation to determine whether all program requirements and funding conditions have been satisfied, and that construction of the project was completed in substantial accordance with approved plans, specifications, and change orders. The final project evaluation will be conducted after notification by the Recipient that construction is complete and, if appropriate, will be conducted in conjunction with the Final Construction Inspection referenced in the *Waterworks Regulations*.

The on-site construction evaluation will determine whether or not the facility is capable of functioning as designed, all equipment is operational and performing satisfactorily, and all administrative and laboratory facilities are complete and available for use.

The final project evaluation will be documented by a report, which presents the findings and conclusions of the evaluation. The report may also present recommendations or conditions to be satisfied relating to completion of unfinished work, submission of additional information or documents, or other items required by the funding program.

Final Financial Evaluation

Disbursement of funding is held to the 95% level until a final financial evaluation can be conducted.

The purpose of this evaluation is to ensure that the financial management records are complete, that financial operations were conducted properly, that the Recipient complied with laws and regulations affecting the expenditure of monies, and that costs claimed are reasonable, eligible, and allocable to the project.

VDH Drinking Water Funding Program Guidance Package #11

Davis-Bacon Act Compliance (Wage Determination and Payroll Review)

All Virginia Drinking Water State Revolving Fund projects must comply with the Davis-Bacon Act (DBA). Federal minimum wage laws are applicable to all construction contracts which are part of the project in excess of \$2,000. This applies to all prime contractors and sub-contractors. 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 Department of Labor website can be accessed at <http://www.dol.gov/>. The wage determinations can be accessed at <https://sam.gov/content/wage-determinations>. The Department of Labor website provides details on other rules and regulations applicable to projects utilizing federal funding as well. This guidance attempts to explain the requirements but in no way supersedes those requirements.

Funding Recipient Responsibilities

The funding recipient must monitor all aspects of the project but in the case of Davis-Bacon Act, the funding recipient has specific responsibilities:

1. Include the latest VDH Drinking Water State Revolving Fund contract inserts in the contract documents.
2. Determine which wage determination or determinations are needed for the type of construction and geographic area and include with the contract inserts.
3. Address the requirements of the Davis-Bacon Act and payroll review at the preconstruction conference.
4. Assign funding recipient personnel or contracted personnel to determine what subcontractors are being used on the job and collect weekly payrolls from the contractor for his laborers and mechanics and those of his subcontractors. Examine weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage requirements.
5. The funding recipient or agent shall periodically (at least quarterly):
 - a. Verify that contractors and subcontractors include covered employees in fringe benefit plans as provided for in the Department of Labor Wage determinations.
 - b. Review contractors and subcontractors use of apprentices and trainees to verify registration in Department of Labor approved programs, and those contractors and subcontractors are not using disproportionate numbers of trainees and apprentices.

6. Ensure all EEO, OSHA, Davis-Bacon, Wage Determinations, and any other required postings are displayed on each work site.

The VDH Financial and Construction Assistance Program or EPA may monitor the performance of the funding recipient in its enforcement and compliance of the minimum wage rules and regulations. 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. The funding recipient shall also maintain their records of payrolls, payroll reviews, on-site subcontractors, and compliance actions for at least three years after completion of the work.

Preconstruction Conference

The funding recipient should attempt to reduce the possibilities of labor standards violations by taking preventative measures to minimize misunderstanding of what is required. The funding recipient shall hold a Preconstruction Conference. One purpose of the Preconstruction Conference is to apprise the contractor and all available subcontractors of their responsibilities and obligations concerning compliance with the minimum wage laws.

Wage Determination(s)

The funding recipient is responsible for obtaining a wage determination or determinations for the proper construction category and geographic area from the Department of Labor (DOL) (see Wage Determinations online at <https://sam.gov/content/wage-determinations>) and incorporating the appropriate wage determination into the construction specifications. The Wage Determinations website allows you to select your state and county and then provides a list of wage determinations by construction category. Some contracts will include multiple types of construction such as "Heavy (water and sewer lines)" and "Building". DOL defines Building as construction, rehabilitation, and repair of sheltered enclosure with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Water and Sewer is a subsection of heavy construction that relates only to laying or repairing lines. In the case of a force main and pump station contract both a "Building Construction" and a "Heavy Construction" wage determination must be included in the specifications. The contractor must either separate payroll hours out by construction category and pay the minimums required for each category or pay the highest applicable rate between the two for all work done.

In the special case that a project extends across the geographic boundaries of two or more wage determinations, a wage determination for each separate area in which work is done must be included in the specifications. Again, as in the case above, the contractor must either pay the higher rate or separate work hours out according to the geographic district in which the work is done.

Prior to publishing the Invitation to Bid, the funding recipient shall download the proper wage determination(s) for their city or county and construction category. The DOL periodically amends wage determinations. **Ten days prior to opening bids, the funding recipient must check the DOL website to ensure their wage determination has not been amended.** If it has been amended, the recipient must issue a specification addendum to include the latest wage determination in the specifications. As long as bids are opened within the ten-day period, the wage determinations will remain in effect for the life of the contract.

Payroll Review

The funding recipients are required to monitor contractor compliance. Once construction begins, the funding recipient must enforce payment of pay scales. The funding recipient will be responsible for the weekly review of payrolls and a determination that all contractors and subcontractors did submit payrolls as required. Special attention should be paid to claimed apprentices and trainees, deductions, work hours, and pay rates according to job classifications and re-determined fringe benefit rates. *The payrolls should be examined within seven days of receipt in order to resolve problems promptly and undertake any corrective actions before they become serious and while workmen are still available.*

Payroll Submittals: Each contractor and subcontractor shall furnish to the funding recipient each week a copy of their weekly payrolls for the preceding work week or partial work week. The payroll submittal shall set out accurately and completely all of the following information for each employee: their name, his or her correct classification; hourly rates paid as wages including fringe benefits or a cash equivalent thereof; daily and weekly number of hours worked; deductions made; and actual wages paid. All mechanics and laborers employed upon the site of the work will be paid unconditionally and not less than once a week.

The contractor and funding recipient are responsible for determining which subcontractors worked “on site” during the payroll period. It is recommended that the funding recipient require the contractor to keep a log on all subcontractors on site each week and submit that log to the funding recipient with their payroll submittals (Attachment #11-2).

Compliance Statement: 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 regulation, 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.

Attachment #9 of the DWSRF Contract Inserts is a suggested certification DOL Form (WH347). The form also includes a sample payroll form. These forms can be downloaded from the DOLs Withholding Divisions website as well. Other forms may be used that contain all of the required information.

Deductions: The weekly payment shall be computed at wage rates not less than those contained in the wage determination included in the contract specifications regardless of any contractual relationship alleged to exist between the contractor or its subcontractors and such laborers and mechanics. No deduction or rebates are allowed except those included in the Copeland Act. The DOL website addresses the types of deductions such as garnishments and dues which may be legally deducted. All deductions will be shown on the payroll form with adequate description of each deduction.

Fringe Benefits: 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, provide that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account sufficient assets to meet obligation 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. 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.

If a contractor pays fringe benefits to approved plans, funds, or programs in lieu of cash they shall continue to show on the face of the payroll the basic hourly rate and overtime rate paid to their employees. Such a contractor shall indicate on the payroll form what they are paying to approved plans, funds, or programs for each craft and indicate the fringe benefit amounts are not less than were determined in the applicable wage decisions.

Contractors who offer no actual fringe benefits shall pay to the employee and insert in the straight time hourly rate 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 applicable wage decision. When overtime is paid, it is not necessary to apply the overtime

multiplier to cash paid in lieu of fringes. The rate shall be the normal overtime rate plus the amount of fringe benefits determined for the employee's wage classification.

Job Classification and Related Issues

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. This includes work in multiple categories on the same Wage Determination or work in classifications on two more Wage Determinations applicable to the same contract.

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. The Department of Labor will review additional classifications, and associated wage rates and fringe benefits, 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.

The Secretary, Department of Labor, has sole authority to approve or disapprove additional wage classifications. 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.

Enforcement and Corrective Actions

The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the owner, VDH, 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.

The funding recipient should initiate an investigation when apparent violations are discovered. These would include valid complaints from an employee or other knowledgeable party, habitual contract violations which indicate carelessness on the part of the contractor, discrepancies in time or payroll records, and conditions which evidence apparent falsifications. If these matters cannot be resolved through informed actions, then VDH and DOL would be notified.

If violations resulted in underpayment of wages, actions shall be taken to ensure proper restitution. The contractor should be informed in writing of required wage adjustments and the

number of payments to be made in back wages to affected employees. *The contractor shall provide evidence of such restitution by submitting a supplemental payroll containing amount paid and copies of both sides of cancelled checks issued to the affected employees.* Should the contractor fail to make full restitution and correct violations within a reasonable period of time, funds should be withheld in amounts necessary to ensure proper restitution.

The governing body may withhold from the contractor under this contract 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 number of wages required by the contract.

A breach of these contract clauses or those contract clauses continued in 29 CFR 5.5 may be grounds for termination of the contract. 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.

The wage determination(s) shall be posted on the work site and monitored to assure that they remain posted throughout the project.

RECORD OF EMPLOYEE INTERVIEW

GRANTEE/CONTRACT: #					
NAME OF PROJECT:					
CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>					
1. NAME OF EMPLOYEE:					
2. EMPLOYEE'S PERMANENT HOME ADDRESS:				LOCATED IN PROJECT AREA?	
				YES	NO
3. LAST DATE WORKED THIS PROJECT:			NUMBER OF HOURS WORKED THAT DATE:		
4. HOURLY PAY RATE: \$					
5. WHAT IS YOUR JOB CLASSIFICATION:					
6. WHAT ARE YOUR DUTIES:					
7. TOOLS OR EQUIPMENT USED:					
8. PAID AT LEAST TIME AND HALF FOR ALL HOURS WORKED OVERTIME				YES <input type="checkbox"/>	NO <input type="checkbox"/>
9. EVER THREATENED, INTIMIDATED OR COERCED INTO GIVING UP PART OF PAY?				YES <input type="checkbox"/>	NO <input type="checkbox"/>
10. DUTIES/JOB CLASSIFICATION OBSERVED BY INTERVIEWER:					
11. MINORITY STATUS	YES <input type="checkbox"/>	NO <input type="checkbox"/>	GENDER	MALE <input type="checkbox"/>	FEMALE <input type="checkbox"/>
12. DATE (month/year) HIRED: _____ OR RECALLED (if applicable): _____					
_____ Signature of Payroll Interviewer			_____ Date of Interview		
PAYROLL EXAMINATION					
REMARKS:					
_____ Signature of Payroll Examiner			_____ Date		

OWNER'S CERTIFICATION OF COMPLIANCE WITH
DAVIS-BACON PROVISIONS

DWSRF PROJECT NUMBER: _____

PROJECT: _____

LOCATION: _____ Virginia

OWNER / RECIPIENT: _____

<i>CONTRACTOR/SUBCONTRACTOR:</i>	<i>PAY DOCUMENTS FOR THE PERIOD OF:</i>

In accordance with the requirements of the Davis-Bacon Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government are being paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of title 40, United States Code.

In addition, the owner/recipient must conduct adequate oversight for compliance with Davis-Bacon and related Acts through (a) the review of payrolls and associated certifications, (b) conducting of employee interviews, if necessary (include Attachment 11-1), and (c) the posting of the Davis-Bacon Poster, all wage determinations, and additional classifications (as appropriate) on the work site.

To the best of the Owner's knowledge, the pay documents for the above referenced period(s) and this project are in compliance with the Davis-Bacon requirements.

Certification By:

Owner/Recipient Signature

Printed Name/Title

Date

VDH Drinking Water Funding Program Guidance Package #12

American Iron and Steel Requirement

All Virginia Drinking Water State Revolving Fund projects that are designated as “non-equivalency” (i.e., projects that are not funded in an amount equal to the state’s capitalization grant from the EPA) must comply with EPA’s American Iron and Steel (AIS) requirements as outlined in Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014. AIS requires Virginia Drinking Water State Revolving Fund (VDWSRF) funding recipients (owners) 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. The prime contractor must provide documentation that all iron and steel products which are permanently incorporated as part of the project are AIS per the definitions outlined in the Contract Inserts for Projects Subject to AIS Requirements, PG#13. The EPA’s AIS website is <http://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement> and contains additional guidance, Questions and Answers, and a listing of Approved and Draft National Waivers.

Funding Recipient Responsibilities

The funding recipient must monitor all aspects of the project but in the case of American Iron and Steel, the funding recipient has specific responsibilities:

1. Include the latest VDH Drinking Water State Revolving Fund contract inserts in the contract documents.
2. Within 21 days of the determination of the apparent low bidder of the project, receive from the Prime Contractor, the Initial AIS General Certification (Attachment 10 of the Contract Inserts) and retain in project file.
3. During the Shop Drawing Review portion of the project, receive, review and forward to the FCAP Project Manager for Approval, individual Material AIS Certification Letters for all components supplied or installed by subcontractors.

These letters must contain the following 5 elements:

- a. Name of the material supplied,
- b. Name of the Project,
- c. Location (i.e., city and state) where material was manufactured,
- d. Specifically affirming the supplier’s material was manufactured in accordance with EPA’s American Iron and Steel Requirements,
- e. Signature of approved supply company representative (on company letterhead and signature can be electronic).

Please note, generic and undated letters or letters which solely reference ARRA Buy American requirements are not acceptable Material AIS Certification Letters.

4. Prior to requesting the Final Payment Reimbursement, provide the FCAP Project Manager a copy of the Final AIS General Certification (Attachment 13 of the Contract Inserts) from the Prime Contractor certifying that the original certification is still valid or document any changes or substitutions, and retain in the project file.
5. The owner may refuse payment for any AIS component until a satisfactory AIS certification is received. Also, VDWSRF may withhold reimbursement request payment on any AIS components for which certification is not available upon request by VDWSRF.
6. Retain summary reports and records of the Prime Contractor's *De Minimis* incidental component if utilized by the contractor. Details of this *De Minimis* national waiver can be found in the Contract Inserts.
7. The owner requests waivers and has sole discretion on the decision whether or not to request a waiver suggested by the prime contractor. Waiver requests and waiver review checklists are first submitted to the FCAP Project Manager for review for completeness (Contract Inserts Attachments 11 & 12), then sent on to EPA Headquarters. EPA has sole authority to approve waivers to the AIS provisions of the Act. Further details of the Waiver process are in the Contract Inserts.

The VDH Financial and Construction Assistance Program or EPA may monitor the performance of the funding recipient in its enforcement and compliance of the American Iron and Steel requirements. Certification records shall be maintained by the contractor and each subcontractor for a period covering three years from the date of completion of the contract. The funding recipient shall also maintain their records of certification actions for at least three years after completion of the work.

Preconstruction Conference

The funding recipient shall hold a preconstruction conference. One purpose of the preconstruction conference is to apprise the contractor and all available subcontractors of their responsibilities and obligations concerning compliance with the American Iron and Steel requirements.

Enforcement and Corrective Actions

The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the owner, VDH, or the EPA. Failure to submit the required records upon request or to make such records available may be grounds for withholding of funding reimbursement payment.

The owner may refuse payment for any AIS component until a satisfactory AIS certification is received.

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.

CONTRACT INSERTS FOR CONSTRUCTION BIDS SUBJECT TO AIS

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-segregated 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

**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)

- | | |
|---|--|
| <input type="checkbox"/> Services – Engineering | <input type="checkbox"/> Construction Contractor (Prime) |
| <input type="checkbox"/> Services – Legal | <input type="checkbox"/> Construction Contractor (Subcontract) |
| <input type="checkbox"/> Supplies/Materials | <input type="checkbox"/> 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 FCAP Project Manager 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 sub-contractors. 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 employee’s 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 DBEs 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). An 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 1973 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 funding 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 in 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 additional classifications, and associated wage rates and fringe benefits, 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 funding 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 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 waived 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 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.

1. 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 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 to verify 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 kept 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 (on company letterhead and signature can be electronic).**

**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. Theresa Hewlett
(804) 864-7501; Fax: (804) 864-7521; Theresa.Hewlett@vdh.virginia.gov

PART I.

A. Year _____

Reporting Quarter (Check One)

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

¹Type 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.

	<u>Bidder/Offeror</u>	<u>Date Contacted</u>	<u>Method of Solicitation</u>	<u>Response? (Yes/No)</u>	<u>Price (if applicable)</u>
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**

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)

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://sam.gov/content/wage-determinations>)

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.



Rev. Dec. 2008

OMB No.: 1235-0008
Expires: 04/30/2021

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS			
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	(4) DAY AND DATE OT OR ST. HOURS WORKED EACH DAY	(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS						(9) NET WAGES PAID FOR WEEK
							FICA	WITH- HOLDING TAX			OTHER	TOTAL DEDUCTIONS	

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 it 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.

Instructions For Completing Payroll Form, WH-347

WH-347 (PDF)

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

General: Form WH-347 has 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 of 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 1 and 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](tel:1-866-4-US-WAGE)
[1-866-487-9243](tel: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 States 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
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — 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 		
<p>Cost Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — 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 		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — 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)

VDH Drinking Water Funding Program Guidance Package #14

Build America, Buy America (BABA) Act Requirements

All Virginia Drinking Water State Revolving Fund projects that (a) are designated as “equivalency” projects (i.e., projects funded in an amount equal to the state’s capitalization grant from EPA), and (b) that use federal infrastructure funding obligated on or after May 14, 2022, must comply with the Build America/Buy America (BABA) Act requirements in Title IX of the Bipartisan Infrastructure Law (Public Law 117-58). The Act requires the “equivalency” designated Virginia Drinking Water State Revolving Fund (VDWSRF) assistance recipients (owners) to use iron, steel, manufactured products, and construction materials that are permanently incorporated into an infrastructure project to be produced in the United States. The prime contractor must provide documentation that all such materials and products which are retained as permanent parts of the project are BABA compliant per the definitions outlined in the Virginia Department of Health (VDH) Contract Inserts for Projects Subject to BABA, Program Guidance Package #15. The EPA’s BABA website is located at <https://www.epa.gov/cwsrf/build-america-buy-america-baba> and contains additional guidance, informational webinars, and a listing of approved and potential waivers.

Funding Recipient Responsibilities

The funding recipient must monitor all aspects of the project but in the case of BABA, the funding recipient has specific responsibilities:

1. Include the latest VDH Drinking Water State Revolving Fund contract inserts for projects subject to BABA in the contract documents.
2. Within 21 days of the determination of the apparent low bidder of the project, receive from the Prime Contractor, the Initial BABA General Certification (Attachment 10 of the Contract Inserts) and retain in project file.
3. During the Shop Drawing Review portion of the project, receive, review and forward to the VDH Financial and Construction Assistance Programs (FCAP) Project Manager for approval, individual BABA certification letters for all iron, steel, manufactured products, and construction materials to be permanently incorporated into the project that are supplied or installed by the prime contractor or subcontractors.

These letters must contain the following 5 elements:

- (1) The date, project name, project location, contract number, or project number.
- (2) Description of product(s), purchase order, invoice, or bill of lading.
- (3) Statement that the products supplied to the project are compliant with BABA requirements under the Bipartisan Infrastructure Law (a.k.a, Infrastructure Investment and Jobs Act (“IIJA”)). Iron and steel items certified using the American Iron and Steel

(AIS) certification process will also satisfy the BABA certification requirements. AIS requirements are covered in Program Guidance Package #12.

(4) Location(s) of manufacturing for each manufacturing step that is being certified. It is acceptable for manufactured products to note a single point of manufacturing, documenting that the final point of manufacturing is in the United States.

(5) Signature of company representative (on company letterhead and signature can be electronic).

4. Prior to requesting the Final Payment Reimbursement, provide the FCAP Project Manager a copy of the Final BABA General Certification (Attachment 13 of the Contract Inserts) from the Prime Contractor certifying that the original certification is still valid or document any changes or substitutions, and retain in the project file.
5. The owner may refuse payment for any BABA component until a satisfactory certification is received. Also, VDWSRF may withhold reimbursement request payment on any BABA components for which certification is not available upon request by VDWSRF.
6. Retain summary reports and records of the Prime Contractor's *De Minimis* incidental components if utilized by the contractor. Details of this *De Minimis* national waiver and other waivers can be found in the Contract Inserts for Projects Subject to BABA Requirements, Program Guidance Package #15.
7. The owner requests waivers of BABA requirements and has sole discretion on the decision whether or not to request a waiver suggested by the prime contractor. Waiver requests and waiver review checklists are first submitted to the FCAP Project Manager for review for completeness (Attachments 11 & 12 of the Contract Inserts). FCAP may approve *De Minimis*, Small Project, and Adjustment Period waiver requests, but Cost and Product Non-Availability waivers must be approved by the EPA. Further details of the waiver process are in the Contract Inserts.

The VDH Financial and Construction Assistance Programs or EPA may monitor the performance of the funding recipient in its enforcement and compliance of the BABA requirements. Certification records shall be maintained by the contractor and each subcontractor for a period covering three years from the date of completion of the contract. The funding recipient shall also maintain their records of certification actions for at least three years after completion of the work.

Preconstruction Conference

The funding recipient shall hold a preconstruction conference. One purpose of the preconstruction conference is to apprise the contractor and all available subcontractors of their responsibilities and obligations concerning compliance with BABA requirements.

Enforcement and Corrective Actions

The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the owner, VDH, or the EPA. Failure to submit the required records upon request or to make such records available may be grounds for withholding of funding reimbursement payment.

The owner may refuse payment for any BABA component until a satisfactory BABA certification is received.

If changes or substitutions are disallowed by EPA, part or all of the funding may be forfeited by the owner. As State or Federal law permits, the owner may seek damages from the contractor.

CONTRACT INSERTS FOR CONSTRUCTION BIDS SUBJECT TO BABA

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-segregated 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 Build America, Buy America (BABA) Act provisions in Section 70901 of P. L. 117-58 of the Bipartisan Infrastructure Law, 2021

- m. Subpart M – 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](#) – Build America, Buy America Initial Certification Statement
- 11. [Attachment No. 11](#) – Build America, Buy America Waiver Request
- 12. [Attachment No. 12](#) – Build America, Buy America Waiver Request Checklist
- 13. [Attachment No. 13](#) – Build America, Buy America Final Certification Statement

**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)

- | | |
|--|--|
| <input type="checkbox"/> Services – Engineering | <input type="checkbox"/> Construction Contractor (Subcontract) |
| <input type="checkbox"/> Services – Legal | <input type="checkbox"/> Equipment |
| <input type="checkbox"/> Supplies/Materials | |
| <input type="checkbox"/> Construction Contractor (Prime) | |

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 FCAP Project Manager 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 DBEs 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). An 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 1973 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 funding 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 in 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 additional classifications, and associated wage rates and fringe benefits, 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 funding 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 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
BUILD AMERICA, BUY AMERICA ACT
TITLE IX OF P. L. 117-58

INTRODUCTION

The Bipartisan Infrastructure Law (BIL) provides federal investment in water infrastructure in communities across America. Title IX of the BIL is the Build America, Buy America (BABA) Act, which establishes permanent domestic sourcing requirements across all Federal financial assistance programs for infrastructure.

Guidance on BABA from the Environmental Protection Agency (EPA) can be found in the [OW-BABA-Implementation-Procedures-Final-November-2022.pdf](#).

APPLICABILITY

Per the BIL, Federal infrastructure funding obligated on or after May 14, 2022, must comply with the BABA requirements. Absent a waiver, all iron, steel, manufactured products, and construction materials permanently incorporated into an infrastructure project subject to the BABA requirements, must be produced in the United States.

Note: BABA applies to projects funded by the BIL. It also applies to projects funded in an amount equivalent to the federal capitalization grant and not to those projects receiving funds in excess of the capitalization grant (i.e., “non-equivalency” projects. The American Iron and Steel (AIS) requirements continue to apply for all SRF projects, including non-equivalency projects).

Any project that is funded in whole or in part with federal assistance must comply with the BABA requirements, unless the requirements are otherwise waived.

BABA WAIVERS

Before initiating a waiver application process, funding recipients should contact their FCAP Project Manager. Co-funded projects must abide by the waiver requirements of the federal program providing the largest amount of federal funding. For information on EPA approved waivers, visit <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>.

***De Minimis* General Applicability Waiver**

BABA requirements are waived for products used in and incorporated into a project that cumulatively comprise no more than five percent of the total project construction cost.

Small Project General Applicability Waiver

BABA requirements are waived for small projects, where funding agreements or subawards under funding agreements from the EPA are less than \$250,000.

Adjustment Period Waiver

Projects to be financed by State Revolving Funds (SRFs) that have **initiated project design planning prior to May 14, 2022**, are exempt from BABA requirements. These projects will still be subject to AIS requirements for iron and steel products.

SRF funding recipients must provide evidence of initiating design such as a preliminary engineering report, contracts for design or engineering services, a SRF funding agreement solicitation of construction bids, plans and specifications, a public referendum or meeting regarding the proposed project, or new bonds passed, or other new funding secured for the project.

Cost Waiver

BABA requirements may be waived if those requirements increase the overall project cost more than 25 percent. Documentation may include itemized cost estimates or bid tabulations comparing project costs with and without BABA implementation. Reasonable administrative costs such as staff, contractor, and technological resources to track BABA compliance may be included in the 25% cost determination.

Product Non-Availability Waiver

For products that are unavailable within a reasonable timeframe to meet the objectives and schedule of a project, EPA may consider a non-availability waiver with adequate justification.

BABA REQUIREMENTS

For many SRF funded water projects, the vast majority of products permanently incorporated into construction, maintenance, or repair projects must comply with the BABA requirements, with the exception of select construction materials (cement and cementitious materials (and asphalt); aggregates such as stone, sand, or gravel; or aggregate binding agents or additives), which are specifically excepted by the BABA statute.

For more information on the BABA requirements, visit the EPA Office of Water's dedicated website – <https://www.epa.gov/cwsrf/build-america-buy-america-baba> – or contact [FCAP](#).

CONTRACT LANGUAGE

Appendix 1 includes suggested language for insertion into construction contracts that addresses the BABA requirements.

PRODUCTS AND MATERIALS COVERED UNDER BABA

As described below, there are three categories of products and materials covered by the BABA requirements including 1) iron and steel products, 2) construction materials, and 3) manufactured products.

Iron and Steel Products

The list of products below would be classified as “Iron and Steel” under BABA. Although this list is not comprehensive, these products were classified as AIS products if made primarily (more than 50 percent) of iron and/or steel by materials cost (for programs subject to both AIS and BABA, this list would be equivalent for “iron and steel” items or products under either requirement):

**Products likely made “primarily” of iron and steel to be classified as Iron and Steel under
BABA**

Lined and Unlined Pipe	Lined and Unlined Fittings	Tanks
Flanges	Pipe Clamps and Restraints	Structural Steel
Valves	Hydrants	Pre-Cast, Iron/Steel Reinforced Concrete (of all types, regardless of iron/steel content percentage)
Manhole Covers and other Municipal Castings	Access Hatches	Ballast Screens
Iron or Steel Benches	Bollards	Cast Bases
Cast Iron Hinged Hatches	Cast Iron Riser Rings	Catch Basin Inlets
Cleanout/Monument Boxes	Construction Covers and Frames	Curb and Corner Guards
Curb Boxes	Curb Openings	Curb Stops
Detectable Warning Plates	Downspout Shoes	Drainage Grates
Drainage Grate Frames and Curb Inlets	Inlets	Junction Boxes
Lampposts	Manhole Rings and Frames	Manhole Risers
Meter Boxes	Service Boxes	Steel Hinged Hatches
Steel Riser Rings	Trash Receptacles	Tree Grates
Tree Guards	Trench Grates	Valve Boxes
Valve Box Covers and Risers	Access Ramps	Aeration Pipes and Fittings (separate from aeration/blowers)
Angles	Backflow Preventers/Double Check Valves	Baffle Curtains
Iron or Steel Bar	Bathroom Stalls	Beam Clamps
Cable Hanging Systems	Clarifier Tanks	Coiled Steel
Column Piping	Concrete Reinforcing Bar, Wire, and Fibers	Condensate Sediment Traps
Corrugated Pipe	Couplings	Decking
Digester Covers	Dome Structures	Door Hardware
Doors	Ductwork	Expansion Joints
Expansion Tanks (diaphragm, surge, and hydropneumatics)	Fasteners	Fencing and Fence Tubing
Fire Escapes	Flanged Pipe	Flap Gates
Framing	Gate Valves	Generic Hanging Brackets
Grating	Ground Testing Boxes	Ground Test Wells
Guardrails	HVAC Registers, Diffusers, and Grilles	Joists
Knife Gates	Ladders	Lifting Hooks, J-bar, Connectors within, and Anchors for Concrete Lockers
Lockers	Man Baskets and Material Platforms	Manhole Steps
Mud Valves	Municipal Casting Junctions	Non-mechanical (aka stationary) Louvers and Dampers
Overhead Rolling Doors/ Uplifting Doors (manual open, no motor)	Pipe Connectors	Pipe Hangers
Pipe Pilings (any type of steel piling)	Pipe Spool (pipe, flanges, connectors, etc.)	Pipe Supports

Pitless Adaptors	Pre-fab Steel Buildings/Sheds (simple structure, unfurnished)	Pre-stressed Concrete Cylinder Pipe (PCCP)
Railings	Reduced Pressure Zone (RPZ) Valves	Roofing
Service Saddles	Sheet Piling	Sinks (not part of eyewash systems)
Solenoid Valves	Stairs	Static Mixers
Stationary Screens	Surface Drains	Tapping Sleeves
Telescoping Valves	Tipping Buckets	Trusses
Tubing	Valve Stem Extensions	Valve Stems (excluding handwheels and actuators)
Wall Panels	Wall Sleeves/Floor Sleeves	Welding Rods
Well Casing	Well Screens	Wire
Wire Cloth	Wire Rod	Wire Rope and Cables

Projects using valves should classify them as iron and steel products under BABA as long as their material cost is made up of more than 50 percent iron and/or steel. Valves with 50 percent or less iron and/or steel by material cost would be considered manufactured products under the BABA requirements.

An article, material, or supply should be classified into only one of the three categories: iron and steel, manufactured products, or construction materials. Under the AIS requirements, all valves made primarily of iron and steel (that is, those with iron and/or steel material cost greater than 50 percent) must comply with the AIS requirements.

Construction Materials

From Office of Management and Budget (OMB) [Guidance M-22-11](#): “construction materials” include an article, material, or supply (other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products) that is or consists primarily of:

- non-ferrous metals,
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables),
- glass (including optic glass),
- lumber, and
- drywall.

Manufactured Products

From OMB [Guidance M-22-11](#): “...all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation...”

The manufactured products category would cover the majority of potential water infrastructure products, including complex products made up of a variety of material types and components. For water infrastructure projects, common manufactured products would include, but not be limited to, pumps, motors, blowers, aerators, generators, instrumentation and control systems, gauges, meters, measurement equipment, treatment equipment, dewatering equipment, actuators, and many other mechanical and electrical items.

Products that could be made “primarily” of iron and steel but would be classified as “manufactured products” under BABA are included in the list below. Although the list is not comprehensive, these products were classified as AIS products if made primarily (more than 50 percent) of iron and/or steel by materials cost (Note: These items are not subject to the AIS requirements.):

Products likely made “primarily” of iron and steel to be classified as Manufactured Products under
BABA

Actuator Superstructures/ Support Structures	Aeration Nozzles and Injectors	Aerators
Analytical Instrumentation	Analyzers (e.g., ozone, oxygen)	Automated Water Fill Stations
Blowers/Aeration Equipment	Boilers, Boiler Systems	Chemical Feed Systems (e.g., polymer, coagulant, treatment chemicals)
Chemical Injection Quills	Chemical Injectors	Clarifier Mechanisms/Arms
Compressors	Controls and Switches	Conveyors
Cranes	Desiccant Air Dryer Tanks	Dewatering Equipment
Dewatering Roll-offs	Disinfection Systems	Drives (e.g., variable frequency drives)
Electric/Pneumatic/Manual Accessories Used to Operate Valves (such as electric valve actuators)	Electrical Cabinetry and Housings (such as electrical boxes/enclosures)	Electrical Conduit
Electrical Junction Boxes	Electronic Door Locks	Elevator Systems (hydraulic, etc.,)
Emergency Life Systems (including eyewash stations, emergency safety showers, fire extinguishers, fire suppression systems including sprinklers /piping/valves, first aid, etc.)	Exhaust Fans	Fall Protection Anchor Points
Fiberglass Tank w/Appurtenances	Filters (and appurtenances, including underdrains, backwash systems)	Flocculators
Fluidized Bed Incinerators	Galvanized Anodes/Cathodic Protection	Gear Reducers
Generators	Geothermal Systems	Grinders
Heat Exchangers	HVAC (excluding ductwork)	HVAC Dampers (if appurtenances to aerators/blowers)
HVAC Louvers (mechanical)	Intake and Exhaust Grates (if appurtenances to aerators/blowers)	Instrumentation
Laboratory Equipment	Ladder Fall Prevention Systems	Ladder Safety Posts
Lighting Fixtures	Lightning and Grounding Rods	Mechanical or Actuated Louvers/Dampers
Membrane Bioreactor Systems	Membrane Filtration Systems	Metal Office Furniture (fixed)

Meters (including flow, wholesale, water, and service connection)	Motorized Doors (unit)	Motorized Mixers
Motorized Screens (such as traveling screens)	Motors	Pelton Wheels
Pipeline Flash Reactors (similar to injectors)	Plate Settlers	Precast Concrete without Iron/Steel Reinforcement
Furnished Pre-fab Buildings (such as furnished with pumps, mechanics inside)	Presses (including belt presses)	Pressure Gauges
Pump Cans/Barrels and Strainers	Pumps	Mechanical Rakes
Safety Climb Cable	Sampling Stations (unless also act as hydrant)	Scrubbers
Sensors	Sequencing Batch Reactors (SBR)	Steel Shelving (fixed)
Slide and Sluice Gates	Spray Header Units	Steel Cabinets (fixed interior/furniture)
Supervisory Control and Data Acquisition (SCADA) Systems	Tracer Wire	Valve Manual Gears, Actuators, Handles
Voltage Transformer	Water Electrostatic Precipitators (WESP)	Water Heaters
Weir Gates		

DOCUMENTING BABA COMPLIANCE

To comply with BABA requirements, the funding recipient must provide adequate documentation to demonstrate the following:

- 1) Documentation linked to the project. For example, this can be in the form of the project name, project location, contract number, or project number.
- 2) Documentation linked to the product used on the project. For example, description of product(s) (simple explanation sufficient to identify the product(s)), or an attached (or electronic link to) purchase order, invoice, or bill of lading.
- 3) Documentation including a statement attesting that the products supplied to the funding recipient are compliant with BABA requirements. A reference to the Bipartisan Infrastructure Law (BIL) or the Infrastructure Investment and Jobs Act (“IIJA”) are also acceptable. For iron and steel items under BABA, certifications may reference BABA or AIS. Documentation that the products comply with the Buy American Act do not satisfy BABA compliance requirements. EPA also recommends for manufactured products and for construction materials that certification letters include direct reference to the product/material content requirements under BABA.
- 4) Documentation that manufacturing occurred in the United States, which could include, for example, the location(s) of manufacturing for each manufacturing step that is being certified. It is acceptable for manufactured products to note a single point of manufacturing, documenting that the final point of manufacturing is in the United States. Note that each BABA category may require different determinations for compliance.

- 5) Signature of company representative (on company letterhead and signature can be electronic). The signatory of the certifying statement affirms their knowledge of the manufacturing processes for the referenced product(s) and attests that the product meets the BABA requirements.

Funding recipients should prepare contract bid solicitation documents with a statement for the consulting engineers and construction firms as follows: *“By signing payment application and recommending payment, Contractor certifies they have reviewed documentation for all products and materials submitted for payment, and the certifications are sufficient to demonstrate compliance with Build America, Buy America Act requirements.”*

It is acceptable, in many cases, especially for highly complex manufactured products that utilize many sub-components, for the final point of assembly to certify without using a “step certification” process. Multiple certifications (i.e., step certifications) or a singular certification can be used for a product, as long as the certifying official is willing to attest to the product’s compliance with BABA requirements at all stages of manufacturing.

Material Test Reports (MTRs, commonly referred to as “Mill Certifications” or “Mill Certs”) are acceptable in lieu of a BABA certification for iron and steel. If an MTR accompanies the delivery of steel or iron to a project site with an invoice or bill of lading, EPA considers it sufficient to demonstrate compliance (equivalent to a certification letter) as long as the MTR includes a manufacturer representative’s signature in addition to the location (city and state) of the mill/foundry. It is common for MTRs to be the first letter in a “step certification” if the product is further fabricated or painted, etc., by another manufacturer.

EPA recommends that representatives of product manufacturers certify compliance and discourages suppliers and distributors from creating certification letters.

Funding recipients must maintain BABA compliance documentation records for a period of three years or longer if required by other funding programs.

General Certifications

Within no more than 21 days after determination of the apparent low bidder, the contractor should submit to the owner (funding recipient) the certification included as **Attachment 10 (BABA 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 should submit to the owner **Attachment 13 (BABA Final Certification Statement)**. If changes or substitutions are disallowed by EPA, part or all of the funding may be forfeited by the owner. As State or Federal law permits the owner may seek damages from the contractor.

RELATIONSHIP TO AIS

The BABA requirements for items considered “iron and steel” are equivalent to those for covered iron and steel products under the AIS requirements in the Safe Drinking Water Act. **AIS requirements are covered in Procedural Guideline #12 and in Subpart M of this document.**

APPENDIX 1

Example Build America, Buy America (BABA) Act Construction Contract Language

ALL CONSTRUCTION CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN A PROJECT'S CONSTRUCTION CONTRACT. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the _____ (“Owner”) and the _____ (the “Funding Authority”) that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

SUBPART M

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 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 waived by EPA, or they are included as Approved National Waivers. 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. 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 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.

1. 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 (not to be confused with the definition of “Construction Materials” under BABA) 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.

**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. Theresa Hewlett
(804) 864-7501; Fax: (804) 864-7521; Theresa.Hewlett@vdh.virginia.gov

PART I.

A. Year _____

Reporting Quarter (Check One)

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

¹Type 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/offers. Written informal solicitation of a minimum of four bidders/offers 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/offers; 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.

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

For professional services contracts only: Indicate at least three criteria (other than cost) considered in your selection of the firm/offers (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**

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)

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 70901 of P. L. 117-58 of the Bipartisan Infrastructure Law, 2021. 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://sam.gov/content/wage-determinations>)

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

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.



Rev. Dec. 2008

OMB No.: 1235-0008
Expires: 04/30/2021

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>		ADDRESS			
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							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS						(9) NET WAGES PAID FOR WEEK
														FICA	WITH- HOLDING TAX			OTHER	TOTAL DEDUCTIONS	
				HOURS WORKED EACH DAY																
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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 it 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.

Instructions For Completing Payroll Form, WH-347

WH-347 (PDF)

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

General: Form WH-347 has 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 of 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 1 and 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](tel:1-866-4-US-WAGE)
[1-866-487-9243](tel:1-866-487-9243)

www.dol.gov

BUILD AMERICA, BUY AMERICA (BABA) INITIAL CERTIFICATION STATEMENT

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

BABA requirements are waived 1) where products incorporated into a project cumulatively comprise no more than 5% of the total project cost, 2) for small projects where EPA funding is less than \$250,000, and 3) for projects that initiated project planning prior to May 14, 2022.

Owners may request waivers from BABA requirements for the above reasons or 1) where the requirements increase the overall project cost more than 25%, and 2) if products are unavailable within a reasonable timeframe.

Owners (funding recipients) should consult with the VDH Financial and Construction Assistance Program (FCAP) before beginning the waiver process. Waivers are not official until approved by FCAP and/or 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)

BUILD AMERICA, BUY AMERICA (BABA) ACT WAIVER REQUEST

A waiver from the Build America, Buy America (BABA) Act requirements of the Bipartisan Infrastructure Law of 2021 is requested for the following reason(s):

- 1) Products incorporated into the project cumulatively comprise no more than 5% of the total project cost
- 2) EPA funding is less than \$250,000
- 3) Project design planning was initiated prior to May 14, 2022
- 4) The BABA requirements increase the overall project cost more than 25%
- 5) Products are unavailable within a reasonable timeframe.

Relevant documentation to this request is enclosed. No materials will be installed prior to approval of this waiver request by FCAP and/or 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	Provided?	Comment
General Information for all Waiver Requests		
Funding recipient name		
Project Name, Funding Number (i.e., WSL-XXX-XX), and Location		
Project Summary, Schedule, and Current Status		
Total project cost and amount of funding provided by all funders (include potential or pending funding)		
Name and description of waiver being requested and justification		
Signature of an authorized representative of the funding recipient		
Anticipated impact if waiver request is denied		
De Minimis General Applicability Waiver		
List of <i>de minimis</i> materials and/or products, their quantity, and their individual cost (include source of cost information)		
Detailed budget showing total project construction cost		
Calculation showing total cost of <i>de minimis</i> items as a percentage of total project cost is no more than 5%		
Small Project General Applicability Waiver		
Request for waiver showing the amount of funding from EPA as below the \$250,000 threshold		
Adjustment Period Waiver		
Documentation showing project design planning was initiated prior to May 14, 2022 such as:		
1) Submitted preliminary engineering report, or equivalent (to the state or to the funding recipient)		
2) Issued a Request for Proposal or execution of a contract for design or engineering services (regardless of funding source)		
3) Execution of an SRF funding agreement – that includes design		
4) For project designed by funding recipient, documentation of design initiation (such as completed preliminary engineering report)		
5) Solicitation of construction contract bids		
6) Submitted plans and specifications (do not need to be complete) to state authority		
7) Public referendum or public meeting held regarding proposed project		
8) Evidence of new bonds passed or other new funding backing secured for project		
9) Other - Evidence showing that the project is significantly far enough along in the planning process that complying with BABA would be a detriment to the project proceeding may qualify the project for the waiver subject to EPA approval		

Review Checklist for Waiver Requests (cont.)

Review Items	Provided?	Comment
Cost Waiver		
Description of the foreign and domestic materials and/or products involved in the waiver request		
Detailed project cost estimates or bid tabulations showing the overall project cost increases more than 25% with BABA requirements		
Quantities and unit costs of products and/or materials involved		
Cost estimates from other domestic manufacturers or suppliers confirming the relative cost of the highest cost products and/or materials		
A certification that there was a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and communications with suppliers		
List of manufacturers and suppliers involved and their contact information		
Demonstration of good faith efforts to obtain American made products or materials		
All engineering specifications and project design considerations relevant to the product(s) in question		
Product Non-Availability Waiver		
Description of the foreign and domestic materials and/or products involved in the waiver request		
Documentation from a reasonable number of manufacturers and/or suppliers indicating the timeframe for delivery of both domestic and proposed foreign products and/or materials and the impact of both on the project schedule.		
Documentation regarding investigations into using alternative products and/or materials that are American made		
Letter from prime contractor confirming the non-availability of American made products and/or materials		
All engineering specifications and project design considerations relevant to the product(s) in question		
The date any products will be needed on site in order to avoid significant project schedule disruptions		
Other pertinent information such as the date plans and specifications were submitted to the state, the date of construction initiation, expected date of project completion, any special considerations such as local zoning and building ordinances, seismic requirements, or noise or odor control requirements		
Demonstration of good faith efforts to obtain American made products or materials		
Quantities and unit costs of products and/or materials involved		
List of manufacturers and suppliers involved and their contact information		

BUILD AMERICA, BY AMERICA (BABA) ACT FINAL CERTIFICATION STATEMENT

Upon execution of this certification, the selected Contractor, Subcontractor, Materials Supplier, or Service Provider hereby certifies that all of the iron, steel, manufactured products, and construction materials 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)