

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 and cannot be written in future tense:

- 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.