

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 14 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
- 14. [Attachment No. 14](#) – Enhancing Public Awareness of DWSRF Assistance Agreements, Traditional Signage Option

**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 or online news publication 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 (FY2022 and FY2023 Projects Only)

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
Digestor 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. BABA certifications must also list the applicable product category (e.g. manufactured product or construction material). 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)

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

B. Name of Recipient: _____

Recipient Project No. and/or Name: _____

C. Prime Contractor: _____

Is your company a MBE firm? Yes _____ **No** _____

Is your company a WBE firm? Yes _____ **No** _____

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

D. Contract Number: _____

Date for Start of Construction: _____

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

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

If no, please sign and date form.

Recipient/Contractor

Name

Date

Phone

If an MBE/WBE subcontract is rescinded, please give a name of firm, date of rescission and amount of rescission.

Name of firm

Date of Rescission

Amount

MBE/WBE PROCUREMENTS MADE DURING QUARTER

PART II.

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

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 70901 of P. L. 117-58 of the Bipartisan Infrastructure Law Build America, Buy America Act, 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)



Rev. Dec. 2008

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

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

NAME OF CONTRACTOR OR SUBCONTRACTOR 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
				HOURS WORKED EACH DAY										FICA	WITH- HOLDING TAX		OTHER	TOTAL DEDUCTIONS	
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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)(i) 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)

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 or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

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

Column 5 - Total: Self-explanatory

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

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

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

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

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

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

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

Items 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 (for FY2022 and FY2023 projects only)
- 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 (FY2022 and FY2023 Projects Only)		
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 – Please note that FCAP recommends initiating this waiver process prior to soliciting bids for construction. As such, some of the items listed below, such as the letter from the prime contractor, may not be applicable.		
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)

ENHANCING PUBLIC AWARENESS OF DWSRF ASSISTANCE AGREEMENTS TRADITIONAL SIGNAGE OPTION

Guidelines for Enhancing Public Awareness of SRF Assistance Agreements are provided in an Environmental Protection Agency (EPA) Memorandum dated June 3, 2015. This requirement applies to projects administered by the Virginia Department of Health (VDH) Financial & Construction Assistance Program (FCAP) that are designed as “equivalency projects.” The EPA has provided multiple options for SRF Assistance Recipients to Enhance Public Awareness regarding these assistance agreements. These options include but are not limited to: standard signage; posters or wall signage in a public building or location; newspaper press release or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility; insert or pamphlet in water/sewer bill; and online signage.

EPA recommends that large projects that involve significant expansion or construction of a new facility elect to publicize through standard signage. This option should be selected for projects where the sign would be near a major road or thoroughfare or where the facility is in a location at which this would effectively publicize the upgrades.

Bidders should reach out to the Owner, or their representative, to see if they have selected the standard signage option, and if so, to see if it is part of the contract as the contractor’s responsibility.

If the Owner has selected the standard signage option and it is part of the construction contract, then see the guidance provided below.

Standard Signage

FCAP funding recipients that will utilize a traditional (standard) sign should ensure the following are included:

- The name of the facility, project, and community
- Project cost
- Project administered by the Virginia Department of Health
- The EPA and VDH logos (EPA and VDH’s logo may only be used on a construction sign, no other methods of enhancing public awareness)

Guidelines for using EPA’s logo are located on EPA’s webpages - [Using the EPA Seal and Logo | US EPA](#). If the EPA logo is displayed along with logos of other participating entities the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipients received financial assistance from EPA for the project. To obtain the appropriate EPA logo graphic file, the funding recipient should send a request to EPA as outlined on their webpage.

VDH’s logo is not available on our website, but it will be provided to our funding recipients, or their consulting engineer, by the FCAP Project Manager if the standard construction sign is selected for the option to enhance public awareness.

The sign must be in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.