

CO SRF Required Specifications INSTRUCTIONS

(SRF Equivalency)

STEPS:

1. The following specifications must be inserted in their entirety into the project construction specification documents for bidding and for construction. This includes material, supplies and equipment procurement contracts.
2. Bid advertisements must be posted for a minimum of 30 days prior to bid opening. The bid advertisement should include the following statement or similar: *“This project anticipates funding from the Colorado State Revolving Fund (SRF) loan program. Bidder’s attention is called to the SRF requirements in the bid package. Disadvantaged Business Enterprise (DBE) requirements and goals are included. Also, certified DBEs or a consortium of certified DBEs are encouraged to bid.”*
3. The following information must be input into the specifications by the Owner representative prior to bidding and contract execution:
 - a. **Section 1:** Insert the current Davis-Bacon Wage general decision number. **The decision number must be verified 10-days prior to bid opening and updated if a new decision has been published.** See Section 1 for instructions.
 - b. **Section 1:** A copy of the current published Davis-Bacon wage determination document must be attached and the attachment number provided.
 - c. **Section 4:** The applicable Colorado county (or counties) must be inserted.
4. The following certifications must be completed and submitted by the prime contractor with their bid:
 - a. [Suspension and Debarment Certification Form](#)
 - b. [DBE 6100-4](#) and [6100-3](#) Forms

If you have any questions regarding the specifications contained in this document, please contact your SRF program Project Manager from the list below. You may also contact the Unit Manager, Work Group Lead or the Compliance Specialist as needed.

IMPORTANT: Prior to construction, the project must receive environmental clearance and engineering final design approval from the Water Quality Control Division. If you have any questions regarding the status of these clearances and approvals please contact your SRF program Project Manager.

Name	Title	Phone	Email
Mark Henderson	Unit Manager	720-258-6450	mark.henderson@state.co.us
Alex Hawley	Work Group Lead	720-248-8095	alex.hawley@state.co.us
Erick Worker	Project Manager	303-692-3594	erick.worker@state.co.us
Aly Ulibarri	Project Manager	720-295-9634	aly.ulibarri@state.co.us
James Wheatley	Project Manager	720-248-7364	james.wheatley@state.co.us
Matt Alms	Compliance Specialist	720-263-1530	matt.als@state.co.us
Jeff Zajdel	Project Manager	720-235-8828	jeff.zajdel@state.co.us
Sean Oliver	Project Manager	720-446-9073	sean.oliver@state.co.us



Colorado State Revolving Fund Required Specifications

(SRF Equivalency)

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Section 1

Davis Bacon Prevailing Wage Requirements

This contract is governed by the Davis Bacon and Related Acts and is subject to General Decision Number CO _____ dated _____.

A copy of this General Decision Number is attached as _____ to this document.

The SRF Program is subject to Davis Bacon and Related Acts, which extends the requirements of the Davis-Bacon Act. Compliance with the Davis-Bacon Act is required for any project funded by the Drinking Water Revolving Fund (DWRP) or Water Pollution Control Revolving Fund (WPCRF) programs. Non-Compliance with the Davis-Bacon Act may result in debarment and suspension from working on future projects funded with federal dollars for up to three years and/or loss of funding for the current project.

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub-grants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I - 5.

Attachment 1

Wage Rate Requirements under:

- The Consolidated Appropriations Act, 2016 (P.L 114-133), or
- The Water Resources Reform and Redevelopment Act of 2014 (WRRDA):

I. For Subrecipients that Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis - Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under The 2014 Act with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. The recipient or subrecipient may also obtain additional guidance from US Department of Labor (DOL) web site at

<https://www.dol.gov/agencies/whd/government-contracts/construction>

1. Applicability of the Davis-Bacon (DB) prevailing wage requirements.

Under The Consolidated Appropriations Act, 2016, or The Water Resources Reform and Redevelopment Act of 2014, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
 - (1) While the solicitation remains open, the subrecipient shall monitor <https://sam.gov/> weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
 - (2) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.
- (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

- (a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment works under the Clean Water State Revolving Fund (CWSRF) or a construction project under the Drinking Water State Revolving Fund (DWSRF) financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or The 2014 Act, the following clauses:

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, <https://sam.gov/>

- (ii) (A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient(s) to the State award official. The State award official will transmit the request to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days

of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

- (i) The subrecipient(s) shall, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Federal Agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual

wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees--
- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
 - (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to

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

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- (5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible

to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

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

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above, or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29

CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Federal Agency, State, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

- (a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- (b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of non-compliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.
- (e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at:

<https://www.dol.gov/agencies/whd/contact/local-offices>

Section 2

American Iron and Steel

The State Revolving Fund Program is subject to, and requires compliance with, the American Iron and Steel requirement (AIS). American Iron and Steel requires Water Pollution Control State Revolving Fund (WPCRF) and Drinking Water Revolving Fund (DWRf) assistance recipients use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed on or after January 17, 2014.

In providing bids, proposals, or services, the Contractor represents and warrants to and for the benefit of the borrower and the State that:

- a. The Contractor has reviewed and understands the American Iron and Steel requirement.
- b. All of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved.
- 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 American Iron and Steel Requirement, as may be requested by the borrower or the State.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the borrower or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the borrower or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the borrower). While the Contractor has no direct contractual privity with the State, as a lender to the borrower for the funding of its project, the borrower and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of the Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

For purposes of the WPCRF and DWRf projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings;
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel;
- Reinforced precast concrete; and
- Construction materials.

If the subrecipient can justify a claim made under one of the categories below, a waiver may be granted. Until a waiver is granted by the EPA, the AIS requirement must be adhered to as described in the act.

A waiver may be provided if EPA determines that:

1. Applying these requirements would be inconsistent with the public interest.
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

All waiver requests must be routed through the Grants and Loans Unit project manager or compliance specialist.

EPA's guidance on AIS requirements, available at http://water.epa.gov/grants_funding/aisrequirement.cfm includes specific instructions for communities interested in applying for a waiver. After receiving a completed application for a waiver from the Grants and Loans Unit, EPA will publish the waiver request and all material submitted with the application on this website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to the EPA.

Approved National Waivers available for borrowers and contractors include:

- April 15, 2014 De Minimis Waiver:

“The EPA is hereby granting a nationwide waiver pursuant to the American Iron and Steel requirements of P.L. 113-76 CAA 2014 (Act), section 436 under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects. This action permits the use of products when they occur in de minimis incidental components of such projects funded by the Act that may otherwise be prohibited under section 436(a). Funds used for such de minimis incidental components cumulatively may comprise no more than a total of five percent of the total cost of the material used in and incorporated into a project; the cost of an individual item may not exceed one percent of the total cost of materials used in and incorporated into a project.”

Section 3

National Term on Suspension and Debarment

I. General Requirements

- A. Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance programs or Federal benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.
- B. The status of prospective individuals or organizations can be checked at the System for Award Management(SAM) at <https://sam.gov/content/home>
- C. Not being debarred or excluded from participation in Federal assistance shall be a condition of the contract in which this specification is included.
- D. It is the prime contractor's responsibility to verify that subcontractors, vendors, suppliers and manufacturers are not debarred or excluded from participation in Federal assistance programs prior to entering into any agreements or awarding contracts and the prime contractor must verify and document they are not on the excluded parties list.
- E. Verification can be completed by checking the System for Award Management (<https://sam.gov/content/home>) or by collection of a certification from that person documenting that the person is not excluded; or by adding a clause or condition to the covered transaction with that person indicating that not being excluded is a condition of the agreement. It is strongly recommended to check the System for Award Management.

II. Demonstrating Compliance

- A. A prospective prime contractor must submit a completed **Suspension and Debarment Certification Form** (reference Section 11-Forms) along with its bid. Failure to submit the certification may result in considering the bid as non-responsive.
- B. As needed a completed Suspension and Debarment Certification form will be required to be submitted by the prime contractor prior to contract execution.
- C. Prime contractors must document they have verified that all subcontractors, vendors, suppliers and manufacturers are not debarred or excluded from participation in Federal assistance programs.
 1. Record of documentation of verification must be maintained throughout the duration of the project and available for review upon request by the Owner or Colorado SRF program.
 2. Upon completion of the project, the documentation must be provided to the Owner and maintained for at least three years after project completion.

Section 4 Equal Employment Opportunity

I. Equal Opportunity Employment and Affirmative Action and Affirmative Action Requirements on Federally Assisted Construction Contracts: Notice and Equal Opportunity Clause

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

This notice shall be included in, and shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts.

- (1) The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
- (2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

County	Minority Participation in Each Trade ¹	Female Participation in Each Trade ¹
Fort Collins, Larimer	6.9%	6.9%
Archuleta, Delta, Dolores, Eagle, Garfield, Grand Junction, Gunnison, Hinsdale, Jackson, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel	10.2%	6.9%
Colorado Springs, El Paso, Teller	10.9%	6.9%
Chaffee, Cheyenne, Clear Creek, Grand, Elbert, Kit Cason, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington, Yuma	12.8%	6.9%
Greeley, Weld	13.1%	6.9%
Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Gilpin, Jefferson	13.8%	6.9%
Alamosa, Baca, Bent, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Rio Grande, Saguache	19.0%	6.9%

Pueblo	27.5%	6.9%
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1) Source: FR Vol.45 No. 194 / Friday, October 3, 1980

These goals are applicable to all the contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- (3) The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number for the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed (See Form C).
- (4) As used in this Notice, and in the contract resulting from this solicitation, the covered area is County.

B. EQUAL OPPORTUNITY CLAUSES

- (1) The Equal Opportunity Clause published at 41 CFR Part 60-1.4(b) is required to be included in, and is part of, all nonexempt federally assisted construction contracts and subcontracts. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated.
- (2) In addition to the clauses described above, all federal contracting officers, all applicants, and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 41 CFR 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order.

II. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

A. DEFINITIONS AS USED IN SPECIFICATIONS

- (1) "Covered Area" means the geographical area described in solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asian, the Indian Subcontinent, or the Pacific Islands);
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

B. DETAILED SPECIFICATIONS

- (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 \$25,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- (2) If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan (Plan) approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area, (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the Equal Employment Opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- (3) The contractor shall implement the specific affirmative action standards provided in paragraphs (6)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- (4) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- (5) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (6) The contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations where the contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - (c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.
 - (d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - (e) Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.

- (f) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (h) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations servicing the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (m) Ensure that seniority practices, job classification, work assignments and other personnel practices, do not have a discriminatory effect by continually

monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations are followed.

- (n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.
- (7) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (6)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (6)(a) through (p) of the specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
- (8) A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the order if a specific minority group of women is under-utilized).
- (9) The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (10) The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.
- (11) The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- (12) The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (6)

of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.3.

- (13) The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- (14) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Section 5

Williams-Steiger Occupational Safety and Health Act of 1970

A. Authority

- (1) The contractor is subject to the provisions of the Williams-Steiger Occupational Safety and Health Act of 1970.
- (2) These construction documents and the joint and several phases of construction hereby contemplated are to be governed, at all times, by applicable provisions of the Federal law(s), including but not limited to the latest amendment of the following:
 - (a) Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 94-596;
 - (b) art 1910 - Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;
 - (c) Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations.

B. Safety and Health Program Requirements

- (1) This project, its prime contractor and its subcontractors, shall at all times be governed by Chapter XVII of Title 29, Code of Federal Regulations, Part 1926 - Safety and Health Regulations for Construction (29 CFR 22801), as amended to date.
- (2) To implement the program and to provide safe and healthful working conditions for all persons, general project safety meetings will be conducted at the site at least once each month during the course of construction, by the construction superintendent or his/her designated safety officer. Notice of such meeting shall be issued not less than three (3) days prior, stating the exact time, location, and agenda to be included. Attendance by the owner, architect, general foreman, shop steward(s), and trades, or their designated representatives, witnessed in writing as such, shall be mandatory.
- (3) To further implement the program, each trade shall conduct a short gang meeting, not less than once a week, to review project safety requirements mandatory for all persons during the coming week. The gang foreman shall report the agenda and specific items covered to the project superintendent, who shall incorporate these items in his/her daily log or report.
- (4) The prime contractor and all subcontractors shall immediately report all accidents, injuries, or health hazards to the owner and architect, or their designated representatives, in writing. This shall not obviate any mandatory reporting under the provisions of the Occupational Safety and Health Act of 1970.
- (5) This program shall become a part of the contract documents and the contract between the owner and prime contractor, prime contractor and all subcontractors, as though fully written therein.

Section 6

Discovery of Archaeological and Other Historical Items

A. Construction Procedures

In the event of an archaeological or more recent historical find (e.g., artifacts, housing sites) during any phase of construction, the following procedure should be followed:

- (1) Construction shall be halted, with as little disruption to the archaeological site possible.
- (2) The Contractor shall notify the Owner who shall contact the State Historical Preservation Officer.
- (3) The State Historical Preservation Officer may decide to have an archaeologist inspect the site and make recommendations about the steps needed to protect the site, before construction is resumed.
- (4) The entire event should be handled as expediently as possible in order to hold the loss in construction time to a minimum while still protecting archaeological finds.

B. National Register Status

In the event archaeological/historical data are evaluated to meet National Register criteria, the Advisory Council on Historic Preservation may be notified and asked to comment by the Water Quality Control Division.

Section 7

Disadvantaged Business Enterprise (DBE) - SRF Program Grant Agreement Information and Requirements

OVERVIEW OF DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The Environmental Protection Agency's (EPA) new Disadvantaged Business Enterprise (DBE) rule became effective on May 27, 2008. The new DBE rule sets forth an EPA program that serves the compelling government interest of remedying past and current racial discrimination through agency-wide procurement objectives. The new DBE rule revises and replaces EPA's Minority and Women Business Enterprise (MBE/WBE) Program for funding received after May 27, 2008.

Note that the loan recipient is not a passive conduit of the contractor's DBE information. By submitting the proposed contractor's DBE documentation to the SRF Loan Program for review, the loan recipient is asserting that it has found the proposed contractor's documentation of good faith efforts adequate.

In order to be counted as a MBE/WBE under the new EPA DBE rule, MBE/WBEs must be certified by a federal agency (e.g., EPA, Small Business Administration, and Department of Transportation) or by a State, locality, Indian Tribe, or independent private organization that meets the certification requirements of the new EPA DBE rule. Under the new EPA DBE rule an individual claiming economic disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

Locating potential DBE subcontractors is the responsibility of the bidder/contractor. The following is a list of resources that may be used to locate potential DBEs:

- The Colorado Department of Transportation maintains a listing of certified DBEs on its website at: [Colorado Unified Certification Program \(dbesystem.com\)](http://colorado.unifiedcertification.com)
- The EPA Office of Small and Disadvantaged Business Utilization provides a small business vendor database that may include certified DBEs at: <https://vpmdsweb.epa.gov/Vendors/list>
- The Small Business Association (SBA) provides a small business procurement database search that includes the ability to search for certified DBEs at: <https://www.sba.gov/partners/contracting-officials/small-business-procurement>

Applications for certification by EPA can be found on EPA's Small Business Programs website at http://www.epa.gov/osbp/dbe_fair.htm Attention is hereby called to the services of the Small Business Association (SBA) and the Minority Business Development Agency (MBDA) of the Department of Commerce that can assist DBEs.

Each procurement contract signed by a loan participant must include the following term and condition:

"The contractor shall not discriminate on the basis of race, color, 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." (Appendix A to Part 33—Term and Condition)

Additionally, the above term and condition is considered included in the contract in which this specification forms a part of the contract documents.

GUIDANCE FOR UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS OF 40 CFR PART 33

A. REQUIREMENTS

1. Each procurement contract signed by a loan recipient must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR 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.

2. The recipient and prime contractor will create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts on EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors:

- (a) Entity's name with point of contact;
- (b) Entity's mailing address, telephone number, and e-mail address;
- (c) The procurement on which the entity bid or quoted, and when; and
- (d) Entity's status as an MBE/WBE or non-MBE/WBE.

3. The recipient and prime contractor will exercise good faith efforts to attract and utilize small, minority, and women's business enterprises primarily through outreach, recruitment, and race/gender neutral activities.

- (a) At a minimum, fulfillment of six affirmative steps (good faith efforts) is required as set forth below:

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 of the Small Business Association ([SBA](#)) and the Minority Business Development Agency ([MBDA](#)) of the Department of Commerce.
 6. If the prime contractor awards subcontract, require the prime contractor to take the affirmative Steps 1 through 5 listed above.
4. The prime contractor must pay its subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.
 5. The prime contractor must notify the owner in writing prior to any termination of a DBE subcontractor for convenience.
 6. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the good faith efforts if soliciting a replacement subcontractor, even if the fair share objectives have already been achieved.

B. FAIR SHARE OBJECTIVES

1. The Colorado SRF project goals are:

SRF Project	%MBE	%WBE
Construction	6.1%	6.6%

C. DEFINITIONS

1. Disadvantaged Business Enterprise (DBE) is a business concern which meets the qualifications of a Minority Business Enterprise (MBE), Women's Business Enterprise (WBE)
2. Minority Business Enterprise (MBE) is a business concern which is:
 - (a) Certified as socially and economically disadvantaged by the Small Business Administration;
 - i. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.
 - ii. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Small Business Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans), are to be

considered socially and economically disadvantaged. Economically and socially disadvantaged individuals are deemed to include women.

- (b) Certified as a minority business enterprise by a State or Federal agency; and
- (c) An independent business concern which is at least 51 percent owned and controlled by minority group member(s).
 - i. A minority group member is an individual who is a citizen of the United States and one of the following:
 - 1. Black American;
 - 2. Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America)
 - 3. Native American (American Indian, Eskimo, Aleut, native Hawaiian); or
 - 4. Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).
 - ii. In order to satisfy this third criteria of the MBE definition, the minority ownership's interest must be real, substantial and continuing. Such interest is characterized by:
 - 1. Risk of loss/share of profit commensurate with the proportional ownership; and
 - 2. Receipt of the customary incidents of ownership, such as compensation (i.e., salary and other personnel compensation).
 - iii. A minority owner must have and exercise control of the business decisions. Characteristics of control include, but are not limited to:
 - 1. Authority to sign bids and contracts;
 - 2. Decisions in price negotiations;
 - 3. Incurring liabilities for the firm;
 - 4. Final staffing decisions;
 - 5. Policy-making; and
 - 6. General company management decisions.
 - iv. Only those firms performing a useful business function according to custom and practice in the industry, are qualified as MBEs. Acting merely as a passive conduit of funds to some other firm where such activity is unnecessary to accomplish the project does not constitute a "useful business function according to custom and practice in the industry." The purpose of this approach is to discourage the use of MBE "fronts" and limit the creation of an artificial supplier and broker marketplace.

3. Women's Business Enterprise (WBE) is a business which is certified as such by a State or Federal agency, or which meets the following definition:

"A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women, who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or otherwise qualified WBE which is 51 percent owned by a married woman in a community property State will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business."

As in the case of a MBE, only United States citizens will be deemed to be WBEs. Similar to the MBE criteria, WBE should meet the criteria cited in subparagraphs C.2.a., C.2.b, and C.2.c(2), (3), and (4).

4. Fair Share or Fair Share Objective: A fair share or a fair share objective is an amount of funds reasonably commensurate with the total project funding and the availability of qualified MBEs and WBEs, taking into account experience on EPA-funded projects and other comparable projects in the area. A fair share objective does not constitute an absolute requirement, but a commitment on the part of the bidder to exercise good faith efforts as defined in this section to use MBEs and WBEs to achieve the fair share objective.
5. Recipient: A party receiving SRF financial assistance.
6. Project: The scope of work for which an SRF loan is awarded.
7. Bidder: A party seeking to obtain a contract with a recipient through a competitive, advertised, sealed bid process.
8. Offeror: A party seeking to obtain a contract with a recipient through a negotiative procurement process.
9. Prime Contractor: A party that has obtained a contract with a recipient through a competitive, advertised, sealed bid process.
10. Good Faith Efforts: Good faith efforts by a recipient, prime contractor, and/or bidder/offeror means efforts to attract and utilize DBEs primarily through outreach, recruitment, and race/gender neutral activities. The following are examples of activities to assist recipients, prime contractors and/or bidders/offerors to comply with good faith efforts.
 - (a) 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.
 - i. Maintain and update a listing of qualified MBE/WBEs that can be solicited for construction, equipment, services and/or supplies.

- ii. Provide listings to all interested parties who request copies of the bidding or proposing documents.
 - iii. Contact appropriate sources within your geographic area and state to identify qualified MBE/WBE for placement on your MBE/WBE business listings.
 - iv. Utilize other MBE/WBE listings such as those of the state's minority business office, the Small Business administration ([SBA](#)), Minority Business Development Agency ([MBDA](#)) of the Department of Commerce, EPA OSDDBU, and DOT.
 - v. Have state environment agency personnel review solicitation lists.
- (b) 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.
- i. Develop realistic delivery schedules which may provide for greater MBE/WBE participation.
 - ii. Advertise through the minority media in order to facilitate MBE/WBE utilization. Such advertisements may include, but are not limited to, contracting and subcontracting opportunities, hiring and employment, or any other matter related to the project.
 - iii. Advertise in general circulation publications, trade publications, state agency publications and minority and women's business focused media concerning contracting opportunities on your projects. Maintain a list of minority and/or women's business-focused publications that may be utilized to solicit MBE/WBEs.
- (c) 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.
- i. Perform an analysis to identify portions of work that can be divided and performed by qualified MBE/WBEs.
 - ii. Scrutinize the elements of the total project to develop economical units of work that are within the bonding range of MBE/WBEs.
 - iii. Conduct meetings, conferences, and follow-ups with MBE/WBE associations and minority media to inform these groups of opportunities to provide construction, equipment, services and supplies.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

- i. Notify MBE/WBEs of future procurement opportunities so they may establish bidding solicitations and procurement plans.
 - ii. Provide MBE/WBE trade organizations with succinct summaries of solicitations.
 - iii. Provide interested MBE/WBEs with adequate information about plans, specifications, timing and other requirements of the proposed projects.
- (e) Use the services of the [SBA](#) and the Minority Business Development Agency ([MBDA](#)) of the Department of Commerce.
- i. Use the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidders lists to assist these firms in the development of bid packaging.
 - ii. Seek out Minority Business Development Centers (MBDC) to assist recipients and prime contractors in identifying MBE/WBEs for potential work opportunities on projects.
- (f) If the prime contract awards subcontracts, require the prime contractor to take steps in Paragraphs (a) through (e) of this section.

D. **REPORTING**

During Bidding:

1. Bidders/offerors must demonstrate compliance with good faith efforts in order to be deemed responsible.
2. The prime contractor must complete DBE Solicitations Form (**Form 6100-4**).
3. The prime contractor must have its DBE subcontractors complete DBE Program Subcontractor Performance Form (**Form 6100-3**).
4. **Form 6100-3** and **Form 6100-4** must be submitted by all bidders with their bid. Failure to submit this information may result in the bid being considered as a non-responsive bid.

During Performance of the Contract:

5. The prime contractor must distribute DBE Program Subcontractor Participation Form (**Form 6100-2**) to all of its contracted DBE subcontractors. The subcontractors can submit completed forms to the State of Colorado, Water Quality Control Division, Grants and Loans Unit.
6. The prime contractor must complete **DBE Form B** to report DBE procurements made during each quarter. These reports must be submitted within 5 days of the end of each Federal fiscal quarter (by 1/5, 4/5, 7/5, and 10/5). Reports may be emailed to: CDPHE_grantsandloans@state.co.us
The recipient will in turn submit this reporting for “DBE Utilization Under Federal Grants, Cooperative Agreements, and Interagency Agreements,” to the Project Administrator beginning with the Federal Fiscal year quarter the bid is awarded and continuing until the project is completed.

Section 8

Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

The following requirements including terms and conditions apply to this contract and expenditures submitted for reimbursement through the state revolving fund loan covering the work to be completed in this contract.

- A. This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.
- B. As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:
 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- C. Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:
 1. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
 - a) Procure or obtain, extend or renew a contract to procure or obtain;
 - b) Enter into a contract (or extend or renew a contract) to procure; or
 - c) Obtain the equipment, services, or systems.

2. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list at <https://sam.gov/>
- D. There is no exhaustive list of components and services that fall under the prohibition. Exercise due diligence and be particularly mindful of project components with internet or cellular connections. For example, recipients should be mindful of automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures to ensure that those items are procured from a non-excluded entity. Items included in the prohibition are not eligible SRF costs, and the SRF programs cannot reimburse borrowers for these costs.

Section 9

Signage Requirements

- A. Signage must be placed at construction sites 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. In cases where the construction site covers a large area (e.g., lead service line replacement or septic tank repair/replacement projects), a sign should be placed in an easily visible location near where the work is being performed (e.g., entrance to the neighborhood, along a main road through town, etc.). Signage costs are considered an allowable SRF expense, provided the costs associated with the signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, assistance recipients are encouraged to translate the language on signs (excluding the official emblems or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable SRF expenses, provided the costs are reasonable.
- B. The BIL signage term and condition requires a physical sign displaying required emblems and EPA logo be placed at construction sites for BIL-funded projects. The required emblems, styles, format, size, and detailed instructions for producing the required sign is included in the following guidance:
 1. [CO SRF Bipartisan Infrastructure Law Signage Guidance](#) and [SRF agency logo files](#)

Section 10

Build America, Buy America (BABA)

- A. The State Revolving Fund Program and the contract including this specification is subject to, and requires compliance with, the Build America, Buy America Act (BABA) requirements. The BABA requirements refer to Title IX-Build America, Buy America of the Infrastructure Investment and Jobs Act (IIJA) also known as the Bipartisan Infrastructure Law (BIL) passed by Congress on November 15, 2021.
- B. ALL CONSTRUCTION CONTRACTS MUST HAVE THE FOLLOWING CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS:
1. The Contractor acknowledges to and for the benefit of the Owner and the Funding Authority (Colorado Water Resources and Power Development Authority) that it understands the goods and services under the loan agreement for the project 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 in writing for the project as described in this specification 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.
- C. In providing bids, proposals, or services, the Contractor represents and warrants to and for the benefit of the borrower and the State Revolving Fund the following:
1. The Contractor has reviewed and understands the Build America, Buy America Act Requirements.
 2. All of the iron and steel, manufactured products, and construction materials used in the project in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements has been approved in writing for the project as described in this specification .
- D. By signing payment applications and requesting 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 Requirements.
- E. Build America, Buy America Products
1. Product Definitions

Title IX - Build America, Buy America of the Infrastructure Investment and Jobs Act (IIJA) also known as the Bipartisan Infrastructure Law (BIL) includes the following:

Title IX - Build America, Buy America, Subtitle A - Build America, Buy America, Part I - Buy America Sourcing Requirements, Section 70912 DEFINITIONS, (6) PRODUCED IN THE UNITED STATES.—The term “produced in the United States” means—

(A) in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(B) in the case of manufactured products, that—

(i) the manufactured product was manufactured in the United States; and

(ii) 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; and

(C) in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

2. Product Examples

The following is provided strictly as examples and it is the Contractor’s responsibility to ensure that all products comply with the BABA Requirements.

(a). Environmental Protection Agency (EPA) [Memorandum on Build America Act Implementation Procedures for the EPA Office of Water Federal Financial Assistance Programs dated November 3, 2023](#) provides the following guidance in Section 2: Product Coverage:

Q2.1: For products made of iron and steel, what is the difference between predominantly and primarily iron and steel?

A2.1: EPA considers the terms “predominantly” and “primarily” to be interchangeable, such that a product is considered predominantly (or primarily) iron and steel if it contains greater than 50 percent iron and steel by material cost.

Q2.2: What is the definition of construction materials (with examples)?

A2.2: From 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 polyvinyl chloride, composite building materials, and polymers used in fiber optic cables), (including optic glass), lumber, and drywall.

Q2.3: What are manufactured products (with examples)?

A2.3: 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.

(b) The EPA [Memorandum on Build America Act Implementation Procedures for the EPA Office of Water Federal Financial Assistance Programs dated November 3, 2023](#) provides example lists of products classified as Iron and Steel and Manufactured Products.

F. Waivers

1. Types of Waivers

Pursuant to Section 70914(c) of the BABA Act, EPA may waive Buy America preference where EPA finds that:

- a. Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- b. Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- c. Inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”).

2. Applying for a Waiver

a. EPA issued waivers

- i. A list of EPA issued waivers is available at the following site:

<https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>

- ii. The Owner and Contractor must submit a written request to the Colorado SRF program for approval of an EPA issued waiver.

- iii. A waiver is not approved until written approval has been issued by the Colorado SRF program or the EPA (if required by the waiver).

1. Exception: Use of the [Public Interest: DeMinimis General Applicability Waiver of Section 70914\(a\) of P.L. 117-58, Build America, Buy America Act, 2021 for US EPA Financial Assistance Awards and Procurements issued October 21, 2022](#) does not require prior approval; however the Owner and Contractor must submit written notification that the waiver will be used, and DeMinimis compliance documentation must be submitted as described in this specification to demonstrate compliance with the waiver.

b. Project specific waivers

- a. The Owner and Contractor must notify the state agency in writing prior to applying for a waiver. The assistance recipient should email the request in the form of a Word document (.doc) or editable PDF (.pdf) to the funding program. The state designee(s) will review the application for the waiver and determine whether the necessary information has been included.
- b. After receiving an application for a waiver, EPA will perform market research to determine whether the iron, steel, manufactured goods, or construction materials are available domestically, or whether the items are cost prohibitive.
- c. After research, if no domestic product has been identified, EPA is required to publish the application and all material submitted with the application on EPA's website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at:
<https://www.epa.gov/cwsrf/build-america-buy-america-baba-waivers-open-public-comment>
- d. After receiving an application for waiver of the BABA requirements, EPA will determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver to determine whether or not to grant the waiver.
- e. Signature of waiver approval by the Administrator or another agency official with delegated authority - As soon as the waiver is signed and dated, EPA will notify the State

SRF program and post the signed waiver on the Agency's website. The assistance recipient should keep a copy of the signed waiver in its project files.

- f. A waiver is not approved until EPA has fully completed the approval process as described above and the Owner and Contractor must not rely on the waiver to meet the BABA requirements until the waiver is approved.

G. Compliance Documentation

1. Compliance with the BABA requirements is essential for the duration of the project. If a project is found to be out of compliance or fails to provide required documentation with the BABA requirements, funding may be withheld until the issue is rectified or other measures may be implemented as described herein.
 - a. Compliance is assessed where the domestic product is used (or installed) at the project site. Proper compliance documentation, whether it is a BABA certification letter or a waiver, should accompany a product prior to its "use", in accordance with Section 70914(a) of BIL.
 - b. Assistance recipients and their representatives should ensure that the products delivered to the construction site are accompanied by proper documentation that demonstrate compliance with the law and be made available to Colorado SRF program upon request. The documentation may be received and maintained in hard copy or electronically.
 - c. All BABA compliance documentation must be maintained by the contractor onsite for the duration of the project,
 - d. Upon completion of the project, the documentation must be provided to the Owner and maintained for at least three years after project completion.
2. Required Documentation
 - a. **BABA Product Certification Letters:** The contractor must collect certified letters for all products that fall underneath the BABA Requirements. At minimum the certification letter must include the following elements:
 1. Specific project reference
 2. Specific List of Products
 3. Location of Manufacturing (city and state)
 4. Signature of authorized manufacturer representative
 5. Reference to the Build America, Buy America Act and that the products comply with the BABA Requirements.

Note: For products that are considered "Iron or Steel" as defined in the BABA requirements a product certification letter including elements 1 through 4 listed above and certifying compliance with the EPA American Iron and Steel requirement are acceptable.
 - b. **SRF BABA Product Tracking Log:** The contractor must maintain a tracking log of all the products that must comply with the BABA Requirements categorizing each product as either an "Iron or Steel" product, a "Manufactured Product", or a "Construction Material" and the tracking log must document that a BABA certification has been collected for each product. The contractor must submit the tracking log with each pay application and it must be included in each reimbursement requisition submitted to the Colorado SRF program.
 1. The Colorado SRF Program will review the product log and request submission of BABA certification letters as needed during reimbursement requisition review to verify BABA Requirements compliance.
 - c. **SRF BABA Pay Application Certification Form:** The assistance recipient must sign and submit the form with each reimbursement requisition. Reimbursement requisitions will not be processed until the signed form is submitted and failure to submit the signed certification form may result in considering the project out of compliance with this specification and the BABA requirements.

Section 11

SRF Required Forms by Section

SRF forms can be found at the following website (click on “Forms” button at bottom of page):

<https://cdphe.colorado.gov/state-revolving-fund-information>

The list of forms are below. Please contact your SRF Project Manager if you have any questions.

Section 1 - Davis Bacon Prevailing Wages

- Davis Bacon Certification Form (SRF form);
- WH - 347 - Contractors Payroll Form;
- Standard Form 1444 - Request for Authorization of Additional Classification and Rate;
- Standard Form 1445 - Labor Standards Interview Form.

Section 2 - American Iron and Steel

- SRF American Iron and Steel Certification Form
- SRF American Iron and Steel Product Log

Section 3 - National Term on Suspension and Debarment

- Suspension and Debarment Certification

Section 4 - Equal Employment Opportunity and Affirmative Action Requirements

- No applicable forms.

Section 5 - Williams-Steiger Occupational Safety and Health Act of 1970

- No applicable forms.

Section 6 - Discovery of Archaeological and Other Historical Items

- No applicable forms.

Section 7 - Disadvantaged Business Enterprise (DBE)

- Form 6100-2 provided by prime contractor and completed by DBE subcontractor and submitted to the CDPHE GLU project manager.
- Form 6100-3 completed by prime contractor and DBE subcontractor and submitted to CDPHE GLU project manager as part of their bid.
- Form 6100-4 completed by prime contractor and submitted as part of their bid.
- DBE Form B completed by prime contractor submitted to cdphe_grantsandloans@state.co.us.

Section 8 - Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

- No applicable forms.

Section 9 - Signage Requirements

- No applicable forms, reference [CO SRF Bipartisan Infrastructure Law Signage Guidance](#) and [SRF agency logo files](#)

Section 10 - Build America, Buy America

- SRF BABA Product Tracking Log
- SRF BABA Pay Application Certification Form