

**REQUIREMENTS AND CONTRACT PROVISIONS FOR THE TREATMENT WORKS PROJECTS
FINANCED THROUGH THE MARYLAND WATER QUALITY REVOLVING LOAN FUND
AND THE MARYLAND DRINKING WATER REVOLVING LOAN FUND
DEPARTMENT OF THE ENVIRONMENT
STATE OF MARYLAND**

The project or segment thereof to be constructed in accordance with these contract documents is subject to the following requirements. In the event of conflict with other requirements of the contract documents, the following requirements control unless the requirement is a minimum requirement. Nothing in this document shall be construed to prohibit the owner from requiring additional assurances, guarantees, indemnities, or other contractual requirements from any other party to this agreement.

- I. **ASSURANCES FOR COMPLIANCE WITH THE FOLLOWING FEDERAL AND STATE LAWS AND REGULATIONS:**
 - 1. **NON-DISCRIMINATION IN EMPLOYMENT**
 - 2. **DEBARMENT**
 - 3. **ANTI-KICKBACK**
 - 4. **CONTRACT WORK HOURS AND SAFETY STANDARDS.**
 - 5. **COMPLIANCE WITH CFR 40 247– 254 (RCRA - SECTION 6002)**
 - 6. **COMPLIANCE WITH PREVAILING FEDERAL WAGE RATES UNDER THE DAVIS-BACON AND RELATED ACTS IN ACCORDANCE TO SECTION VI OF THIS DOCUMENT**
 - 7. **MARYLAND ANTIDegradation IMPLEMENTATION PROCEDURES**
 - 8. **COMPLIANCE WITH BUILD AMERICA, BUY AMERICA (BABA) ACT**
 - 9. **PROHIBITION ON CERTAIN TELECOMMUNICATION AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR 200.216)**

- II. **DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**
 - **GUIDANCE DOCUMENTS AND FORMS**
(Performance of the good faith steps are required, regardless of goal achievement. All information is to be submitted to the owner, prior to the owner's award of the contract, UNLESS OTHERWISE DIRECTED BY THE OWNER).

- III. **PRESIDENTIAL DOCUMENTS**
 - **ATTACHMENT II**

EXECUTIVE ORDER 13202 of February 17, 2001

EXECUTIVE ORDER 13208 of April 8, 2001

- IV. **SEVERABILITY**

- V. **PROJECT SIGNS**

- VI. **FEDERAL WAGE RATE REQUIREMENTS UNDER THE DAVIS-BACON AND RELATED ACTS**

I. ASSURANCES

The contractor is required to comply with the Federal laws and regulations in regard to non-discrimination in employment, debarment, anti-kickback, contract work hours and safety standards, and prevailing Federal wage rates under the Davis-Bacon and related acts as delineated below.

1. Non-discrimination in Employment:

The contractor is required to comply with Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity” as amended by Executive Order 11375 of October 13, 1967.

The contract for the work under this proposal will obligate the prime contractor and its subcontractors not to discriminate in employment practices.

The contractor shall not maintain or provide for his/her employees the facilities, which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis.

The contractor must, if requested, submit a compliance report concerning their employment practices and policies in order to maintain his/her eligibility to receive the award of the contract.

The contractor must be prepared to comply in all respects with the Contract Provisions regarding non-discrimination, as stipulated under the Labor Standards.

2. Debarment:

Under Executive Order 12549, an individual or organization debarred from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a sub-agreement thereunder for \$25,000 or more.

Therefore, the bidder as an individual or as an organization, presently debarred, suspended, proposed for debarment, will be declared ineligible to participate in bidding the proposed contract as a prospective recipient of financial assistance from the Maryland Department of the Environment.

The contractor shall not enter into any sub-contract with any individual, firm or organization debarred from Government contracts pursuant to Executive Order 11246.

3. Anti-kickback:

The contractor and/or its sub-contractors shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874). Any evident illicit kickback practice in any shapes or forms will cause termination of the contract.

4. Contract Work Hours and Safety Standards:

The contractor and/or its sub-contractors shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330).

5. Compliance with 40 CFR: 247– 254 (RCRA - Section 6002):

The contractor shall comply with the guidelines contained in 40 CFR 247– 254 (Section 6002 of the Resource Conservation and Recovery Act).

State and local recipients and sub-recipients of grants, loans, cooperative agreements or other instruments funded by appropriated Federal funds shall give preference in procurement programs to the purchase of recycled products pursuant to the EPA guidelines.

6. Compliance with Prevailing Federal Wage Rates under the Davis-Bacon and Related Acts in accordance to Section VI of this document.

All laborers and mechanics employed by contractors and sub-contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government programs including the State Revolving Loan fund shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards

specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.App.) and section 3145 of title 40, United States Code. Most recent Federal prevailing wages can be obtained from: <https://sam.gov/content/wage-determinations>

The prevailing wage determination category that should be used for this project is Heavy Construction (including water and sewer). This determination is based on the Federal Department of Labor Wage and Hour Division classification.

7. Maryland Antidegradation Implementation Procedures:

The Clean Water Act requires three components to water quality standards that set goals for and protect each States' waters. The three components are: (1) designated uses that set goals for each water body (e.g., recreational use), (2) criteria that set the minimum conditions to support the use (e.g., bacterial concentrations below certain concentrations) and (3) an antidegradation policy that maintains high quality waters so they are not allowed to degrade to meet only the minimum standards. The designated uses and criteria set the minimum standards for Tier I.

Maryland's antidegradation policy has been promulgated in three regulations: COMAR 26.08.02.04 sets out the policy itself, COMAR 26.08.02.04-1, provides for identification and implementation of Tier II (high quality waters) of the antidegradation policy, and COMAR 26.08.02.04-2 that describes Tier III (Outstanding National Resource Waters or ONRW), the highest quality waters. No Tier III waters have been designated at this time. Any capital funding project occurring within Tier II catchment areas, which are areas that drain to Maryland's high quality designated Tier II stream segments, must undergo Antidegradation Review.

To determine if your project is located within Tier II catchment area, please contact Ms. Angel Valdez of MDE Environmental Standards and Assessment Program, at (410) 537-3606, or at angel.valdez@maryland.gov.

Please be aware that projects subject to an Antidegradation or Tier II review must adequately address comments that arise during the review before funding can be granted.

How Tier II Stream Segments are Designated

- Currently high quality stream segments are designated for the characteristic of biology using Maryland Biological Stream Survey (or comparable) data
- Streams are recorded in Table O (COMAR 26.08.02.04-1) and the pending list of streams awaiting promulgation or corrections is maintained on the MDE website.

The Basic Antidegradation Review Process

Many of the projects funded by the Water Infrastructure Financing Administration (WIFA) at MDE result in a net improvement to water quality. As a result, the antidegradation review process for WIFA generally involves making sure that any land disturbance activities associated with the project includes additional controls. Any other antidegradation reviews specific to project discharges (e.g. end-of-pipe) will be addressed separately through the permitting process.

To help expedite the review process the following list of practices has been provided. These practices include "accelerated stabilization, redundant controls, increased riparian buffers, passive or active chemical treatment, or a reduction in the size of the grading unit" as stated in the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control to address Tier II issues. All practices implemented should be evident in plans. When using the list below to aide in planning keep in mind that application and site specifics will ultimately determine each recommendation's applicability. Also realize that this list is not exhaustive and additional practices may be identified as specific plans become available.

- Initial Considerations: including limiting vegetative disturbances, phasing and/or sequencing, accelerated stabilization, minimum weekly inspections, and timing of in-stream work to low flow periods or clear weather forecasts

- **Expanded Riparian Buffers (for new structures/expansions only):** from 100 to 230 feet, depending upon slope and soil composition, on all intermittent and perennial streams within project footprint to help further address direct hydrologic impacts to surface waters. See Table 1 for more details.

Table 1

Adjusted Average Optimal Buffer Width Key for HQ Waters (minimum width 100 feet)				
Slopes (%)				
Hydrologic Soil Group	0-5%	5-15%	15-25%	>25%
Ab	100	130	160	190
C	120	150	180	210
D	140	170	200	230

- **Streamside Management Zones (buffer areas for utility projects):** where disturbance and work cannot be avoided, utilize minimally disturbing & selective vegetative clearing methods, restorative planting (not seeding) for major near-stream clearings totaling 1 acre or more, no mulch placement within the streamside management zones, if possible allow small shrub growth
- **Enhanced Buffer Management:** including sheetflow of discharge beyond the minimum 100 foot vegetative buffer or implementing redundant mechanisms in dewatering exercises such as devices in manifold, use of chemical filtration aides, combining two practices such as filter bags with vegetated buffers and silt fencing. Also incorporation of super silt fencing or an equivalent practice when working near streams.
- **Enhanced Temporary Access Waterways Crossings:** including utilizing horizontal directional drilling/jack and bore for all major stream crossings or sensitive crossings, including a frac-out plan; preferential use of partial diversions (where possible); and utilization of temporary access bridges over fords.
- **Special Concern- pH and Water Quality:** For all activities related to in-stream grout placement, either in bags or as fill:
 1. To prevent impacts to in-stream pH, such operations should occur “in-the-dry”.
 2. An emergency treatment plan should be in place to address accidental material releases.
 3. Cure time allotted should reflect chemically stable grout material and should also represent the most conservative time in the expected cure range.
 4. The water quality standard numeric criteria for pH must be met in the ‘first flush’ before diversion is removed.
- **Stormwater Management:** follow the current guidelines within the Maryland Stormwater Design Manual (2009 Revised), including ESD to the MEP or other non-structural practices

8. COMPLIANCE WITH BUILD AMERICA, BUY AMERICA (BABA) ACT

None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public drinking water system or water quality unless all of the *iron, steel, manufactured products, and construction materials* used in the project are produced in the United States (Build America, Buy America (BABA) Act, P.L. 117-58, Secs 70911 - 70917).

The Act requires the following Buy America preference:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) 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.
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. The “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; or aggregate binding agents or additives that is or consists primarily of:
 - non-ferrous metals;
 - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - glass (including optic glass);
 - lumber; or
 - drywall.

To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

Certification Process:

The final manufacturer that delivers the iron, steel, manufactured products, or construction materials to worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. The certification should include the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a responsible party.

Additional documentation such as Step Certification may be needed if the certification is lacking important information. A Step Certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc) of the iron, steel, manufactured products, and construction materials certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin.

Waiver:

A request for waiver may be submitted to MDE. Pursuant to Section 70914(c) of the BABA Act, a waiver may be considered under one of the following categories:

1. Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
2. 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

3. 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”).

MDE may agree with the waiver request and submit it to the Administrator of the Environmental Protection Agency for final approval. Alternatively, MDE may, in its sole discretion, reject the waiver request and elect not to fund the project.

De Minimis Nationwide Waiver:

A De Minimis Nationwide Waiver was issued by EPA, on October 21, 2022, waiving Build America, Buy America requirements for products used in and incorporated into a project that cumulatively comprise no more than five percent of the total project cost.

To be covered under this waiver, the grant/loan recipient must, in consultation with the contractor, take the following actions:

1. Retain relevant documentation (i.e. invoices) as to those items being covered under this waiver in their project files.
 2. Summarize in reports to MDE the types and/or categories of items to which this waiver is applied, including the cost of each category/type. The report must also include the total cost of items covered by the waiver (including installation cost), the total project cost, and the percentage of covered items calculated by cost.
 3. Upon the receipt of the report, MDE, within 30 calendar day of receipt, will accept and file the report, request additional information, or advise the grant/loan recipient that the items cannot be covered under this waiver and a project specific waiver is needed.
 4. If no comments are received by MDE within 30 calendar days, the grant/loan recipient would not need to take any further action, unless more items need to be covered, at which time cumulative summary would need to be submitted to MDE.
9. Borrower agrees to comply with 2 CFR 200.216, which requires that 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).

Within seven (7) days of the bid opening, the apparent low bidder shall sign the form of “Assurances for Compliance with Federal Laws and Regulations” pertaining to non-discrimination in employment, debarment, anti-kickback, contract work hours and safety, compliance with prevailing Federal wage rates under the Davis-Bacon and related acts, Maryland Antidegradation Implementation Procedures, and compliance with Build America, Buy America (BABA) Act. The form is appended herewith in Section I.

ASSURANCES FOR COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS
FOR WATER QUALITY-TREATMENT WORKS AND DRINKING WATER PROJECT

Project Name: _____ Contract No. (if applicable): _____

The contractor is required to comply with the following Federal laws and regulations:

1. Non-discrimination in Employment in accordance with Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity” as amended by Executive Order 11375 of October 13, 1967.
2. Debarment in accordance with the Executive Order 12549 and Executive Order 11246.
3. Anti-kickback in accordance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874).
4. Contract Work Hours and Safety Standards in accordance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330).
5. Compliance with Guidelines Contained in 40 CFR 247-254 (RCRA - Section 6002).
6. The prevailing Federal wage rates as determined by the U.S. Department of Labor under the Davis-Bacon and related acts. The prevailing wage determination category that should be used for this project is Heavy Construction (including water and sewer). Available at: <https://sam.gov/content/wage-determinations>

General Decision Number: _____ Date: _____

7. Maryland Antidegradation Implementation Procedures as promulgated in three regulations: COMAR 26.08.02.04 sets out the policy itself, COMAR 26.08.02.04-1, provides for identification and implementation of Tier II (high quality waters) of the antidegradation policy, and COMAR 26.08.02.04-2 that describes Tier III (Outstanding National Resource Waters or ONRW), the highest quality waters. No Tier III waters have been designated at this time.
8. Use of the iron, steel, manufactured products, and construction materials produced in the United States (Build America, Buy America (BABA) Act, P.L. 117-58, Secs 70911 - 70917).
9. 2 CFR 200.216, which requires that 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).

I do solemnly declare and affirm that I am obligated to comply with the above Federal laws and regulations. It is understood that non-compliance with any one of the above Federal laws and regulations will be sufficient reason to cause termination of the contract.

Contractor

Signed by: _____
Authorized Officer

Date

Name (Print)

Title (Print)

**II. Maryland Department of the Environment
Maryland Water Quality & Drinking Water Revolving Loan Fund Programs
Disadvantaged Business Enterprise Program (DBE)
Guidance for Prime (Construction & A/E) Contractors**

The Maryland Water Quality and Drinking Water Revolving Loan Fund Programs (RLF) receive federal funds from the U.S. Environmental Protection Agency (EPA). The funds are used to provide low interest rate loans to finance water quality and drinking water capital projects. As a condition of federal grant awards, EPA regulations require that loan recipients and sub-recipients (i.e., prime contractors and subcontractors) make a good-faith effort to award a fair share of work to DBEs who are small business enterprises (SBE’s), minority business enterprises (MBE’s) and women’s business enterprises (WBE’s). A/E service consultants who receive loan funds are also considered as prime contractors and must comply with DBE requirements. Additionally, EPA’s DBE rule requires loan recipients and sub-recipients to adhere to the terms and conditions in Appendix A attached hereto.

To ensure compliance with EPA DBE requirements, the MWQFA has developed guidance for both Loan Recipients and Prime Contractors (sub-recipients) to undertake certain good faith efforts to provide opportunities for DBE firms to participate in contracts. EPA regulations require evidence of the demonstration of the six good faith efforts in trying to achieve the DBE participation goals. MDE’s negotiated DBE participation goals with EPA have been approved as of February 6, 2019. The goals below are not a quota and apply to DBE participation only.

<i>Procurement Category</i>	<i>MBE Goal (%)</i>	<i>WBE Goal (%)</i>
Construction	22	16
Equipment	23	11
Services	25	18
Supplies	23	11

Good Faith Efforts: The following good faith efforts apply to the procurement categories involving EPA financial assistance funds (See Appendix B: EPA Good Faith Efforts):

- Step 1:** Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities by placing qualified DBEs on solicitation lists whenever they are potential sources.
- Step 2:** Establishing delivery schedules, where the requirement permits to encourage participation by DBEs. The prime contractor should allow a 30-day minimum advertising period for bidding.
- Step 3:** Dividing total requirements, when economically feasible, into small tasks or quantities, to permit maximum participation of DBEs.
- Step 4:** Encourage contracting with a consortium of DBEs, when a contract is too large for one of these firms to handle individually.
- Step 5:** Using the services and assistance of the Maryland Department of Transportation (MDOT), the United States Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) of the U.S. Department of Commerce (See Appendix C).
- Step 6:** Require each sub-contractor, if subcontracts are to be let, to take the steps 1- 5.

**Please submit all information to:
DBE Coordinator, MWIFA
1800 Washington Blvd., Baltimore MD 21230
Phone: 410-537-3146, FAX: 410-537-3968
<https://mde.maryland.gov/programs/water/WQFA/Pages/mwbe.aspx>**

Disadvantaged Business Enterprise Program (DBE)

Guidance for Prime (Construction & A/E) Contractors

Demonstration of the Six Good Faith Efforts. See **Appendices A & B** for additional bidding instructions and contract administrative provisions.

A: Prime contractors are required to undertake good faith efforts. Steps 1 & 5 can be attained by developing a bidders list of qualified DBE firms that can bid as sub-contractors. The prime contractors should advertise in minority, local and regional newspapers and obtain a bidders list from the loan recipient to supplement their list. The bidders list used during sub-contractor solicitation must be available throughout the project's construction period.

In developing bidders list of qualified DBE firms for participation as sub-contractors in construction, equipment, services, and supplies, the prime contractors should contact and gather information from different resources (See **Appendix C**) such as:

- Loan Recipient
- U.S. Small Business Administration (US-SBA)
- Minority Business Development Agency (MBDA) of the US Department of Commerce
- Maryland Department of Transportation (MDOT)

The DBE bidders lists may be classified with Standard Industrial Classification (SIC) or NAICS codes, should be updated periodically, and should be made available to sub-contractors to solicit additional sub-contractors, if necessary. **The prime contractor is required to keep the bidders list throughout the project's construction period.**

B: Prime contractors are also required to undertake good faith efforts. Steps 2, 3, & 4, can be utilized during the project planning, design and/or pre-bidding phase, to assure that qualified DBE firms have procurement opportunities in construction, equipment, services, and supplies.

To provide procurement opportunities to DBE firms, the Prime Contractor should undertake the following:

- Conduct pre-bid meetings to inform potential bidders/contractors about DBE requirements and provide guidance in undertaking the required good faith efforts.
- Use the bidders list developed in Item A (above) to solicit DBE firms as sub contractors.
- Invite DBE firms, where appropriate, to meetings, conferences, etc., to inform them of procurement opportunities and develop, where possible, reasonable contract and delivery schedules that encourage and facilitate participation by DBEs.
- Determine if a project can be broken down into smaller components/contracts to allow opportunity for DBE firms to bid as sub-contractors.
- For projects broken down into smaller components (e.g., painting, roofing, excavation, pipe laying, etc.) ensure that the delivery schedules are reasonable.
- Encourage DBE firms, where appropriate, to apply as a consortium, or as part of a consortium of DBEs, when a contract is too large for one of these firms to handle individually.

MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard, Suite 515 Baltimore MD 21230-1718

410-537-3119, 1-800-633-6101 https://mde.maryland.gov/programs/water/WQFA/Pages/mission_statement.aspx

Disadvantaged Business Enterprise (DBE) Good Faith Efforts Checklist

To be Completed by Loan Recipient

Project Name:

Procurement Category: Check box for all M/WBE procurement categories being reported under the above referenced project.

Construction Equipment Services Supplies

For each procurement action, please answer the following questions

A: Develop Bidders List of DBE firms

- | | | | |
|----|--|------------------------------|-----------------------------|
| A1 | Did you develop a Bidders List of DBE firms? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| A2 | Did you advertise via eMMA, minority, local/regional papers or Dodge Report? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| A3 | Did you send invitation for bids to DBE trade associations? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| A4 | Did you contact US-SBA/MBDA/MDOT? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| A5 | Did you provide Prime Contractors with Bidders List | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| A6 | Did you provide MDE with Bidders List? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

B: Smaller work components and delivery schedules

- | | | | |
|----|---|------------------------------|-----------------------------|
| B1 | Did DBE firms have opportunities to bid as prime contractors? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| B2 | Did you break down the project, where economically feasible, into smaller components? | | |
| | o For DBE firms to bid as prime contractor | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| | o For DBE firms to bid as sub-contractors | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| B3 | Do project components have reasonable delivery schedules? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| B4 | Did you allow a reasonable time for DBEs to bid (e.g., min. of 30 days)? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| B5 | Did you encourage DBEs to bid as a consortium due to project size? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

C: Require prime contractor to Undertake Good Faith Efforts

- | | | | |
|----|--|------------------------------|-----------------------------|
| C1 | Did you include the “MDE Insert” in the bidding documents? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| C2 | Did you require the prime contractors to apply the good faith efforts? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| C3 | Is DBE a “responsiveness” criteria in bid documents? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

D: Solicitation Summary of DBE firms (Use Attachment 1 for each prime contract)

- | | | | |
|----|--|------------------------------|-----------------------------|
| D1 | Did you use the Bidders List to solicit prime contractors? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| D2 | Did DBE firms bid as prime contractors? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| D3 | Did you select any DBE firms as prime contractor? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| D4 | Is the prime contractor using any subcontractors? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Loan recipient must also complete Attachment 1 and have prime contractor list each DBE subcontractor on WIFA 6100 Form. In addition, WIFA 6100 Form must be submitted with bid proposal after completion by prime contractor.

Supporting Documentation

In support of the actions taken in items A, B, C and D (above), all borrowers and prime contractors must attach this checklist along with supporting documentation for “Yes” answers and an explanation for “No” answers. Examples of supporting documentation include: (i) Bidders List of DBE firms; (ii) list of sub-contract work elements possible under the prime contract; (iii) proof of contact with DBE firms as potential prime contractors (copies of invitations for bids/RFP, contact letters, faxes and telephone call sheets, etc.; (iv) copies of all procurement advertisements; and (v) list of all prime contractors that submitted bids/RFP.

Loan Recipient’s Name and Title

Loan Recipient Official’s Signature/ Date

Contact Phone # _____

Attachment 1

MARYLAND DEPARTMENT OF THE ENVIRONMENT
SOLICITATION OF FIRMS
Loan Recipient must complete one form for each prime (construction & A/E) contract

Project Name:

Total Contract Amount (Prime Construction Contractor): \$

Please answer the following questions for each prime contract

Procurement Category: Check only one procurement category for each prime contract being reported under the above referenced project. Construction Equipment Services Supplies

Summary of Prime Contractors Solicited

- 1 Number of firms solicited (attach list/documentation): _____
- 2 Number of firms that responded (attach documentation): _____
- 3 Number of DBE firms that responded (attach documentation): _____

Details of Selected Firm

4 Name of Firm:

5 Address:

6 Contact Person (Name and Phone):

7 Total amount of Contract \$

8 Is the firm a Minority Business Enterprise? (MBE) Yes No

9 Is the firm a Women Business Enterprise? (WBE) Yes No

10 If the response to question 8 or 9 is Yes, please complete the following:

- M/WBE Certification Number: _____
- Certification Date: _____
- Expiration Date (if applicable): _____
- Certifying Agency: _____

Please submit all information to:
DBE Coordinator, MWIFA
1800 Washington Blvd., Baltimore MD 21230
Phone: 410-537-3146, FAX: 410-537-3968

MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard Suite 515 Baltimore MD 21230-1718

410 537 3119 1-800-633-6101

<https://mde.maryland.gov/programs/water/WQFA/Pages/mwbe.aspx>

**Disadvantaged Business Enterprise (DBE) Good Faith Efforts Checklist
To be completed by Prime (Construction & A/E) Contractor**

Project Name:

Procurement Category: Check box for all M/WBE procurement categories being reported under the above referenced project. **Construction** **Equipment** **Services** **Supplies**

For each procurement action, please answer the following questions

A: Develop Bidders List of DBE firms

- A1 Did you develop a Bidders List of DBE firms? Yes No
- A2 Did you advertise via eMMA, minority, local/regional papers or Dodge Report? Yes No
- A3 Did you send invitation for bids to DBE trade associations? Yes No
- A4 Did you contact US-SBA/MBDA/MDOT? Yes No
- A5 Did you receive Bidders List from Loan Recipient? Yes No
- A6 Did you provide MDE with Bidders List? Yes No

B: Smaller work components and delivery schedules

- B1 Did DBE firms have opportunities to bid as subcontractors? Yes No
- B2 Did you break down the project, where economically feasible, into smaller components for DBE firms to bid as subcontractors? Yes No
- B3 Do project components have reasonable delivery schedules? Yes No
- B4 Did you allow a reasonable time for DBEs to bid? Yes No
- B5 Did you encourage DBEs to bid as a consortium due to project size? Yes No

C: Solicitation Summary of DBE firms (Prime Contractor must fill WIFA 6100 Form)

- C1 Did you use the Bidders List to solicit subcontractors? Yes No
- C2 Did DBE firms bid as subcontractors (provide list, work type, & price)? Yes No
- C3 Did you select any DBE firms as subcontractor? Yes No
- C4 Is the subcontractor using any additional subcontractors? Yes No

Prime contractor must provide to loan recipient: (1) list of ALL subcontractors (DBE and non-DBE) with type of work and estimated dollar amounts; (2) completed WIFA 6100 Form.

Supporting Documentation

In support of the actions taken in items A, B, and C, (above), all prime contractors must attach this checklist along with supporting documentation for “Yes” answers and an explanation for “No” answers. Examples of supporting documentation include: (i) Bidders List of DBE firms; (ii) list of sub-contract work elements possible under the prime contract; (iii) proof of contact with DBE firms as potential sub contractors (copies of invitations for bids/RFP, contact letters, faxes and telephone call sheets, etc.; (iv) copies of all procurement advertisements; and, (v) list of all sub contractors that submitted bids/RFP.

Prime Contractor’s Name and Title

Prime Contractor Official’s Signature/ Date

Contact Phone # _____

**Maryland Department of the Environment -- Water Infrastructure Financing Administration
Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form
(MDE WIFA 6100 Form)**

This form is intended to capture the prime contractor’s actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

PRIME CONTRACTOR NAME	PROJECT NAME
CONTACT NAME	CONTACT PHONE
ADDRESS	

Please list all DBE subcontractors you plan to utilize on this project. Use additional sheets as necessary.

SUBCONTRACTOR NAME	COMPANY ADDRESS	EST. DOLLAR AMOUNT TO BE SUBCONTRACTED	CURRENTLY DBE CERTIFIED? YES/NO

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware that in the event of the replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

PRIME CONTRACTOR SIGNATURE	TITLE
PRINT FULL NAME	DATE

¹ A DBE is a Disadvantaged, Minority or Woman Business Enterprise that has been certified by any entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205.

² Subcontractor is defined as a company, firm, joint venture or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

APPENDIX A: EPA DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

EPA's Disadvantaged Business Enterprise Program rule applies to contract procurement actions funded in part by EPA assistance agreements awarded after May 27, 2008. The rule is found at Federal regulation Title 40, Part 33. Specific responsibilities are highlighted below.

Loan Recipient Responsibilities:

- Include MDE's DBE guidance in each contract with a primary contractor, *MDE, October 2008*.
- Employ the six Good Faith Efforts during prime contractor procurement (§ 33.301).
- Require prime contractor to comply with the following prime contractor requirements of Title 40 Part 33:
 - a) To employ the six Good Faith Efforts steps in paragraphs (a) through (e) of § 33.301 if the prime contractor awards subcontracts (§ 33.301(f)).
 - b) To pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient (§ 33.302(a)).
 - c) To notify recipient in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor (§ 33.302(b)).
 - d) To employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason. (§ 33.302(c)).
 - e) To employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of Part 33. (§33.302(d)).
 - f) Provide grant recipient DBE participation achievements with bid proposal
- Maintain records documenting its compliance with the requirements of Title 40 Part 33, including BIDDERS LIST and documentation of its, and its prime contractors', good faith efforts (§ 33.501(a)).

Prime Contractor Responsibilities:

- Employ the six Good Faith Efforts steps in paragraphs (a) through (e) of § 33.301 if the prime contractor awards subcontracts (§ 33.301(f)).
- Pay subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient (§ 33.302(a)).
- Notify the recipient in writing prior to prime contractor termination of a DBE subcontractor for convenience (§ 33.302(b)).
- Employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor after a DBE subcontractor fails to complete work under the subcontract for any reason. (§ 33.302(c)).

- Employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of Part 33. (§33.302(d)).
- Provide loan recipient DBE participation achievements with bid proposal: (1) list of ALL subcontractors (DBE and non-DBE) with type of work and estimated dollar amounts; (2) completed WIFA 6100 Form.
- Maintain records documenting its compliance with the requirements of Title 40 Part 33, including BIDDERS LIST documentation of its, and its prime contractors', good faith efforts (§ 33.501(a)).

APPENDIX B: TITLE 40 PART 33 SUBPART C—GOOD FAITH EFFORTS

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a loan recipient or its prime contractor, for construction, equipment, services, and supplies.

§ 33.106 What assurances must EPA financial assistance recipients obtain from their contractors?

The recipient must ensure that each procurement contract it awards contains the term and condition specified in Appendix A to this part concerning compliance with the requirements of this part.

§ 33.206 Is there a list of certified MBEs and WBEs?

EPA OSDBU will maintain a list of certified MBEs and WBEs on EPA OSDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA OSDBU. The Maryland Department of Transportation will also have a bidders list.

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

- (a) Ensure DBEs are made aware of contracting opportunities fully 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.
- (b) Make information on forthcoming opportunities available to DBEs, arrange periods 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.
- (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.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

- (a) Loan recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
- (b) Its prime contractor must notify loan recipient in writing prior to any termination of a DBE subcontractor for convenience by the prime contractor.
- (c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.
- (d) A recipient must require its prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.
- (e) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the Appendix A concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.410 Can a recipient be penalized for failing to meet its fair share objectives?

A recipient cannot be penalized, or treated by EPA as being in noncompliance with this subpart, solely because its MBE or WBE participation does not meet its applicable fair share objective. However, EPA may take remedial action under § 33.105 for a recipient's failure to comply with other provisions of this part, including, but not limited to, the good faith efforts requirements described in subpart C of this part.

Source: Federal Requirements and Contract Provisions for Special Appropriation Act Projects, US Environmental Protection Agency, Region III, June 2008

**APPENDIX C: RESOURCE LISTING AND CONTACT INFORMATION
FOR UTILIZATION OF MINORITY AND WOMEN’S BUSINESS ENTERPRISES**

Resource Listing	Contact	Website if applicable
<p>State of Maryland Governor’s Office of Minority Affairs The mission of the Governor's Office of Minority Affairs (GOMA) is facilitating minority business enterprise activities through coordinating and promoting government programs aimed at strengthening and preserving the state’s minority and women owned businesses.</p>	<p>Governor's Office of Minority Affairs Suite 1502 6 Saint Paul Street Baltimore MD 21202 767-8232 1-(877) 558-0998 f-(410) 333-7568 info@mdminoritybusiness.com</p>	<p>http://www.oma.state.md.us/</p>
<p>eMARYLAND MARKETPLACE ADVANTAGE The official online procurement tool for the state of Maryland.</p>	<p>Website</p>	<p>https://emma.maryland.gov/page.aspx/en/usr/login?ReturnUrl=%2fpage.aspx%2fen%2fbuy%2fhomepage</p>
<p>U.S. Small Business Administration (SBA) In addition to the national office, the SBA has local district and regional offices to assist small businesses in contracting with the public and private sector.</p>	<p>Website</p>	<p>www.sba.gov/category/navigation-structure/contracting/working-with-government</p>
<p>CCR/Pro-Net is an extensive database that combines the SBA’s Pro-Net database and the DOD’s Central Contractor Registration database of small businesses.</p>	<p>CCR Assistance Center 888-227-2423 269-961-5757 DSN: 661-5757</p>	<p>www.ccr.gov/ Select “Dynamic Small Business</p>
<p>U. S. Small Business Administration (SBA) - MD. District Office</p>	<p>City Crescent Bld. 6th Floor 10 South Howard St. Baltimore MD 21201 Phone: 410 962-6195</p>	<p>www.sba.gov/tools/local-assistance/districtoffices</p>
<p>Minority Business Development Administration (MBDA): The MBDA is an agency within the U.S. Dept. of Commerce, created to foster the development and growth of minority businesses in the U.S. and coordinates resources in the public and private sectors to help MBE’s. Recipients and bidders should contact the centers and provide notices of contracting opportunities. Also, see the Phoenix database, which matches minority companies with business opportunities.</p>	<p>1401 Constitution Ave NW Washington, D.C. 20230 Email: support@mbda.gov 1.888.324.1551</p>	<p>www.mbda.gov/</p>
<p>Standard Industrial Classification Codes (SIC) or North American Industry Classification System (NAICS) codes visit the website.</p>	<p>Website</p>	<p>www.sba.gov/content/north-american-industry-classification-system-codes-and-small-business-size-standards</p>

<p>Maryland Department of Transportation (MDOT) and the Minority/Disadvantaged Business Enterprise (MDOT – MBE/DBE). Loan recipients and bidders may locate qualified M/WBE's through the MBE/WBE Directory.</p>	<p>Office Address 7201 Corporate Drive Hanover, MD 21076</p> <p>Or</p> <p>Mailing Address: P.O. Box 548 Hanover, MD 21076</p>	<p>www.mdot.maryland.gov/Office%20of%20Minority%20Business%20Enterprise/HomePage.html</p> <p>http://mbe.mdot.state.md.us/directory/ Click on "Proceed to Directory. Select any combination of the fields to identify M/WBE's for the specific project opportunities.</p>
<p>U.S. EPA Office of Small, Disadvantaged Business Utilization (OSDBU) – OSDBU's mission includes "fostering opportunities for partnerships, contracts, subagreements, and grants for small and socioeconomically disadvantaged concerns". One of the resources to assist prime contractors is a listing of small and disadvantaged businesses (a vendor profile system) registered with OSDBU.</p>	<p>US.EPA Office of Small Programs 1200 Pennsylvania Avenue NW Mail Code 1230T Washington, D.C. 20460</p>	<p>http://cfpub.epa.gov/sbyps/ http://www.epa.gov/osdbu/ Select "search the OSDBU Registry" Click on the search criteria of interest (ethnicity, size, SIC, etc.)</p>
<p>National Black Chamber of Commerce</p>	<p>1350 Connecticut Ave. N.W. Suite 405 Washington D.C. 20036 Phone: 202 466-6888 Fax: 202 466-4918</p>	<p>www.nationalbcc.org</p> <p>Email: info@nationalbcc.org</p>
<p>Virginia Hispanic Chamber of Commerce (Northern Va.)</p>	<p>8300 Boone Blvd., 4TH Floor Vienna, VA 22182 Phone: 804.378.4099 Fax: 703 893-1269</p>	<p>www.vahcc.com</p>
<p>U.S. Hispanic Chamber of Commerce</p>	<p>2175 K Street NW Suite 100 Washington, D.C. 20037</p>	<p>www.usfcc.com</p>
<p>National Association of Minority Contractors (NAMC)</p>	<p>666 11 Street N.W. Suite 520 Washington D.C. 20001 Phone: 202 347-8250</p>	<p>www.namcnational.org/</p>
<p>Maryland/Washington Minority Contractors (MWMCA)</p>	<p>1107 North Point Blvd, Suite 227 Baltimore, MD 21224 410.282.6101 410.282.6102 –fax</p>	<p>www.mwmca.org</p>
<p>National Association of Women's Business Owners (NAWBO) – National</p>	<p>1760 Old Meadow Rd. Ste 500 McLean VA 22102 Phone: 800.556.NAWBO 703.506.3268 703.506.3266-fax</p>	<p>www.nawbo.org</p>

NAWBO Baltimore Regional Chapter	4404 Silverbrook Lane, Suite E-204 Owings Mills MD 21117 Phone: 410 876-0502 410.654.9734-fax	www.nawbomaryland.org Email: info@nawbomaryland.org
NAWBO Delaware Chapter	P.O. Box 4657 Greenville Station Greenville, DE 19807-4657 Phone: 302 355.9945	www.nawbodelaware.org Email: info@nawbodelaware.org
MD/DC Minority Supplier Development Council (MSDC)	10770 Columbia Pike Lower Level, Suite L100 Silver Spring MD 20901 Phone: 301 592-6710 Fax: 301 592-6704	http://mddccouncil.org/
National Minority Supplier Development Council, Inc. (NMSDC)	1040 Avenue of the Americas, 2 nd Floor New York, New York 10018 Phone: 212 944-2430 212.719.9611-fax	www.nmsdcus.org/
UIDA Business Services is a Native American Procurement and Technical Assistance Center-maintains a comprehensive database of Native American owned firms	86 South Cobb Drive, MZ:0510 Marietta, GA 30063-0510 Phone, 770 494-0431 770.494.1236-fax or <u>Northeast Region</u> 2340 Dulles Corner Blvd Mail Stop: 1n01 Herndon, VA 20171 Phone: 703.561.3120 703.561.3124-fax	
Diversity Business (A multi-cultural online resource)	200 Pequot Avenue Southport, CT 06890 Phone 203.255.8966 203.255.8501-fax	www.diversitybusiness.com/
National Association of Women in Construction	327 S. Adams Street Fort Worth, TX 76104 Phone: 1-800-552-3506 Phone: 817.877.5551 817.877.0324-fax	www.nawic.org/

III. PRESIDENTIAL DOCUMENTS

PRESIDENTIAL EXECUTIVE ORDER 13202 OF FEBRUARY 17, 2001 and PRESIDENTIAL EXECUTIVE ORDER 13208 OF APRIL 8, 2001 are appended as Attachment II.

IV SEVERABILITY

In the event any provision of the within and foregoing Requirement, including any attachment thereto, shall be held illegal, invalid, unconstitutional or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

V. PROJECT SIGNS

- 1. The prime contractor shall provide and erect a construction site sign as described below at a prominent location at each construction site.**
- 2. For projects funded in whole or in part by the Bipartisan Infrastructure Law (BIL), the prime contractor shall provide and erect an additional construction site sign at a prominent location at each construction site using the Investing in America Signage guidelines at <https://www.epa.gov/invest/investing-america-signage>.**

The owner shall approve the site for the signs' erection. The signs shall be prepared in accordance with detailed instructions provided by Maryland Department of the Environment (MDE).

It shall be the responsibility of the contractor to protect and maintain the signs in good condition throughout the life of the project.

Attachment II

Presidential Documents**Executive Order 13202 of February 17, 2001****Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects**

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 *et seq.*, and in order to (1) promote and ensure open competition on Federal and federally funded or assisted construction projects; (2) maintain Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects; (3) reduce construction costs to the Federal Government and to the taxpayers; (4) expand job opportunities, especially for small and disadvantaged businesses; and (5) prevent discrimination against Government contractors or their employees based upon labor affiliation or lack thereof; thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects, it is hereby ordered that:

Section 1. To the extent permitted by law, any executive agency awarding any construction contract after the date of this order, or obligating funds pursuant to such a contract, shall ensure that neither the awarding Government authority nor any construction manager acting on behalf of the Government shall, in its bid specifications, project agreements, or other controlling documents:

(a) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or

(b) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

(c) Nothing in this section shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subsection (a).

Sec. 2. Contracts awarded before the date of this order, and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this order.

Sec. 3. To the extent permitted by law, any executive agency issuing grants, providing financial assistance, or entering into cooperative agreements for construction projects, shall ensure that neither the bid specifications, project agreements, nor other controlling documents for construction contracts awarded after the date of this order by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on their behalf, shall contain any of the requirements or prohibitions set forth in section 1(a) or (b) of this order.

Sec. 4. In the event that an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of the foregoing, performs in a manner contrary to the provisions of sections 1 or 3 of this order, the executive agency awarding the contract, grant, or assistance shall take such action, consistent with law and regulation, as the agency determines may be appropriate.

Sec. 5. (a) The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of any or all of the provisions of sections 1 and 3 of this order, if the agency head finds that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(b) A finding of "special circumstances" under section 5(a) may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

Sec. 6. (a) The term "construction contract" as used in this order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The term "executive agency" as used in this order shall have the same meaning it has in 5 U.S.C. 105, excluding the General Accounting Office.

(c) The term "labor organization" as used in this order shall have the same meaning it has in 42 U.S.C. 2000e(d).

Sec. 7. With respect to Federal contracts, within 60 days of the issuance of this order, the Federal Acquisition Regulatory Council shall take whatever action is required to amend the Federal Acquisition Regulation in order to implement the provisions of this order.

Sec. 8. As it relates to project agreements, Executive Order 12836 of February 1, 1993, which, among other things, revoked Executive Order 12818 of October 23, 1992, is revoked.

Sec. 9. The Presidential Memorandum of June 5, 1997, entitled "Use of Project Labor Agreements for Federal Construction Projects" (the "Memorandum"), is also revoked.

Sec. 10. The heads of executive departments and agencies shall revoke expeditiously any orders, rules, regulations, guidelines, or policies implementing or enforcing the Memorandum or Executive Order 12836 of February 1, 1993, as it relates to project agreements, to the extent consistent with law.

Sec. 11. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
February 17, 2001

Federal Register

Vol. 66, No. 70

Wednesday, April 11, 2001

Presidential Documents**Title 3—****Executive Order 13208 of April 8, 2001****The President****Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 *et seq.*, and in order to (1) promote and ensure open competition on Federal and federally funded or assisted construction projects; (2) maintain Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects; (3) reduce construction costs to the Federal Government and to the tax payers; (4) expand job opportunities, especially for small and disadvantaged businesses; (5) prevent discrimination against Government contractors or their employees based upon labor affiliation or lack thereof; and (6) prevent the inefficiency that may result from the disruption of a previously established contractual relationship in particular cases; thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects, it is hereby ordered that Executive Order 13202 of February 17, 2001, is amended by adding to section 5 of that order the following new subsection:

- (c) The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of the foregoing, may exempt a particular project from the requirements of any or all of the provisions of sections 1 and 3 of this order, if the agency head finds: (i) that the awarding authority, recipient of grants or financial assistance, party to a cooperative agreement, or construction manager acting on behalf of the foregoing had issued or was a party to, as of the date of this order, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in sections 1(a) or (b) of this order; and (ii) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of this order.



THE WHITE HOUSE,
April 6, 2001.

[FR Doc. 01-9086
Filed 4-10-01; 8:45 am]
Billing code 3195-01-P

**THE CONSTRUCTION SITE SIGN FOR PROJECTS FINANCIALLY
SUPPORTED BY STATE REVOLVING LOAN FUNDS
AND OTHER FUND SOURCES**

White Background

Light Blue Scroll

Black Letters

PROJECT TITLE
Project Type (by MDE)

**A PROJECT FINANCIALLY SUPPORTED BY THE
STATE OF MARYLAND AND
U.S. ENVIRONMENTAL PROTECTION AGENCY**

**UNDER THE DIRECTION
OF THE
MARYLAND DEPARTMENT
OF THE ENVIRONMENT**

**APPROVED BY THE
MARYLAND BOARD
OF PUBLIC WORKS**

Wes Moore, Governor
Brooke E. Lierman, Comptroller
Dereck E. Davis, Treasurer



Total Project Cost: _____
State Loan: _____
State Grant: _____
Federal Funds: _____
Other Funds: _____
Local Funds: _____



4'

8'

Project Type:

Insert the selected item under the project title:

- Green Infrastructure Project - Constructing environmentally beneficial “green” infrastructure
- Wetlands - Creating wetlands to improve water quality and create wildlife habitat
- Stream restoration - Restoring streams to improve water quality and create wildlife habitat
- Living shorelines - Turning shorelines into living habitats to improve water quality and to reduce erosion and flooding
- Septic connections - Connecting homes to public sewer to eliminate failing septic systems, improve water quality, and protect public health
- Drinking water extension - Connecting homes to public water supply to improve drinking water quality
- Stormwater project - Reducing stormwater runoff to improve water quality, protect public health, and reduce flooding
- CSOs, Sewer project - Preventing sewer overflows to improve water quality and protect public health
- ENR - Reducing pollution to improve Maryland waterways and the Chesapeake Bay and to protect public health

FEDERAL WAGE RATE REQUIREMENTS UNDER THE DAVIS-BACON AND RELATED ACTS

Prevailing Wage Requirements for CWSRF Capitalization Grants

The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by Title VI of the Federal Water Pollution Control Act, also known as the CWA, (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under the Clean Water Act, Section 513." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

Preamble

With respect to the CWSRF program, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients 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 sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section I-3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

ATTACHMENT 1

I. Requirements Under Title VI of the Clean Water Act (CWA) For Sub recipients 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 Title VI of the CWA, with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a state recipient needs guidance, the recipient may contact EPA's Office of Grants and Debarment for guidance at EPA_Grants_Info@epa.gov. The recipient or sub recipient may also obtain additional guidance from the U.S. Department of Labor's (DOL) website at <http://www.dol.gov/whd/>.

1. Applicability of the DB prevailing wage requirements.

Under Title VI of the CWA, 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. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients 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.

- (i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov> weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients 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 sub recipients 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 sub recipient.
- (ii) If the sub recipient 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 sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient 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 sub recipient 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 sub recipient shall insert the appropriate DOL wage determination from <https://sam.gov> into the ordering instrument.

(c) Sub recipients 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 sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient 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 sub recipient 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 sub recipient'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 sub recipient(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 work under the CWSRF - 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 Title VI of the Clean Water 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 DB 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 DB 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. Sub recipients may obtain wage determinations from DOL's website, <https://sam.gov/>.

(ii)(A) The sub recipient(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 sub recipient(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 sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The DOL 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 sub recipient(s) do not agree on the proposed 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 sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar), which indicates the State award official's disagreement and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The DOL 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 DB 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. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of DOL, 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 DB 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 EPA 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 DB 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 DB 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 sub recipient, 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 sub recipient 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 website at <http://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 sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the DOL 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 sub recipient(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 DOL, 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 EPA 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 DOL, 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 DOL, 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 DB and Related Act requirements. All rulings and interpretations of the DB 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 DOL 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 sub recipient(s), State, EPA, DOL, 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 DB 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 DB 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 sub recipient 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 \$29 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 sub recipient, upon written request of the EPA Award Official or an authorized representative of the DOL, 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 (a)(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 Sub recipient 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 Sub recipient 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 EPA and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient 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)(3), all interviews must be conducted in confidence. The sub recipient 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 sub recipient 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. Sub recipients 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. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient 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 sub recipient shall establish and follow a spot check 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. At a minimum, if practicable, the sub recipient 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. Sub recipients 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 sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractor's and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S DOL 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) Sub recipients 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>.

II. Requirements Under Title VI of the CWA - For Sub recipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under Title VI of the CWA with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a state recipient needs guidance, the recipient may contact EPA's Office of Grants and Debarment for guidance at EPA_Grants_Info@epa.gov. The recipient or sub recipient may also obtain additional guidance from DOL's website at <http://www.dol.gov/whd/>.

Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

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

Under Title VI of the CWA, 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. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients must obtain proposed wage determinations for specific localities at <https://sam.gov/>. After the sub recipient obtains its proposed wage determination, it must submit the wage determination to Ms. Bambi Turner, bambi.turner1@maryland.gov, (410) 537-3146, for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients 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.

- (i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients 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 sub recipients 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 sub recipient.
- (ii) If the sub recipient 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 sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient 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.

(c) If the sub recipient 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 sub recipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(d) Sub recipients 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.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient 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 sub recipient 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 sub recipient'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 sub recipient(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 work under the CWSRF - 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 Title VI of the CWA, 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 DB 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 DB 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.

Sub recipients may obtain wage determinations from the DOL's website, <https://sam.gov/>.

(ii)(A) The sub recipient(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 sub recipient(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 sub recipient(s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The DOL 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 sub recipient(s) do not agree on the proposed 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 sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar), which

indicates the State award official's disagreement and supporting materials to WHD-CBACONFIRMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The DOL 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 DB 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. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the DOL, 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 DB 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 EPA 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 DB 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 DB 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 sub recipient, 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 sub recipient 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 website at <http://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 sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the DOL 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 sub recipient(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 DOL, 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 EPA 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 DOL, 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 subcontractors 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 DOL, 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 DB and Related Act requirements. All rulings and interpretations of the DB 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 DOL 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 Sub recipient(s), State, EPA, DOL, 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 DB 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 DB 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 sub recipient 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 (b)(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 (b)(1) of this section, in the sum of \$29 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the DOL, 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 (a)(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.

(c) 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 Sub recipient 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 Sub recipient 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 EPA and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient 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)(3), all interviews must be conducted in confidence. The sub recipient 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 sub recipient 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. Sub recipients 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. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The sub recipient 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 sub recipient shall establish and follow a spot check 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. At a minimum, if practicable the sub recipient 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. Sub recipients 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 sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub recipient 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 DOL 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) Sub recipients 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>.

Prevailing Wage Requirements for DWSRF Capitalization Grants

The recipient agrees to include in all agreements to provide assistance for any construction project carried out in whole or in part with such assistance made available by a drinking water revolving loan fund as authorized by Section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12), a term and condition requiring compliance with the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C.300j-9(e)) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for any construction project carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of \$2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

Preamble

With respect to the DWSRF program, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients 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 sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section I-3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

ATTACHMENT 1

I. Requirements Under Section 1452(a)(5) of the Safe Drinking Water Act For Sub recipients 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 with respect to State recipients and sub

recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact EPA's Office of Grants and Debarment for guidance at EPA_Grants_Info@epa.gov. The recipient or sub recipient may also obtain additional guidance from the U.S. Department of Labor's (DOL) website at <http://www.dol.gov/whd/>

1. Applicability of the DB prevailing wage requirements.

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 sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients 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.

- (i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov/> weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients 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 sub recipients 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 sub recipient.
- (ii) If the sub recipient 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 sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient 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 sub recipient 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 sub recipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(c) Sub recipients 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 sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient 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 sub recipient 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 sub recipient'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 sub recipient(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 work under the CWSRF or a construction project carried out in whole or in part with assistance made available by the DWSRF, and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the Safe Drinking Water Act, Section 1452(a)(5), 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 DB 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 DB 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.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's website, <https://sam.gov/>.

(ii)(A) The sub recipient(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 sub recipient(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 sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The Department of Labor 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 sub recipient(s) do not agree on the proposed 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 sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) which indicates the State award official's disagreement and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The Department of Labor 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 DB Act have been met. The Secretary of Labor may require the contractor to set aside assets in a separate account for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(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 DB 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 EPA 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 DB 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 DB 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 sub recipient, 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 sub recipient 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 website at <http://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 sub recipient(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 sub recipient(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 EPA 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 DB and Related Act requirements. All rulings and interpretations of the DB 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 sub recipient(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 DB 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 DB 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 sub recipient 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 \$29 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 sub recipient, 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 (a)(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 Sub recipient 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 Sub recipient 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 EPA 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 sub recipient 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)(3), all interviews must be conducted in confidence. The sub recipient 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 sub recipient 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. Sub recipients 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. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The sub recipient 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 sub recipient shall establish and follow a spot check 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. At a minimum, if practicable, the sub recipient 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. Sub recipients 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 sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractor's and subcontractor's 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) Sub recipients 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>.

II. Requirements Under Section 1452(a)(5) of the Safe Drinking Water Act For Sub recipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the Safe Drinking Water Act, Section 1452(a)(5) with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact EPA's Office of Grants and Debarment for guidance at EPA_Grants_Info@epa.gov The recipient or sub recipient may also obtain additional guidance from DOL's website at <http://www.dol.gov/whd/>

Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

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

Under the Safe Drinking Water Act, Section 1452(a)(5), 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 sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients must obtain proposed wage determinations for specific localities at <https://sam.gov/>. After the sub recipient obtains its proposed wage determination, it must submit the wage determination to Ms. Bambi Turner, bambi.turner1@maryland.gov, (410) 537-3146, for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients 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.

- (i) While the solicitation remains open, the sub recipient shall monitor <https://sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients 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 sub recipients 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 sub recipient.
- (ii) If the sub recipient 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 sub recipient, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient 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.

(c) If the sub recipient 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 sub recipient shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

(d) Sub recipients 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.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient 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 sub recipient 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 sub recipient'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 sub recipient(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 work under the CWSRF or a construction project carried out in whole or in part with assistance made available by the DWSRF, and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the Safe Drinking Water Act, Section 1452(a)(5), 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 DB 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 DB 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.

Sub recipients may obtain wage determinations from DOL's website, <https://sam.gov/>.

(ii)(A) The sub recipient(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 sub recipient(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 sub recipient(s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently. The Department of Labor 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 sub recipient(s) do not agree on the proposed 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 sub recipient (s) to the State award official. The State award official will transmit a completed conformance request form (SF-1444 or similar) which indicates the State award official's disagreement and supporting materials to WHD-CBACONFORMANCE_INCOMING@dol.gov, and to the EPA DB Regional Coordinator concurrently. The Department of Labor 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 DB Act have been met. The Secretary of Labor may require the contractor to set aside assets in a separate account for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(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 DB 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 EPA 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 DB 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 DB 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 sub recipient, 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 sub recipient 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 website at <http://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 sub recipient(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 sub recipient(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 EPA 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 DOL, 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 subcontractors 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 DOL, 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 DB and Related Act requirements. All rulings and interpretations of the DB 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 Sub recipient(s), State, EPA, DOL, 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 DB 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 DB 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 sub recipient 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 (b)(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 (b)(1) of this section, in the sum of \$29 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 (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, 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 (a)(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 Sub recipient 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 Sub recipient 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 EPA 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 sub recipient 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)(3), all interviews must be conducted in confidence. The sub recipient 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 sub recipient 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. Sub recipients 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. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c). The sub recipient 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 sub recipient shall establish and follow a spot check 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. At a minimum, if practicable the sub recipient 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. Sub recipients 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 sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d). The sub recipient 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) Sub recipients 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>.