

**D. FEDERAL PROVISIONS, RULES
REGULATIONS AND FORMS**

**CWSRF/DWSRF
2016**

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* Denotes items to be completed by successful bidder and incorporated in executed contract

Pertinent Federal Acts

The Contractor shall comply with the regulations of the Davis-Bacon Act, Executive Order 11246 (Standard Federal Equal Employment Opportunity), the Contract Work Hours Standards Act, the Consolidated Appropriations Act, 2014, the Consolidated and Further Continuing Appropriations Act, 2015, the Consolidated Appropriations Act 2016, the Water Resources Reform and Development Act of 2014 (Use American Iron and Steel), and Title X of the Clean Air Act Amendments of 1990 (Disadvantage Business Enterprise), and any amendments or modifications thereto, and shall cause appropriate provisions to be inserted in subcontracts to ensure compliance therewith by all Subcontractors subject thereto.

Forms

The following forms are to be used in conjunction with these federal provisions (copies are attached):

- A. Contractor's Payroll Certification and American Iron and Steel Certification
- B. Notice to Unions or Other Organizations of Workers (Nondiscrimination in Employment)
- C. Certification of Non-segregated Facilities
- D. DBE Subcontractor Participation Form (EPA Form 6100-2)
- E. DBE Subcontractor Performance Form (EPA Form 6100-3)
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- K. AIS Certification (Substantial Completion)

Links for more Information

- U.S.DOL Prevailing Wage Resources Book - <http://www.dol.gov/whd/recovery/pwrb/toc.htm>
- U.S. DOL General Wage Determinations - <http://www.wdol.gov>
- U.S. DOL Certified Payroll Form WH-347 - <http://www.dol.gov/whd/forms/wh347.pdf>
- WH-1321 "Employee Rights Under the Davis-Bacon Act" poster - <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
- EPA's DBE Resources - http://www.epa.gov/osbp/dbe_team.htm
- NHDOT Certified Disadvantaged Business Enterprise (DBE) Directory- <http://www.nh.gov/dot/org/administration/ofc/index.htm> [click on "Complete Certified NH DBE Directory"]
- American Iron and Steel (AIS) Requirement, <http://www.epa.gov/sites/production/files/2015-09/documents/ais-final-guidance-3-20-14.pdf>
- AIS Q & A Part 1, Valves & Hydrants - http://www.epa.gov/sites/production/files/2015-09/documents/ais-qanda-part-1-valves-and-hydrants-final_0.pdf
- AIS Q & A Part 2, Products, Projects and Process - http://www.epa.gov/sites/production/files/2015-09/documents/ais-qanda-part-2_sept102014_final_0.pdf
- AIS Q & A Part 3, Plans and specification dates, Refinancing & Coatings- http://www.epa.gov/sites/production/files/2015-09/documents/ais-qanda-part-3-mar-2015_final-for-posting_0.pdf
- AIS Approved National Waivers - <http://www.epa.gov/cwsrf/american-iron-and-steel-requirement-approved-national-waivers-0>

**CONTRACTOR'S PAYROLL CERTIFICATION
AND
AMERICAN IRON AND STEEL CERTIFICATION**

(To be submitted with each application for payment)

Name of Contractor: _____

Address of Contractor: _____

Project Name: _____

Project Number: _____

Project Location: _____

Payment Application No.: _____

Payment App. End Date: _____

I hereby certify that all of the contract requirements as specified under the Labor Standards Provision for Federal and Federally Assisted Contracts have been complied with by the above named Contractor, and by each Subcontractor employing Laborers or Mechanics at the site of the work, or there is an honest dispute with respect to the required provisions.

I hereby certify that the "American Iron and Steel" provisions of P.L. 113-76, "Consolidated Appropriation Act, 2014", the "Consolidated and Further Continuing Appropriations Act, 2015", P.L. 114-113, the "Consolidated Appropriations Act, 2016"; and/or the "Water Resources Reform and Development Act of 2014" ("Acts") as applicable, have been met, and that all iron and steel used in the project named above have been produced in the United States in a manner that complies with American Iron and Steel Requirements, and/or that applicable EPA-approved waivers have been obtained to comply with American Iron and Steel requirements.

CONTRACTOR: _____
Name of Responsible Official

Title

Signature

Date

**NOTICE TO LABOR UNIONS OR OTHER ORGANIZATIONS OF WORKERS
NONDISCRIMINATION IN EMPLOYMENT**

To: _____
(Name of union or organization of workers)

The undersigned currently holds contract(s) with _____
(Name of Applicant)

_____ involving funds or credit of the U.S. Government or (a) subcontract(s)
with a prime contractor holding such contract(s).

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Executive Order 11246, dated September 24, 1965, Executive Order 13665 dated April 8, 2014 and Executive Order 13672 dated July 21, 2014, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, religion, national origin, sexual orientation or gender identity. This obligation not to discriminate in employment includes, but is not limited to, the following:

HIRING, PLACEMENT, UPGRADING, TRANSFER, OR DEMOTION RECRUITMENT, ADVERTISING, OR SOLICITATION FOR EMPLOYMENT TRAINING DURING EMPLOYMENT, RATES OF PAY OR OTHER FORMS OF COMPENSATION, SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF, OR TERMINATION.

COPIES OF THIS NOTICE WILL BE POSTED BY THE UNDERSIGNED IN CONSPICUOUS PLACES AVAILABLE TO EMPLOYEES OR APPLICANTS FOR EMPLOYMENT.

C/S/

(Contractor or Subcontractor)

Date

Equal Employment Opportunity Requirements
(Executive Order 11246, as amended)

The Contractor shall comply with the equal opportunity requirements of Executive Order 11246, as amended, and as supplemented by 41 CFR Part 60, including the Equal Opportunity Clause at 41 CFR Part 60-1.4(b), and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

A. Equal Opportunity Clause (41 CFR Part 60-1.4(b))

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Federal Equal Employment Opportunity Construction Contract Specifications (41 CFR Part 60-4.3)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

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- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000.00 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The Goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the *Federal Register* in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
 6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during

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the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligation.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least

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once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to an discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned,

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social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF WATER PROGRAMS OPERATIONS
CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.*)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

The federally assisted construction contractor agrees that (except where he had obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certification in his files.

Signature

Date

Name and Title of Signer (Please Type)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

***This document must be completed by the successful bidder and bound in the executed contract.**

DBE Rule- Program Requirements

Purpose

The Environmental Protection Agency's (EPA) Disadvantaged Business Enterprise (DBE) rule became effective on May 27, 2008. The DBE rule sets forth an EPA program that serves the compelling government interest to increase and encourage the utilization and participation of DBEs in procurements funded by EPA assistance agreements. Although the DBE rule revises and replaces EPA's Minority and Women Business Enterprise (MBE/WBE) Program, MBEs and WBEs are an integral part of the DBE rule. Because the New Hampshire State Revolving Fund (SRF) Loan Program is partially funded by EPA, the state has applied the DBE rule requirements to all SRF funded projects.

The DBE rule, 40 Code of Federal Regulations (CFR), 33 can be downloaded at:
<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=cfa469998ede0f93cfcace9706a301d9&r=PART&n=40y1.0.1.2.30>

State Revolving Fund loan recipients **and their contractors** must comply with the following DBE Rule Program requirements until the project period for the SRF loan has ended:

- 1) Fair share objectives (MBE/WBE goals);
- 2) Good Faith Efforts;
- 3) Annual Reporting of MBE/WBE accomplishments;
- 4) Contract Administration Requirements and Forms;
- 5) Bidders List Requirements; and
- 6) Reporting

The NHDES SRF programs must ensure that contracts and subcontracts that are funded with SRF loans comply with these federal requirements and must report to EPA on DBE accomplishments.

Fair Share Objectives (MBE/WBE goals)

A fair share objective is a goal based on the capacity and availability of qualified, certified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services, and supplies. The goal accounts for the number of all qualified entities in the same market for the procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination. A fair share objective is not a quota.

Current Fair Share Objective/Goal:

The current Fair Share Goal is .77% for MBEs and 6.22% for WBEs.

6 Good Faith Efforts

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could be contracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

Bidders List Requirements

The Loan Recipient is required to maintain a bidders list. The purpose of a bidders list is to provide loan recipients who conduct competitive bidding and the SRF Programs with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both MBE/WBEs and non-MBE/WBEs.

The following information must be provided by the prime contractor for himself and all subcontractors who submit bids for subcontract work:

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

A loan recipient whose financial assistance agreement is in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the requirement to create and maintain a bidders list.

Reporting

The Bidder shall submit with its bid completed DBE Subcontractor Performance Forms (EPA Form 6100-3), and DBE Subcontractor Utilization Form (EPA Form 6100-4). The Owner is required to submit these forms to NHDES when requesting authorization to award the construction contract.

The Loan Recipient must complete and submit a modified version of EPA Form 5700-52A, “MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements” to NHDES beginning with the federal fiscal year reporting period the Loan recipient receives the award and continuing until the project is complete and the final disbursement has been processed. The form has been modified to conform to NH SRF reporting requirements. **Only procurements with certified MBE/WBE’s are counted toward a recipients MBE/WBE accomplishments.** The reporting period is annual, ending September 30th. The report must be submitted to the State SRF Program Administrator within 15 days of the end of the annual reporting period, October 15th.

The Contractor shall provide its MBE/WBE accomplishments to the Owner in a timely manner to allow the Owner to submit the MBE/WBE report within 15 days of the end of the reporting period.

The Owner must also submit the cumulative bidder’s list to NH DES once the project is completed.

Contract Administration Requirements

All projects funded by the SRF program require the contractor to:

1. Pay all subcontractors for satisfactory performance no more than 30 days from the prime contractor’s receipt of payment from the loan recipient. (also reference General Conditions article 26.3)
2. Notify the loan recipient in writing prior to the termination of any DBE subcontractor for convenience by the prime contractor.
3. Employ the six good faith efforts when soliciting a replacement subcontractor if a DBE subcontractor fails to complete work under the subcontract for any reason.
4. Employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.
5. Each procurement contract executed by the prime contractor with a supplier or subcontractor must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. (Appendix A to 40 CFR Part 33—Term and Condition)

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

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.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="radio"/> DOT <input type="radio"/> SBA <input type="radio"/> Other: _____		Meets/ exceeds EPA certification standards? <input type="radio"/> YES <input type="radio"/> NO <input type="radio"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

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.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

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 of that in the event of a 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	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization 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	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input type="radio"/> YES	<input type="radio"/> NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

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.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

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 of that in the event of a 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	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**New Hampshire State Revolving Fund
BIDDERS LIST**

Prime Contractors must submit a bidders list for SRF-funded projects in accordance with 40 CFR § 33.501. The list must include information regarding all entities that bid or quote on prime contracts or bid or quote on subcontracts under EPA assisted projects, including both DBEs and non-DBEs. Projects with financial assistance agreement totals of \$250,000 or less are exempt from this requirement.
Completed form must be submitted once substantial completion of the project has been achieved, and prior to substantial completion upon request by the OWNER.

Firm Name, Contact, & Address	Phone/ E-mail/Fax	Contract Item No. and Description of Work to be Performed	Currently Certified DBE?	Awarded Contract?	Estimated Award Amount
<i>Name & Contact</i>	<i>Phone</i>		YES <input type="checkbox"/> WBE; or <input type="checkbox"/> MBE <input type="checkbox"/> NO	<input type="checkbox"/> YES	\$
<i>Address</i>	<i>E-mail</i>			<input type="checkbox"/> NO	
<i>City State Zip</i>	<i>Fax</i>			<i>Date</i>	
<i>Name & Contact</i>	<i>Phone</i>		YES <input type="checkbox"/> WBE; or <input type="checkbox"/> MBE <input type="checkbox"/> NO	<input type="checkbox"/> YES	\$
<i>Address</i>	<i>E-mail</i>			<input type="checkbox"/> NO	
<i>City State Zip</i>	<i>Fax</i>			<i>Date</i>	
<i>Name & Contact</i>	<i>Phone</i>		YES <input type="checkbox"/> WBE; or <input type="checkbox"/> MBE <input type="checkbox"/> NO	<input type="checkbox"/> YES	\$
<i>Address</i>	<i>E-mail</i>			<input type="checkbox"/> NO	
<i>City State Zip</i>	<i>Fax</i>			<i>Date</i>	
<i>Name & Contact</i>	<i>Phone</i>		YES <input type="checkbox"/> WBE; or <input type="checkbox"/> MBE <input type="checkbox"/> NO	<input type="checkbox"/> YES	\$
<i>Address</i>	<i>E-mail</i>			<input type="checkbox"/> NO	
<i>City State Zip</i>	<i>Fax</i>			<i>Date</i>	
<i>Name & Contact</i>	<i>Phone</i>		YES <input type="checkbox"/> WBE; or <input type="checkbox"/> MBE <input type="checkbox"/> NO	<input type="checkbox"/> YES	\$
<i>Address</i>	<i>E-mail</i>			<input type="checkbox"/> NO	
<i>City State Zip</i>	<i>Fax</i>			<i>Date</i>	

D-7.1 American Iron and Steel

Public Law 113-76, the “Consolidated Appropriations Act, 2014”; Public Law 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015”, P.L. 114-113, the “Consolidated Appropriations Act, 2016”; and the “Water Resources Reform and Development Act of 2014” (“Acts”) include “American Iron and Steel (AIS)” requirements for the Clean Water and Drinking Water State Revolving Fund (SRF) programs. Under these Acts, all Clean Water and Drinking Water SRF funded construction, alteration, maintenance, or repair of public water systems or treatment works projects must use iron and steel products that are produced in the United States.

Iron and steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

These Acts also set forth certain circumstances under which EPA may waive the AIS requirement.

Additional AIS Information

EPA’s [State Revolving Fund American Iron and Steel Requirement](http://water.epa.gov/grants_funding/aisrequirement.cfm) website includes additional information on American iron and steel requirements and waivers. The website address is as follows: http://water.epa.gov/grants_funding/aisrequirement.cfm

D-7.2
American Iron and Steel

AIS Appendix 3: American Iron and Steel Manufacturer Certification

Date _____

Manufacturer Name _____

Manufacturer Address _____

City, State Zip _____

Project Name _____

1. Complete (a) or (b) below as applicable

- (a) **Step Certification:** I, _____ (Authorized Manufacturer Representative) hereby certify that the _____ (melting, bending, coating, galvanizing, cutting, etc.) process for _____ (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Material _____

Item, Products and/or Material _____

Item, Products and/or Material _____

Such process took place at the following location: _____

- (b) **Certification by the Final Manufacturer:** I, _____ (Authorized Manufacturer Representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials _____

Item, Products and/or Materials _____

Item, Products and/or Materials _____

Such process took place at the following location(s): _____

Additionally, if any of the above compliance statements change while providing material to this project _____ (Manufacturer) will immediately notify _____ (Contractor) and the _____ (Owner).

(Signature of Authorized Manufacturer Representative)

(Date)

D-7.3
American Iron and Steel

AIS Appendix 4: Required Subcontract and Purchase Agreement Language

The Contractor shall include in all contracts and purchase agreements for this project the following American Iron and Steel contract language:

“ _____ (Subcontractor/Supplier) acknowledges to and for the benefit of the _____ (Owner) and the State of New Hampshire (State) that it understands the goods and service under this contract or purchase agreement (Agreement) are being funded with monies that are subject to statutory requirements commonly known as “American Iron and Steel;” (P.L. 113-76, Consolidated Appropriation Act, 2014, Water Resources Reform and Development Act, the Consolidated and Further Continuing Appropriations Act, 2015 and P.L. 114-113, the Consolidated Appropriations Act, 2016) that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided under this contract or Agreement. The Subcontractor/Supplier hereby represents and warrants to and for the benefit of the Owner and the State that (a) the Subcontractor/Supplier has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Subcontractor/Supplier will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State.”

D-7.4
American Iron and Steel

BIDDER'S AMERICAN IRON AND STEEL ACKNOWLEDGEMENT

Instructions: This acknowledgement form must be completed and signed by the Bidder's authorized representative, and conveyed to Owner with bid submittal.

Project Name: _____
City/Town/Entity: _____
Bidder Name: _____
Bidder Address: _____

With submittal of this Bid, the Bidder acknowledges to and for the benefit of the Owner and the State of New Hampshire (State) that it understands that this project is subject to the "American Iron and Steel (AIS)" requirement of P.L. 113-76, Consolidated Appropriation Act, 2014, Water Resources Reform and Development Act, the Consolidated and Further Continuing Appropriations Act, 2015, and/or P.L. 114-113, the Consolidated Appropriations Act, 2016 that requires all of the iron and steel used in the project be produced in the United States ("American Iron and Steel Requirement") including all iron and steel goods provided by the Bidder pursuant to this Bid.

The Bidder hereby presents and warrants to and for the benefit of the Owner and State that (a) the Bidder has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Bidder will provide any further verified information, certification or assurance of compliance with this Acknowledgement, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State

Notwithstanding any other provision of the Contract Documents, any failure to comply with this Acknowledgement by the Bidder shall permit the Owner or State to recover as damages against the Bidder any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner).

Additionally, The Bidder hereby acknowledges that Bidder must include in all contracts and purchase agreements for this project the following American Iron and Steel contract language:

"_____ (Subcontractor/Supplier) acknowledges to and for the benefit of the _____ (Owner) and the State of New Hampshire (State) that it understands the goods and service under this contract or purchase agreement (Agreement) are being funded with monies that are subject to statutory requirements commonly known as "American Iron and Steel;" (P.L. 113-76, Consolidated Appropriation Act, 2014, Water Resources Reform and Development Act, the Consolidated and Further Continuing Appropriations Act, 2015 and/or P.L. 114-113, the Consolidated Appropriations Act, 2016) that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided under this contract or Agreement. The Subcontractor/Supplier hereby represents and warrants to and for the benefit of the Owner and the State that (a) the Subcontractor/Supplier has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Subcontractor/Supplier will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State.

(Signature of Certifying Bidder Representative)

(Date)

D-7.5
American Iron and Steel

DE MINIMIS WAIVER



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

DECISION MEMORANDUM

SUBJECT: De Minimis Waiver of Section 436 of P.L. 113-76, Consolidated Appropriations Act (CAA), 2014

FROM: Nancy K. Stoner
Acting Assistant Administrator

The EPA is hereby granting a nationwide waiver pursuant to the "American Iron and Steel (AIS)" requirements of P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), section 436 under the authority of Section 436(b)(1) (public interest waiver) for de minimis incidental components of eligible water infrastructure projects. This action permits the use of products when they occur in de minimis incidental components of such projects funded by the Act that may otherwise be prohibited under section 436(a). Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel" (AIS) requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use specific domestic iron and steel products that are produced in the United States if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Fiscal Year 2014, unless the agency determines it necessary to waive this requirement based on findings set forth in Section 436(b). The Act states, "[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency... finds that— (1) applying subsection (a) would be inconsistent with the public interest" 436(b)(1).

In implementing section 436 of the Act, the EPA must ensure that the section's requirements are applied consistent with congressional intent in adopting this section and in the broader context of the purposes, objectives, and other provisions applicable to projects funded under the SRF. Water infrastructure projects typically contain a relatively small number of high-cost components incorporated into the project. In bid solicitations for a project, these high-cost components are generally described in detail via project specific technical specifications. For these major components, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

D-7.6 American Iron and Steel

Every water infrastructure project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc. Examples of items that are clearly not incidental include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures, etc.

The EPA undertook multiple inquiries to identify the approximate scope of de minimis incidental components within water infrastructure projects during the implementation of the American Reinvestment and Recovery Act (ARRA) and its requirements (Buy American provisions, specifically). The inquiries and research conducted in 2009 applies suitably for the case today. In 2009, the EPA consulted informally with many major associations representing equipment manufacturers and suppliers, construction contractors, consulting engineers, and water and wastewater utilities, and performed targeted interviews with several well-established water infrastructure contractors and firms who work in a variety of project sizes, and regional and demographic settings to ask the following questions:

- What percentage of total project costs were consumables or incidental costs?
- What percentage of materials costs were consumables or incidental costs?
- Did these percentages vary by type of project (drinking water vs. wastewater treatment plant vs. pipe)?

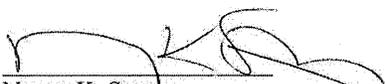
The responses were consistent across the variety of settings and project types, and indicated that the percentage of total costs for drinking water or wastewater infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total cost of the materials used in and incorporated into a project. In drafting this waiver, the EPA has considered the de minimis proportion of project costs generally represented by each individual type of these incidental components within the many types of such components comprising those percentages, the fact that these types of incidental components are obtained by contractors in many different ways from many different sources, and the disproportionate cost and delay that would be imposed on projects if the EPA did not issue this waiver.

Assistance recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver and must retain relevant documentation (i.e., invoices) as to those items in their project files.

D-7.7
American Iron and Steel

If you have any questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Municipal Support Division, at connor.timothy@epa.gov or (202) 566-1059 or Kirsten Anderer, Environmental Engineer, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Issued on: APR 15 2014

Approved by: 
Nancy K. Stoner
Acting Assistant Administrator

**D-7.8
American Iron and Steel**



AMERICAN IRON AND STEEL DE MINIMIS TRACKING FORM
 NH DEPARTMENT OF ENVIRONMENTAL SERVICES
 CLEAN WATER STATE REVOLVING FUND (CWSRF)
 DRINKING WATER STATE REVOLVING FUND (DWSRF)



Contractors who wish to use this waiver shall retain and provide to the Owner relevant documentation (i.e., invoices) as to those items in their project files, and shall summarize in reports to the Owner the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which Contractor determined the total cost of materials used in and incorporated into the project. The form below must be completed and provided to the Owner with each payment application, and as requested by the Owner. Additionally, the Contractor shall submit a copy of the above documentation, calculations and forms to the Department of Environmental Services upon request.

Owner: _____ Project Name: _____

Contractor: _____ CWSRF/DWSRF Project #: _____

Total Cost of Materials: _____ Have all materials been delivered? _____

NOTE: The De Minimis waiver is only applicable to the cost of materials incorporated into the project. Do not include other project costs (labor, installation costs, etc.) in the "Total Cost of Materials". The cost of a material must include delivery to the site and any applicable tax. Contractor must have sufficient documentation to support all costs included in this calculation.

De Minimis 5% Limit: _____

Component Description	Country of Origin (if available)	Quantity (if applicable)	Cost per Unit (if applicable)	Component's Total Cost	How is Cost Documented?*

Total De Minimis Cost of Components:

--

If approaching the 5% limit, contact NHDES immediately

* Documentation must demonstrate confirmation of the components' actual costs (invoice, etc.).

Completed by: _____

Name and Title: _____

Affiliation: _____

Signature: _____

Date: _____

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American Iron and Steel

**STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES
CLEAN WATER STATE REVOLVING FUND (CWSRF) AND
DRINKING WATER STATE REVOLVING FUND (DWSRF)
AMERICAN IRON AND STEEL CERTIFICATION**

Instructions

This certification must be completed and signed by the authorized representative of the Contractor, acknowledged by the authorized representative of the Owner, and submitted to the New Hampshire Department of Environmental Services upon substantial completion of the project.

Project Name: _____

City/Town/Entity: _____

Contractor Name: _____

Contractor Address: _____

Name/Title of Contractor Certifying Representative: _____

I hereby certify on behalf of the above named Contractor, (Please check one of the following and provide documentation as necessary)

That the "American Iron and Steel" provisions of P.L. 113-76, Consolidated Appropriation Act, 2014, Water Resources Reform and Development Act, the Consolidated and Further Continuing Appropriations Act, 2015, and/or P.L. 114-113, the Consolidated Appropriations Act, 2016 (Iron and Steel Requirement) **have been met** and that all iron and steel used in the project named above have been produced in the United States in a manner that complies with the American Iron And Steel Requirement.

OR

That the "American Iron and Steel" provisions of P.L. 113-76, Consolidated Appropriation Act, 2014, Water Resources Reform and Development Act, the Consolidated and Further Continuing Appropriations Act, 2015, and/or P.L. 114-113, the Consolidated Appropriations Act, 2016 (Iron and Steel Requirement) **were unable to be met**. Not all of the iron and steel used in the project named above have been produced in the United States.

Attach all documentation including EPA approved waivers for all iron and steel that do not meet the Iron and Steel Requirement

Signature of Certifying Contractor Representative: _____

Date: _____

Acknowledged by Authorized Owner Representative: _____

Date: _____

Attachment A
NH Department of Environmental Service
Federal Labor Standards Provisions
29 CFR 5.5(a)

(1) Minimum Wage

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

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

Wage determinations may be obtained from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The Loan recipient, 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 Loan 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 Loan recipient(s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and

Attachment A
NH Department of Environmental Service
Federal Labor Standards Provisions
29 CFR 5.5(a)

Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Loan Recipient (s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The Loan recipient(s), shall upon written request of the Contracting Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) 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.

Attachment A
NH Department of Environmental Service
Federal Labor Standards Provisions
29 CFR 5.5(a)

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Loan 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 Loan 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 Web site at <http://www.dol.gov/esa/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 Loan 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 Loan 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:

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(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees-

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work

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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.

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(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Loan 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 Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

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

(a) Contract Work Hours and Safety Standards Act. The Loan 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.

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

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Prime Contractor shall insert a clause requiring that the 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 Prime Contractor shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the subcontractor for inspection, copying, or transcription by authorized representatives of NH DES and the Department of Labor, and the subcontractor will permit such representatives to interview employees during working hours on the job.