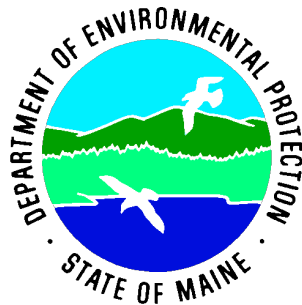




**CLEAN WATER STATE REVOLVING LOAN FUND
(CWSRF)**

Construction Contract Requirements



CLEAN WATER STATE REVOLVING FUND (CWSRF) **CONSTRUCTION CONTRACT REQUIREMENTS**

Note to the Consultant / Owner - These contract requirements represent what should apply to most projects. However, there may be some exceptions depending on the project specific situation such as the type of loan (or loan/grant), the type and size of project, and what other funding agencies may be involved. Always discuss these requirements with the SRF project engineer with respect to your project before finalizing the contract documents. You may also contact Karen Hefler for assistance at phone #287-4162 or email her at karen.l.hefler@maine.gov . In addition, please verify that you are using the most current version of this document as it may be revised, corrected, or updated at anytime.

Elements of the Construction Contract

Elements to be included:

A. Bidding and Contract Requirements

1. Advertisement for Bid (also may be called Notice to Contractors or Invitation to Bid)
2. Instructions to Bidders (also may be called Notice / Information to Bidders)
3. Bid Form
4. Agreement (EJCDC standard form required when cofunded with RD, otherwise just recommended)
5. General Conditions (EJCDC latest version required)
6. CWSRF Supplementary Conditions (includes exhibits/attachments)
7. Forms
 - a. Bid Bond
 - b. Construction Performance Bond (EJCDC or AIA format required when cofunding with RD, otherwise just recommended)
 - c. Construction Payment Bond (EJCDC or AIA format required when cofunding with RD, otherwise just recommended)
 - d. Notice of Award
 - e. Notice to Proceed
 - f. Change Order
 - g. Certificate of Substantial Completion
 - h. Contractors Application for Payment
 - i. Affidavit and Lien Waiver

B. Technical Specifications

C. Drawings

D. Addenda

Advertisement for Bid

CWSRF topics to be included: (use same language when in quotations)

1. Bid Bond

“A bid must be accompanied by Bid security made payable to Owner in an amount of 5% of Bidder’s maximum bid price and in the form of a certified check or Bid bond issued by surety meeting the requirements of the General Conditions.”

2. Agency Not a Party

“This contract is expected to be funded in whole or in part by the State of Maine Department of Environmental Protection (DEP) Clean Water State Revolving Loan Fund (CWSRF) program. Neither the State of Maine nor any of its departments, agencies, or employees is or will be a party to this contract.”

3. SRF Disadvantaged Business Enterprises Program

“The contractor must comply with the Disadvantaged Business Enterprises (DBE) requirements contained in the CWSRF Supplementary Conditions.”

4. Federal Requirements

“The contractor must comply with all Federal Requirements per the CWSRF Supplementary Conditions.”

5. American Iron and Steel *Reminder - do not remove when BABA is required*

“The contractor must comply with the use of American Iron and Steel requirements per the CWSRF Supplementary Conditions.”

6. Build America, Buy America *Reminder to remove if BABA is not required*

“The contractor must comply with the use of Build America, Buy America Act requirements per the CWSRF Supplementary Conditions.”

7. Davis-Bacon and Related Acts

“The contractor must comply with the Davis-Bacon Related Act per the CWSRF Supplementary Conditions. All laborers and mechanics employed by the contractor and subcontractors on this project shall not be paid less than the prevailing wage rates contained in the wage determination published in the bidding documents.” *Add the following highlighted text to this paragraph if required for the project.* “The Contractor and subcontractors shall use the Elation Systems software, made available by the State of Maine Department of Environmental Protection, for uploading their certified weekly payroll.”

Instructions for Bidders

CWSRF topics to be included: (use same language when in quotations)

1. Bid Bond

Consultant to provide detailed information. (EJCDC language recommended)

2. Agency Not a Party

“This contract is expected to be funded in whole or in part by the State of Maine Department of Environmental Protection (DEP) Clean Water State Revolving Loan Fund (CWSRF) program. Neither the State of Maine nor any of its departments, agencies, or employees is or will be a party to this contract. The word “agency” in the contract documents refers to the DEP and all other involved funding agencies.”

3. Performance and Payment Bonds

“The successful bidder must submit Performance and Payment Bonds to the Owner prior to contract award. Detailed information can be found in the General Conditions.”

4. Insurance

“The successful bidder must submit Liability and Property Insurance certificates to the Owner prior to contract award. Detailed information can be found in the General Conditions and the Supplementary Conditions.”

5. Basis of Award

Consultant language must clearly define which line on the bid form is the bid to be evaluated and used for comparison to other bids to determine the lowest bid. (project specific)

6. Contract Time

Consultant language must specify contract time frame for substantial completion and final completion

7. Taxes

“The Owner is exempt from Maine state sales and use taxes on all materials to be incorporated in the work. Said taxes shall not be included in the bid. Detailed information can be found in the General Conditions and the CWSRF Supplementary Conditions.”

8. American Iron and Steel *Reminder - do not remove when BABA is required*

“The Contractor shall comply with the Use of American Iron and Steel in accordance with Public Law 113-76, Section 436. The law and its requirements and guidance, including certification forms, can be found in the CWSRF supplementary conditions.”

9. Buy America Build America *Reminder to remove if BABA is not required*

“The Contractor shall comply with the Build America, Buy America Act in accordance with Public Law 117-58, Sections 70911-70917. More information on the law, including certification forms, can be found in the CWSRF supplementary conditions.”

10. SRF Disadvantaged Business Enterprise Program

“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, Disadvantaged Business Enterprises (DBE), in the award and administration of subcontracts. DBEs are defined as DBE certified women and or minority owned businesses (MBE/WBE). 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.

1. During the bidding period and throughout the project, the Contractor is required to make the good faith efforts as described in the CWSRF Supplementary Conditions whenever procuring subcontracts, equipment, services, and supplies. Contractors should initiate solicitation efforts early in the bidding period. Directories of certified DBE businesses can be found on the Maine Department of Transportation and on the New Hampshire Department of Transportation websites.
2. The Contractor must comply with the following provisions when submitting their bid:
 - (a) The contractor must complete and submit EPA Form 6100-4, ‘DBE Program Subcontractor Utilization Form’ (**copy attached**) as part of the prime contractor’s bid or proposal package to the Owner. Note, only DBE subcontractors should be listed. If no potential DBE subcontractors have been identified, the contractor must still complete and submit the form.
 - (b) The contractor must have each of the identified DBE subcontractors complete the EPA Form 6100-3, ‘DBE Program Subcontractor Performance Form’ (**copy attached**). The completed forms must be submitted as part of the prime contractor’s bid or proposal package to the Owner when DBEs have been identified.
3. Prior to contract award, the Successful Bidder must comply with the following provisions:
 - (a) The contractor must submit to the Owner documentation of good faith efforts (such as copies of solicitation letters and emails) and other related documents. Solicitation documentation must include proof of receipt.
 - (b) The contractor must submit to the Owner a bidders list of all firms that bid or quote on subcontracts, including both DBEs and non DBEs. The list must include the following information:
 - (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 a currently certified DBE or non DBE.

Additional information and forms may be found in the CWSRF Supplementary Conditions.”

11. Suspension and Debarment

“The eligibility of successful bidder will be verified through the federal government’s Excluded Parties List System prior to Maine Department of Environmental Protection approval of the contract award. Furthermore, by entering into the contract, the contractor shall certify that no part of the contract shall

be subcontracted to a Debarred or Suspended person or firm. Detailed information may be found in the CWSRF Supplementary Conditions.”

12. Davis-Bacon and Related Acts

“The contractor must comply with Davis-Bacon (DB) and Davis-Bacon Related Acts (DBRA). All laborers and mechanics employed by the contractor and subcontractors on this project shall not be paid less than the prevailing wage rates contained in the wage determination published in these bidding documents. All laborers and mechanics not listed in the wage determination but employed by the contractor and subcontractors on this project shall be paid at least as much as the lowest wage rate for other similar trade classifications already contained in the wage determination published in these bidding documents. After contract award, a form 1444 submission will be required to obtain additional classifications and wage rates for those not listed in the wage determination. No allowances or extra considerations on behalf of any contractor or subcontractor will be permitted subsequently by reason of error or oversight on account of Department of Labor wage determinations. The contractor and subcontractors shall pay all employees weekly. The contractor and subcontractors shall submit weekly certified payrolls to the owner or designated representative, including a payroll summary with signed certification form WH-347. Detailed information and forms can be found in the CWSRF Supplementary Conditions.” *Add the following highlighted text to this paragraph if required for the project.* “The Contractor and subcontractors shall use the Elation Systems software, made available by the State of Maine Department of Environmental Protection, for uploading their certified weekly payroll. Payroll noncompliance and other related payroll issues identified by the software shall be resolved by the contractor/subcontractor in the software and in a timely manner to maintain compliance with Davis Bacon requirements throughout the project.”

13. Federal Requirements

“The contractor must comply with all Federal requirements found in the CWSRF Supplementary Conditions.”

14. State Minimum Wages

“All laborers and mechanics employed or working upon the construction site of the project shall be paid not less than the prevailing State minimum wage rate regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.”

15. Bid Protests

“All protests arising from the Owner’s procurement practices must be submitted to the Owner as soon as practical. The Owner will investigate the basis for the protest, seek the advice of legal counsel, document all meetings and actions, and attempt to resolve the protest promptly and equitably.”

16. Withdrawal of Bid

Consultant to provide detailed information. (EJCDC language recommended)

Bid Form

CWSRF topics to be included: (use same language when in quotations)

1. Expiration of bid

Consultant to provide language

2. Acknowledgement of addenda

Consultant to provide language

3. Basis of Award

Indicate which line on the bid form is the bid to be evaluated and used for comparison to other bids in determining the lowest bid.

Agreement

CWSRF topics to be included: (use same language when in quotations)

1. Contract Time: Time Frame for contract, substantial and final completion

Consultant to provide language.

2. Progress payment percentages and retainage *[When cofunding with RD, use their language (5% retainage (plus value of PL) till final completion) which omits the 2% retainage for one year]*

“Prior to substantial completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages in accordance with general conditions:

- a. 95 percent of work completed (with balance being retainage); and
- b. 95 percent of cost of materials and equipment not incorporated in the work (with balance being retainage)

Upon substantial completion, Owner shall pay an amount sufficient to increase total payments to the Contractor to 98 percent of the work completed, less such amounts as Engineer shall determine in accordance with general conditions. The final two percent of the value of the Work shall be retained for a period of one year from the date of substantial completion”

3. Contents of the Construction Contract

Consultant to list applicable sections.

CWSRF Supplementary Conditions

CWSRF topics to be included: (use same language when in quotations)

1. Agency Not a Party

“This contract is expected to be funded in whole or in part by the State of Maine Department of Environmental Protection (DEP) Clean Water State Revolving Loan Fund (CWSRF) program. Neither the State of Maine nor any of its departments, agencies, or employees is or will be a party to this contract. The word “agency” in the contract documents refers to the DEP and all other involved funding agencies.”

2. Contract Award Approval

“The Owner and Contractor shall furnish the documents as required by this contract to the State of Maine Department of Environmental Protection (DEP) Clean Water State Revolving Loan Fund (CWSRF) program for contract award approval. Concurrence by the Agency in the award of the Contract is required before the Contract is effective.”

3. Conflict of Interest

“Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the plans and specifications has a corporate or financial affiliation with the supplier or manufacturer. Owner’s officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. Owner’s officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractor or subcontractors.”

4. Gratuities

“If Owner finds after a notice and hearing that Contractor, or any of Contractor’s agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of Owner or Agency in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, Owner may, by written notice to Contractor, terminate this Contract. Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract. In the event this Contract is terminated as provided in above paragraph, Owner may pursue the same remedies against Contractor as it could pursue in the event of a breach of this Contract by Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, Owner may pursue exemplary damages in an amount (as determined by Owner) which shall not be less than three nor more than ten times the costs Contractor incurs in providing any such gratuities to any such officer or employee.”

5. Audit and Access to Records

“Owner, Agency, the Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor, which are pertinent to the Contract, for the purpose of making audits, examinations, excerpts and transcriptions. Contractor shall maintain all required records for three years after final payment is made and all other pending matters are closed.”

6. Anti-Kickback

“Contractor shall comply with the Copeland Anti-Kickback Act (18 USC 874 and 40 USC 276c) as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that Contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. Owner shall report all suspected or reported violations to Agency.”

7. Clean Air and Pollution Control Acts

“If this Contract exceeds \$100,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 USC 1251 *et seq.*). Contractor will report violations to the Agency and the Regional Office of the EPA.”

8. State Energy Policy

“Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.”

9. Equal Opportunity Requirements

- A. “If this Contract exceeds \$10,000, Contractor shall comply with Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- B. “Contractor’s compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority

or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed."

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

10. Environmental Requirements

"When constructing a project involving trenching and/or other related earth excavations, Contractor shall comply with the following environmental constraints:

1. Wetlands – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert wetlands.
2. Floodplains – When disposing of excess, spoil, or other construction materials on public or private property, Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency Floodplain Maps, or other appropriate maps, i.e., alluvial soils on NRCS Soil Survey Maps.
3. Historic Preservation – Any excavation by Contractor that uncovers an historical or archaeological artifact shall be immediately reported to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the State Historic Preservation Officer (SHPO).
4. Endangered Species – Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of Contractor, Contractor will immediately report this evidence to Owner and a representative of Agency. Construction shall be temporarily halted pending the notification process and further directions issued by Agency after consultation with the U.S. Fish and Wildlife Service."

11. Suspension and Debarment

"The Contractor must comply with Subpart B and Subpart C of 2 CFR Part 180 and Part 1532. By entering into this contract, the contractor certifies that neither the contractor's firm, nor any person or firm who has an interest in the contractor firm, is a Debarred or Suspended person or firm. Furthermore, by entering into this contract, the contractor shall certify that no part of this contract shall be subcontracted to a Debarred or Suspended person or firm. Contractors may access the federal government's website sam.gov for verification of excluded parties."

12. Taxes

“The Owner is exempt from Maine state sales and use taxes on all materials to be incorporated in the work. The Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the work. The Owner’s exemption does not apply to construction tools, machinery, equipment, or other property purchased or leased by Contractor or to supplies or materials not incorporated into the work.”

13. State Minimum wages

“All laborers and mechanics employed or working upon the construction site of the project shall be paid not less than the prevailing State minimum wage rate regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. The most current version of the State of Maine poster for Minimum Wage (as per the Department of Labor website) must be posted where it can be easily seen by employees.”

14. Posting Documents

“The contractor shall post documents in accordance with all applicable state and federal labor and employment laws. Posters shall be located and maintained by the Contractor at such place or places on the project site where employees can easily see them. Posters displayed outdoors must be laminated or otherwise protected from the weather. The most current version of workplace posters can be found on the internet on the state and federal Department of Labor websites.”

15. SRF Project Sign

“At the start of the project, the Contractor shall provide and erect a project sign, or multiple signs as required by the project’s funding entities, as detailed and specified in the attachment to these supplementary conditions. The location of the sign(s) shall be as directed by the Engineer. No other contractor, subcontractor, or material references will be permitted on the sign. The Contractor shall maintain and keep the project sign(s) in good condition until the work is completed when the sign will be removed. Provide adequate supports for sign(s) as site conditions may require and keep sign a proper distance above prevailing grade to permit public viewing.”

Alternate methods of publicizing may be considered on a project specific basis for projects with a contract value less than \$250,000. Prior to the start of the project, the Contractor must obtain Agency approval, through the Owner, for use of a proposed method. Alternate methods that may be considered include: posters or wall signage on public buildings or at a public location, newspaper advertising, online signage, and press releases. Minimum public awareness requirements and sample language can be obtained from the Agency.

16. SRF Disadvantaged Business Enterprises Program

“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, Disadvantaged Business Enterprises (DBE), in the award and administration of subcontracts.

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.

DBEs are defined as DBE certified women and or minority owned businesses (MBE/WBE). Directories of certified DBE businesses can be found on the Maine Department of Transportation and on the New Hampshire Department of Transportation websites.

The Contractor must maintain all records documenting its compliance with the requirements of this part, including documentation of its good faith efforts and other related documents.

1. During the bidding period and thorough out the project whenever procuring subcontracts, equipment, services, and supplies, the Contractor is required to make the following good faith efforts:
 - (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. 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 and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
 - (c) Consider in the contracting process whether firms competing for large contracts could subcontract 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.
 - (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.
2. The Contractor must comply with the following provisions when submitting their bid:
 - (a) The contractor must complete and submit EPA Form 6100-4, 'DBE Program Subcontractor Utilization Form' (**copy attached**) as part of the prime contractor's bid or proposal package to the Owner. Note, only DBE subcontractors should be listed. If no DBE subcontractors are identified, the contractor must still complete and submit the form.
 - (b) The contractor must have each of the identified DBE subcontractors complete the EPA Form 6100-3, 'DBE Program Subcontractor Performance Form' (**copy attached**). The completed forms must be submitted as part of the prime contractor's bid or proposal package to the Owner when DBEs have been identified.
3. Prior to contract award the Successful Bidder must comply with the following provisions:
 - (a) The contractor must submit to the Owner documentation of its good faith efforts (such as copies of solicitation letters and emails) and other related documents. Solicitation documentation must include proof of receipt.
 - (b) The contractor must submit to the Owner a bidders list of all firms that bid or quote on subcontracts, including both DBEs and non-DBEs. The list must include the following information:
 - (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 a currently certified DBE or non DBE.

4. Following contract award, the Contractor must comply with the following additional provisions:
 - (a) The Contractor is required to make the good faith efforts thorough out the project whenever procuring subcontracts, services, equipment, and supplies.
 - (b) The contractor must provide EPA Form 6100–2, ‘DBE Program Subcontractor Participation Form’ (**copy attached**) to all DBE subcontractors being used on the project. EPA Form 6100–2 allows the DBE subcontractor to describe the work received from the prime contractor, how much the DBE subcontractor was paid, and any other concerns the DBE subcontractor might have during the course of the project, for example, reasons why the DBE subcontractor believes it was terminated by the prime contractor. If DBE subcontractors choose to complete this form, it should be mailed directly to the CWSRF DBE Coordinator at: Maine Department of Environmental Protection, Attn: Patti Korbet, Bureau of Water Quality, 17 State House Station, Augusta, Maine 04333.
 - (c) Complete the CWSRF DEP Progress Report of DBE Subcontractor Utilization Form (**copy attached**) for all contractor pay applications whether or not they include invoiced amounts from DBE subcontractors. The progress report should be attached to the corresponding pay application for processing through the Owner.
 - (d) Pay subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Owner.
 - (e) Notify the Owner in writing prior to any termination of a DBE subcontractor for convenience by the prime contractor.
 - (f) If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the good faith efforts described above if soliciting a replacement subcontractor. Documentation of good faith efforts shall be submitted to the Owner upon request.”

17. Davis-Bacon and Related Acts

“1. The Contractor must comply with the following contract and subcontract provisions of the Davis-Bacon and Davis-Bacon Related acts. Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair of treatment works financed in whole or in part with assistance made available by a Clean Water State Revolving Fund.

2. Obtaining Wage Determinations

- (a) Owners 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 Owner shall monitor www.sam.gov weekly to ensure that the wage determination contained in the solicitation remains current. The Owner shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (bid opening) for the solicitation.
 - (ii) If the Owner 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. The Owner shall monitor www.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 Owner 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 Owner shall insert the appropriate DOL wage determination from www.sam.gov into the ordering instrument.

(c) Owners 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 Owner's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner 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 Owner 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 Owner'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

(1) Minimum wages.

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

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

(ii)(A) The Owner, 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

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 Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), Form 1444 (attached) shall be completed and sent by the Owner to the State official. The State official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The DOL Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State official or will notify the State official within the 30-day period that additional time is necessary. Additional copies of Form 1444 may be obtained from the US Department of Labor website.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the State official shall refer the questions, including the views of all interested parties and the recommendation of the State official, to the Administrator for determination. The request shall be sent to the EPA DB Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the State official or will notify the State official 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 Owner shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same

prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the 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 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 Owner. Such documentation shall be available on request of the State Official or EPA. As to each payroll copy received, the Owner 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 (attached) is available for this purpose. Additional copies of the form are available from the US Department of Labor Wage and Hour Division website. 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 Owner 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 Owner.

(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 (page 2 of the form is attached) 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.

Add the following highlighted text if required for the project.

“(E) The Contractor and subcontractors shall use the Elation Systems software, made available by the State of Maine Department of Environmental Protection, for uploading their certified weekly payroll. Payroll noncompliance and other related payroll issues identified by the software shall be resolved by the contractor/subcontractor in the software and in a timely manner to maintain compliance with Davis Bacon requirements throughout the project.”

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not

individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

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

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

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

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Owner, 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 Owner 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 Owner, 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 Owner 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 Owner 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 Environmental Protection Agency 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 Owner 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 Owner must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are attached and are available from EPA on request.
- (b) The Owner 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. Owners must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Owners shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- (c). The Owner 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 Owner 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 Owner must 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. Owners 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 Owner shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.
- (d). The Owner 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) Owners must immediately report potential violations of the DB prevailing wage requirements to the EPA DB Regional Coordinator, the State Official, and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/agencies/whd/contact/local-offices> ”

18. American Iron and Steel (AIS) Requirements *(Reminder –for reference, do not delete this section for projects subject to BABA)*

“The Contractor acknowledges, to and for the benefit of the Owner and the State (Maine Department of Environmental Protection), that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund (CWSRF) that have statutory requirements commonly known as “American Iron and Steel;” 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 by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants, to and for the benefit of the Owner and the State, that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State. While the Contractor has no direct contractual privity with the State, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

The Owner shall maintain files on the project site for American Iron and Steel (AIS) manufacturer certifications. The Contractor and subcontractors shall provide step manufacturer certifications to the Owner for each AIS item delivered to the site. The files shall be made available to State and Federal officials for inspection upon request. See sample Step Manufacturer Certification attachment for information that should be included.

The Contractor and its subcontractors shall submit to the Owner, an AIS Compliance Certification (see form attached) with each contractor pay application. The Owner, shall in turn, submit this certification from the Contractor, with their AIS Compliance Certification (see form attached), to the State with the SRF payment reimbursement requisition.

The nationwide waiver to the American Iron and Steel law 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. It is the State’s interpretation that all CWSRF projects will contain incidental components that might not comply with the law and therefore it is likely that the Owner will use the de minimis waiver. The Contractor is required to maintain records and provide the necessary documentation (see attached sample de minimis tracking form) to the Owner. The Owner shall maintain files on the project site for this documentation, which shall be made available to State and Federal officials for inspection upon request.

The AIS De Minimis waiver cannot be used on projects subject to the Build America, Buy America Requirements. The iron and steel components must be accounted for under the BABA De Minimis waiver.

The Contractor shall refer to the attached AIS Covered Products FAQ document for guidance.

Additional information regarding the AIS requirements can be found on this website:

<http://epa.gov/cwsrf/american-iron-and-steel-requirement-guidance-and-questions-and-answers>”

19. Build America, Buy America Act *Reminder – do not include this section if BABA is not required*

“The Contractor acknowledges, to and for the benefit of the Owner and the State (Maine Department of Environmental Protection), that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund (CWSRF) that have statutory requirements commonly known as “Build America, Buy America Act” (BABA), that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants, to and for the benefit of the Owner and the State, that (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the State. While the Contractor has no direct contractual privity with the State, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

The Owner shall maintain files on the project site for Build America, Buy America (BABA) manufacturer certifications. The Contractor and subcontractors shall provide step manufacturer certifications to the Owner for each BABA item delivered to the site. The files shall be made available to State and Federal officials for inspection upon request. See sample Step Manufacturer Certification attachment for information that should be included.

The Contractor and its subcontractors shall submit to the Owner, a BABA Compliance Certification (see form attached) with each contractor pay application. The Owner, shall in turn, submit this certification from the Contractor, with their own BABA Compliance Certification (see form attached), to the State with the SRF payment reimbursement requisition.

A nationwide waiver to the Build America, Buy America Act waives the BABA requirements for products used and incorporated into a project that cumulatively comprise no more than five percent of the total project cost. This waiver is referred to as the BABA De Minimis waiver. It is the State’s interpretation that all CWSRF projects will likely contain components that might not comply with the law and therefore it is likely that the Owner will use the de minimis waiver. The Contractor is required to maintain records and provide the necessary documentation (see attached sample de minimis tracking form) to the Owner. The Owner shall maintain files on the project site for this documentation, which shall be made available to State and Federal officials for inspection upon request.

The AIS De Minimis waiver cannot be used on projects subject to the Build America, Buy America Requirements. The iron and steel components must be accounted for under the BABA De Minimis waiver.

The Contractor shall refer to the attached BABA Contractor FAQ document for guidance.

Additional information regarding the BABA law, requirements and waivers can be found on the EPA website: <https://www.epa.gov/cwsrf/build-america-buy-america-baba>.”

20. List of Attachments to the CWSRF Supplementary Conditions

- SRF Project Sign Drawing
- DBE Program Subcontractor Utilization Form - SRF 6100-4
- DBE Program Subcontractor Performance Form - SRF 6100-3
- DBE Program Subcontractor Participation Form - SRF 6100-2
- SRF Progress Report of DBE Subcontractor Utilization Form

- Davis Bacon Project Wage Determination (to be made into a poster also)
- Davis Bacon Poster “Employee Rights” WH-1321
- Davis Bacon DOL Additional Classification Request form 1444
- Davis Bacon DOL Employee Interview form 1445
- Davis Bacon DOL Payroll form WH-347 page 1 (optional), and page 2 (mandatory)
- Owner’s Davis Bacon Compliance Report *(include only for projects not using the Elation payroll software)*
- Owner’s Davis Bacon Compliance Certification *(include only for projects that are using the payroll Elation software)*
- DBRA Guidance for Self Employed, Executives and Foremen
- DBRA Contractors Instructions for Fringe Benefits
- DBRA Contractors Instructions for Other Deductions

- AIS Covered Products FAQ *(include for **both** - projects that do and do not require BABA)*
- AIS Certification by Owner *(include only for projects that do not require BABA)*
- AIS Certification by Contractor *(include only for projects that do not require BABA)*
- AIS Step Manufacturer Certification *(include only for projects that do not require BABA)*
- AIS DeMinimis Tracking Form *(include only for projects that do not require BABA)*

- BABA Contractor FAQ *(include only for projects that require BABA)*
- BABA/AIS Certification by Owner *(include only for projects that require BABA)*
- BABA/AIS Certification by Contractor *(include only for projects that require BABA)*
- BABA/AIS Step Manufacturer Certification *(include only for projects that require BABA)*
- BABA DeMinimis Tracking Form *(include only for projects that require BABA)*