

Guide to Federal Requirements— Equivalency



SC Department of Health and Environmental Control

Federal capitalization grants established and continue to seed the State Revolving Fund (SRF) program; therefore, any money provided to Project Sponsors through the SRF is subject to federal requirements. The EPA, as the funding agency for the SRF capitalization grants can also impose requirements on SRF loan recipients. Some requirements apply to all SRF projects with an additional few that apply to equivalency requirements as well as some that apply only to Clean Water Projects.

This guide discusses the equivalency requirements for most of the federal authorities that apply to SRF projects and explains the actions required of the Project Sponsor in order to obtain funding from the SRF. Forms referred to in the text below are listed in Attachment B and may be found on the SRF forms page, <http://www.scdhec.gov/srfforms>.

Equivalency requirements that apply to all projects include:

- ❖ Age Discrimination Act of 1975, Pub. L. 94-135
- ❖ Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- ❖ Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (Clean Water Act)
- ❖ Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- ❖ Uniform Relocation and Real Property Acquisition Act, Pub. L. 91-646, as amended
- ❖ Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- ❖ Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- ❖ Equal Employment Opportunity, Executive Order 11246, as amended
- ❖ Debarment and Suspension, Executive Order 12549
- ❖ Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- ❖ Prohibitions on certain telecommunication and video surveillance services or equipment, Public L 115-232
- ❖ Environmental Review, Federal Water Pollution Control Act (FWPCA), Pub. L. 80-845 as amended by Water Resources Reform and Development Act (WRRDA), Pub.L. 113-121
- ❖ Utility-Sustainability Assessment, Section 1420(a) of the federal Safe Drinking Water Act
- ❖ Single Audit; Single Audit Act of 1984, Pub L. 98-502, Single Audit Act Amendments of 1996, Pub L. 104-156; 2 CFR 200
- ❖ Federal Funding Accountability and Transparency Act (FFATA) Reporting; Pub. L. 109-282
- ❖ Build America Buy America Act (BABA), Pub. L. No. 117-58

For Clean Water projects with equivalency requirements where the SRF Loan includes reimbursement for *architectural and/or engineering services*, those services must be procured through a process that is equivalent to the SC State Procurement process.

- ❖ “American Iron and Steel” Provisions, Clean Water Act, Section 608, and the Consolidated and Further Continuing Appropriations Act, 2015, Section 424 (and as required by any subsequent continuing or annual appropriations act).
- ❖ Davis-Bacon and Related Acts, Clean Water Act, Section 513 and the Safe Drinking Water Act, Section 1450(e)
- ❖ Signage, EPA Memorandum of June 3, 2015 RE: *Guidelines for Enhancing Public Awareness of SRF Assistance Agreements* and EPA Memorandum of December 8, 2022 RE: *Guidelines for Implementing the Bipartisan Infrastructure Law Signage Term and Condition for the State Revolving Fund Programs*

In addition to the above, Clean Water projects must also comply with the following:

- ❖ Architectural and Engineering Procurement, CWA as amended 2014, Section 602(b)(14)
- ❖ Cost and Effectiveness Analysis, CWA as amended 2014, Section 602(b)(13)
- ❖ Fiscal Sustainability Plan, Clean Water Act CWA as amended 2014, Section 603(d)(1)(E)

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CIVIL RIGHTS/NON-DISCRIMINATION IN THE SRF PROGRAM

- ❖ The Age Discrimination Act of 1975
- ❖ Title VI of the Civil Rights Act of 1964
- ❖ Section 13 of the Federal Water Pollution Control Act Amendments of 1972
- ❖ Section 504 of the Rehabilitation Act of 1973

The SRF program is bound by the civil rights laws above, which prohibit discrimination in providing services or benefits on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability or age.

These laws were amended in 1988 to make clear that their anti-discrimination powers are intended to apply to the entire operations of a project sponsor, not just the specific program, project, or activity that involves federal assistance. Recipients of federal financial assistance from the US EPA must comply with the above laws.

Direct EPA grantees, such as DHEC's SRF Program, are required to complete and submit to EPA Form 4700-4: *Preaward Compliance Review Report for all Applicants and Recipients Requesting Federal Financial Assistance*. SRF assistance recipients do not have to submit EPA form 4700-4 to EPA or DHEC, but instead are asked to review the form to self-assess how well the entity addresses nondiscrimination in its programs. An SRF Project Sponsor needs to be compliant with nondiscrimination practices. Keeping a copy of the form with any relevant documentation in the project's documentation file would be a best practice.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URLAP)

- ❖ Uniform Relocation and Real Property Acquisition Act, Pub. L. 91-646, as amended

The Project Sponsor is required to certify in writing that it has complied with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act), **regardless of land purchase for loan participation**. This certification requirement applies to all land whether already owned, leased, purchased, or used without payment. Fee simple title, long-term lease, permanent easement, and use without payment are all acceptable acquisition methods. Compliance with the Uniform Act can be waived for pre-owned land or previously acquired easements, but a request for waiver stating the date of possession of such waived land or easements must be submitted. (Please note, however, that **the cost of any land acquired earlier than one year prior to the date of the complete loan application is not eligible for loan participation.**)

Any land included in the project must be acquired in accordance with the Uniform Act **whether or not the land acquired is eligible for loan assistance**. The cost of land cannot exceed fair market value and must be documented by a certified appraisal to be eligible for loan participation.

- Under the Clean Water State Revolving Fund Program (CWSRF), land is eligible if needed for construction.
- Under the Drinking Water State Revolving Fund Program (DWSRF), land is eligible only if it is needed to locate eligible treatment or distribution projects and is purchased from a willing seller. **Any land requiring condemnation action is not eligible for funding.**

The Project Sponsor must complete all land acquisition prior to loan execution. The Project Sponsor must have fee simple ownership or have taken possession of all land required for construction and operation of the project including all necessary right-of-ways and easements, whether acquired by donation, purchase, condemnation, written authorizations for use (such as Highway Department right-of-ways), or other acceptable means. Project Sponsors must submit the certification of compliance prior to loan closing. Certification is documented on DHEC Form 3594, *URLAP Certification*. The Project Sponsor's attorney or the authorized representative should sign the certification statement.

LAND AND ACQUISITION

During the process of acquisition, the landowners must be fully informed by the Project Sponsor, in writing, of the owners' rights under the Uniform Act. After being informed of these rights, landowners may voluntarily waive their right to an appraisal and may donate the land or easements. Such waivers should be in writing and include a statement that the landowner has read and understands his rights under the Act. In cases where the cost of the land or easement being purchased or donated is \$2500 or less, the Project Sponsor may waive the requirement for an appraisal. However, if the landowner specifically requests an appraisal, it must be provided. Arrangements for long term lease, permanent easement, and use without payment must be adequate to ensure successful construction and operation for the life of the project; i.e., the arrangements must not be subject to expiration or revocation which would prevent continued operation for the life of the project.

Except as noted above, all land **must** be appraised by a certified/professional appraiser with a determination of fair market value included for fee simple title or less than fee simple title, e.g., lease. Appraisals must be up-to-date. A new appraisal must be obtained if the former appraisal is dated earlier than six months prior to the date the land is acquired. **Costs for expenses incidental to transfer, such as recording fees, transfer fees, attorney fees or appraiser fees, are eligible for SRF participation with DHEC approval, provided expenses are adequately documented.**

- Under the CWSRF, costs for litigation (e.g. condemnation) are also eligible for SRF participation with DHEC approval, provided expenses are adequately documented.

DHEC recommends an outside acquisition professional with experience in working with the Uniform Act requirements and eminent domain procedures.

APPRAISERS

The Project Sponsor must ensure the appraiser has sufficient knowledge and experience in the type of appraisal problem to be solved and is thoroughly familiar with local conditions and property values. There are professional appraisal organizations which sponsor training, publish guidance and information, require proof of attainment of expertise for certification or professional designation in the organization, and monitor work performed by their members. Appraisers who are certified or designated members of these organizations are required to follow the organization's code of ethics and are subject to disciplinary actions and dismissal for failure to perform according to the standards of the organization. A list of appraisers for a given area can be obtained from the headquartered offices of the following appraisal organizations:

Appraisal Institute (AI)
200 W. Madison, Suite 1500
Chicago, Illinois 60606
Phone: (888) 756-4624 or (312) 335-4100
<http://www.appraisalinstitute.org/>

American Society of Appraisers, (ASA)
Post Office Box 17265
Washington, D.C. 20041
Phone: (800) 272-8258 or (703) 478-2228
<http://www.appraisers.org/>

American Society of Farm Managers and Rural Appraisers (ASMFRA)
950 South Cherry Street, Suite 508
Denver, Colorado 80246-2664
Phone: (303) 758-3513
<http://www.asfmra.org/>

RELOCATION

The Project Sponsor must contact the Federal Highway Administration (FHWA) for technical assistance if acquisition of real property results in the displacement of any person, business, or farm operation. **Relocation costs are not eligible under the SRF Program.** DHEC may request FHWA confirmation of the Project Sponsor's certification of compliance. *If no relocation was involved in the land acquisition, it must be so stated in the Project Sponsor's written certification to DHEC.*

CERTIFICATION

Subsequent to land acquisition, but prior to loan execution, the Project Sponsor must certify to DHEC in writing that:

- The property was acquired by negotiation, if at all possible, rather than by litigation;
- The real property was appraised prior to initiation of negotiation;
- It has informed the property owner, in writing by certified mail, of his rights under the law, of acquisition policies, of requirements, and of payments which apply to the project. Specifically:
 - The property owner or his designated representative was given an opportunity to accompany the appraiser during his inspection of the property;
 - The owner was paid no less than the fair market value as established by the appraisal;
 - The seller was furnished a written statement of, and summary of the basis for, the amount established by the project sponsor as just compensation;
 - The property owner was reimbursed for necessary expenses;
 - If the acquisition of any part of the property left the owner with an uneconomic remnant, an offer was made to include that remnant in the acquisition;
 - The owner was not required to surrender possession of real property until the project sponsor paid the agreed purchase price or deposited with the court, for benefit of the owner, an amount not less the appraised fair market value of the property or the amount of award of compensation in condemnation proceedings for the property;
 - No person was required to move from his dwelling, or move his business or farm without at least 90 days written notice of the date by which the move was required;

- No action was taken that was coercive in nature to compel an agreement on the price to be paid for the property;
- If an owner or tenant was permitted by the project sponsor to occupy the real property on a rental basis, the amount of rent did not exceed the fair rental value of the property;
- The owner/tenant was paid just compensation for any building, structure, or improvement required to be acquired or removed from the real property;
- The owner was reimbursed fair and reasonable expenses incurred for:
 - recording fees, transfer fees, and expenses incidental to conveying real property;
 - penalty costs for prepayment of any pre-existing mortgage;
 - the pro rata portion of real property tax paid which were allocable to a period subsequent to the date of vesting title or the effective date of possession of the property, whichever is earlier;
 - litigation expenses to acquire property by condemnation, if the court:
 - rendered judgment or settlement for the owner; or
 - judges that the Project Sponsor cannot acquire the property by condemnation; or
 - the proceedings were abandoned by the Project Sponsor.

DISADVANTAGED BUSINESS ENTERPRISE COMPLIANCE

Project sponsors are required to ensure, to the fullest extent possible, that *disadvantaged businesses* have the opportunity to participate in a fair share of the contracts and subcontracts awarded in a SRF-funded project. This is required by public law which EPA has determined apply to the SRF loan program:

- ❖ Public Law 102-389
- ❖ 42 U.S.C. 4370d

DBE DEFINITION

A Disadvantaged Business Enterprise (DBE) is defined as a business that is:

- Owned by socially disadvantaged individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities; and
- Owned by economically disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. An individual claiming disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

For purposes of this definition, disadvantaged enterprises may include the following:

- | | |
|-------------------------|--|
| ■ Black Americans | ■ Asian Americans |
| ■ Women | ■ Hispanic Americans |
| ■ Disabled Americans | ■ Native Americans |
| ■ Minority Institutions | ■ Historically Black Colleges and Universities |

To qualify as a DBE firm, at least 51 percent of an independent business must be owned and controlled by a socially and economically disadvantaged individual whose personal net worth is less than

\$750,000. The minority or woman owner's interest must be real, substantial and continuing. The control determination will revolve around the minority or woman owner's involvement in the day-to-day management of the business enterprise.

DBE CERTIFICATION

DHEC does not determine the DBE status of businesses. Instead, the South Carolina SRF Program accepts certification of DBE status from other sources already established to make this determination, such as:

- South Carolina Office of Small & Minority Business Assistance
- SC Commission on Minority Affairs
- South Carolina Department of Transportation
- Minority Business Development Agency (MBDA), U.S. Department of Commerce
- Other sources approved at Project Manager's discretion (DBE definition/criteria must be consistent with agency sources listed above).

Note: See Attachment A for a listing of the addresses, telephone numbers and web addresses for the above referenced agencies.

DBE REQUIREMENTS

Project sponsors must ensure that DBE firms have the opportunity to participate in a fair share of the funds awarded for contracts and subcontracts for supplies, construction, equipment or services.

"Six Good Faith Efforts"

Project Sponsors and their prime contractors must comply with the following "Six Good Faith Efforts" before a contract is awarded:

1. 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.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, **posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.**
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will involve dividing total requirements, when economically feasible, into smaller tasks or quantities to permit 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 identified in paragraphs 1 through 5 of this section.

IMPLEMENTATION OF DBE REQUIREMENTS

The following is recommended for accomplishing the “Six Good Faith Efforts” of the DBE program:

Project Design Phase

The process for satisfying the DBE requirements begins during the design phase of the project. SRF Permit Guidance contains *Appendix A – Mandatory Supplemental Conditions for the South Carolina State Revolving Program*. This section includes information on the DBE requirements for the project. **It is mandatory for Appendix A to be included verbatim in the project specifications. (Appendix A is also to be included in subcontracts over \$2,000.)**

A unit price bid schedule is recommended over a lump sum bid schedule. Dividing work requirements into smaller segments will encourage participation by disadvantaged businesses. Some examples include masonry, plumbing, electrical, excavation, clearing and grubbing, sodding and seeding, landscaping, roofing, mechanical, sheet metal, curb and gutter, paving, hauling, fencing, tile, painting, steel erection, pipe installation, line work, heating, ventilation and air conditioning, building supplies, architect and engineering services and consultant work.

Bidding Phase

The obvious key toward successfully meeting the DBE requirements is the solicitation of minority and women's business enterprises. The following strategies will aid in this effort and **note that item number 4 is mandatory**:

1. Strategic placement of the Invitation for Bid (IFB) advertisement in local newspapers of general circulation, DBE publications, statewide or regional newspapers of general circulation, or the South Carolina Business Opportunities (SCBO) will help the Project Sponsor assure that disadvantaged businesses are actually solicited for participation in the project. **The project should be advertised for a minimum of thirty (30) days in advance of bid opening.**

Under the SRF loan program, one of the requirements for construction contract approval is that the prime contractor must document to DHEC that he has made good faith efforts to meet the project's DBE requirements. The most effective way for the Project Sponsor to assure compliance is to inform all prospective bidders of the DBE requirements in the IFB. Therefore, it is recommended that the following information be included in the IFB:

- A statement that prospective bidders must implement procedures that ensure that DBE firms are given opportunities for meaningful participation if subcontracts are awarded; and
 - A statement informing the prospective bidders of the project's DBE goals.
2. Send a copy of the IFB to the MBDA Business Center (see Attachment A), retaining a copy of the transmittal letter for documentation purposes. The MBDA assists minority businesses in securing procurement contracts and provides technical assistance and bid and/or proposal preparation. Announcements of any prebid conferences should also be sent to the MBDA for distribution.
 3. Developing a DBE listing for the use of potential contractors is highly recommended. Providing the potential contractors with a list of qualified, bona fide disadvantaged business enterprises

will help the Project Sponsor meet the DBE requirements. This can be accomplished by including the project's DBE listing in the Invitation for Bid Documents. Each potential bidder will have easy access to identified disadvantaged businesses from which to solicit subcontract proposals.

Attachment A lists state and federal agencies that can help in developing a DBE procurement list. These agencies maintain listings of disadvantaged businesses which can form the basis for a project-specific DBE listing. Any DBE firm that directly expresses interest in your project can be added to this list. This will provide a pool of DBE firms for proposal solicitation. Direct mailing of the IFB advertisement to all the firms on your DBE listing is also suggested.

4. It is **mandatory** that Project Sponsors create and maintain a **Bidders List**. This is a composite list composed of **all firms that bid or quote on prime contracts or bid or quote on subcontracts, including both DBEs and non-DBEs**. The purpose of the Bidders List is to provide as accurate of a database as possible about the universe of DBE and non-DBE prime contractors and subcontractors. A copy of the Project Sponsor's Bidders List must be submitted to DHEC as part of the bid package. Project Sponsors are required to retain the Bidders List until the project period for the loan has ended. The following information must be obtained from all bidders:
 - Bidder's name with point of contact
 - Bidder's mailing address, telephone number and e-mail address
 - The procurement (scope of work) on which the firm bid or quoted and when
 - The bidder's status as a DBE or non-DBE

Preconstruction Phase

The Project Sponsor should take two more steps to meet the DBE requirements. The first is establishing delivery schedules, work requirements permitting, which will encourage participation by disadvantaged businesses. This can be done by:

- Assisting the prime contractor(s) in developing realistic delivery schedules,
- Encouraging the prime contractor(s) to consider lead times and scheduling requirements needed by disadvantaged business firms for participation, and
- Helping the prime contractor(s) maintain as much flexibility as possible, without jeopardizing the work, to facilitate DBE participation.

Second, the Project Sponsor *must*, in accordance with good faith effort number 6, *require that the prime contractor take the same six good faith efforts* if the prime contractor intends to award subcontracts. However, the prime contractor(s) cannot be forced to subcontract any work.

DBE DOCUMENTATION

The tentatively selected bidder is required to submit DBE documentation in duplicate to the Project Sponsor after bid opening. The Project Sponsor must forward one copy of the information to DHEC. Since the project's plans and specifications serve as documentation of the **Project Sponsor's** prebid efforts to provide opportunities for DBE participation, the DBE documentation submitted will primarily show the **prime contractor's** efforts to achieve the DBE requirements.

Please note that the prime contractor(s) cannot be forced to subcontract any work. If the prime contractor elects to perform the work using only his own work force, the only documentation needed is an executed *Prime Contractor's Subagreement Certification Form* (DHEC 3591) indicating the contractor has elected not to let subcontracts. However, please be aware that subcontractor utilization is monitored during construction. The Project Sponsor's inspector is required to list all subcontractors on the job site in the *Monthly Construction Inspection Reports — Equivalency* (DHEC 4366) provided to DHEC. Use of any unapproved subcontractor on the project may delay loan draw requests or result in costs associated with that subagreement declared ineligible for SRF assistance.

Prime Contractor's Good Faith Efforts

If subcontracts are awarded, the prime contractor must submit the following items as documentation of its good faith efforts:

- A copy of the proposed prime contractor's Bidders List.
- Evidence of solicitation to certified prospective DBE firms, such as copies of solicitation letters/emails listing **specific scope/volume of work**, phone logs, fax confirmation sheets, printouts of online searches with results of said searches, etc. Whenever possible, **contact should be made not later than 30 days before bid opening** to allow DBE firms sufficient time to develop quotes or proposals. Letters of a general nature which do not request quotes or proposals for **specific scope/volume of work** will not be acceptable as good faith efforts. *The prime contractor is strongly encouraged to follow-up each written, faxed or emailed solicitation with at least one logged phone call.*
- Copies of letters asking assistance from the MBDA Business Center - Columbia, SC, the South Carolina Governor's Office of Small & Minority Business Assistance, or other agencies or organizations that provide procurement assistance to DBEs. **Note: As outlined in the "Good Faith Efforts" Number 5 above, it is mandatory that prime contractors contact the MBDA Business Center.**
- List by trade the names of *certified* DBE subcontractors solicited but not selected, including name, address, telephone number, contact person, date of contact, and outcome of contact, including dollar amount of quote.
- List any job-specific criteria that disqualified a certified DBE firm that submitted a low bid for a subcontract. Attach a copy of the disqualified bid or quote along with the bid or quote from the selected subcontractor for comparison.
- Proof of DBE certification from an acceptable source for each subcontractor listed as a DBE.
- DHEC form entitled *Prime Contractor's Subagreement Certification* (DHEC 3591) ~~and EPA Form 6100-4, DBE Subcontractor Utilization Form.~~ The DHEC form captures **all** proposed subcontractors, both DBE firms and non-DBE firms, ~~while the EPA form captures only DBE subcontractors only.~~

EPA 6100-series forms
have been suspended.

- ~~Require all DBE subcontractors to complete EPA Form 6100-3, *DBE Subcontractor Performance Form*. This form captures an intended DBE subcontractor performed for the prime contractor and the price of the contractor.~~

EPA 6100-series forms
have been suspended.

Upon submittal of the DBE package, DHEC will determine if deficiencies exist. If any such deficiencies are correctable, the Project Sponsor will be informed as to what actions must be taken. The proposed construction contract award will not be approved until the corrective action has been taken. Failure by the contractor to take the required corrective action or to explain to DHEC's satisfaction why the action cannot be taken may result in a finding by the Project Sponsor that the prime contractor is nonresponsive. This may be grounds for rejecting the bid.

Please note that DHEC cannot authorize the Project Sponsor to award the construction contract(s) until the project's good faith efforts are approved.

REPORTING REQUIREMENTS

The DBE approval is contingent upon the prime contractor's commitment to use the services of the DBE firm(s) reported. After the SRF Project Sponsor awards the construction contract(s), the Project Sponsor must comply with the following:

- Require prime contractors to forward a copy of each DBE subcontract as soon as possible.
- Require prime contractors to pay subcontractors for satisfactory performance no more than **30 days** from the prime contractor's receipt of payment.
- Submit *Monthly Construction Inspection Reports — Equivalency* (DHEC 4366) to DHEC. The Project Sponsor's project inspector is required to list **all** subcontractors working on the job site in the reports. **Use of any unapproved subcontractor on the project may delay loan draw requests or result in costs associated with that subcontract declared ineligible for SRF assistance.**
- Submit the *MBE/WBE Utilization under Federal Grants and Cooperative Agreements* (EPA Form 5700-52A) to DHEC unless the sponsor receives federal funding below the Simplified Acquisition Threshold (currently \$250,000) in the fiscal year. The reporting period is annual, with the reporting period ending September 30th. Submission of this report is required even if there is no DBE activity to report; this is called a Negative Report. **Failure to meet this requirement may result in loan draw requests being held pending receipt of the MBE/WBE Utilization report.**
- Require the prime contractor to report any proposed changes/additions from the approved subcontractor list to the Project Sponsor **prior to initiation of the action** along with the following items:
 1. A **revised/updated** *Prime Contractor's Subagreement Certification* (DHEC Form 3591) ~~and EPA 6100-4 Form *DBE Subcontractor Utilization Form*.~~
 2. Reason for the proposed deviation.
 3. Evidence of the prime contractor's continued good faith efforts to secure a DBE firm for the new and/or replacement subcontract work.

EPA 6100-series forms
have been suspended.

4. ~~A DBE Subcontractor Performance Form (EPA Form 6100-3) if we are a DBE firm.~~
5. An Equal Employment Opportunity (EEO) Documentation Form (DHEC Form 2323) from the **new** subcontractor **if** the subcontract amount exceeds \$10,000.
6. An Equal Employment Opportunity (EEO) Certification by Proposed Prime Contractor or Subcontractor (DHEC 3592) from the **new** subcontractor **if** the subcontract amount exceeds \$10,000.
7. A Certification Regarding Debarment, Suspension and Other Responsibility Matters (DHEC 3590) from the **new** subcontractor **if** the subcontract amount equals or exceeds \$25,000.

EPA 6100-series forms
have been suspended.

If an unidentified scope of work is to be subcontracted, or, an approved subcontractor needs to be replaced, DHEC must be notified and the good faith efforts employed in procuring a subcontractor.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- ❖ Equal Employment Opportunity (EEO), Executive Order 11246, as amended

Discrimination in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin is prohibited. The affirmative action program is designed to enhance hiring, training and promotion opportunities for minorities and women and is governed by the Executive Order 11246.

These provisions, applicable to SRF projects, require contractors and subcontractors to maintain a policy of nondiscrimination in the treatment of employees, to make this policy known to employees, and to recruit, hire and train employees without regard to age, race, color, national origin, religion, gender, and disability.

By submission of a bid, each bidder acknowledges that he understands and agrees to be bound to the EEO requirements and to also contractually bind each subcontractor, if applicable.

EEO DOCUMENTATION

Appendix A – Mandatory Supplemental Conditions for the South Carolina State Revolving Program found in the *Permit Guide for CWSRF and DWSRF Projects - Equivalency* contains information on the EEO requirements for the project. **It is mandatory for Appendix A to be included verbatim in the project specifications. (Appendix A is also to be included in subcontracts over \$2,000.)**

All prime contractors and any subcontractors whose contract amount exceeds \$10,000, must supply the EEO information required by Special Notice #1 of Executive Order (EO) 11246, as amended. The *EEO Documentation Form* (DHEC 2323) assists contractors with presenting the most of the required EEO information (#1, 3-8 & 11) in addition to DHEC 3591 & 3592. (Attachment B – Forms)

The required information is:

1. Project number, location and type of construction.

2. Copy of the *Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity* (DHEC Form 3592).
3. Copy of the *Employer Information Report EEO-1* (also known as Standard Form 100) if the contractor meets the criteria outlined on page 4 of the *EEO Documentation Form* (see DHEC 2323).
4. Copy of the Affirmative Action Plan of the contractor. Indicate company official responsible for EEO.
5. List of current construction contracts, with dollar amount. List contracting federal agency, if applicable.
6. Statistically detail the sex and race/ethnic composition of the company's workforce, temporary and permanent, by job category. List any handicapped employees.
7. List of employment sources for the project in question. If union sources are used, indicate percentage of minority membership within the union crafts.
8. Anticipated employment needs for this project, by sex, race, and trade, with estimate of minority participation in specific trades.
9. List of subcontractors (name, address and telephone) with dollar amount and duration of subcontract. (Use *Prime Contractor's Subagreement Certification* (DHEC 3591) to provide this information.)
Note: Subcontractors whose contract amount exceeds \$10,000 must submit items 2-8 (DHEC 2323 & 3592).
10. List of any subcontract work yet to be committed with estimate of dollar amount and duration of contract. (Use *Prime Contractor's Subagreement Certification* (DHEC 3591) to provide this information.)
11. Contract Price and duration of prime contract.
12. DBE Documents - See instructions above for Disadvantaged Business Enterprise Compliance regarding use of Disadvantaged Business Enterprises and Small Businesses.

REPORTING REQUIREMENTS

The tentatively selected bidder is required to submit the above EEO documentation in duplicate to the Project Sponsor after bid opening. The Project Sponsor must forward one copy of the information to DHEC as part of their bid package.

Failure to comply with the EEO requirements may be grounds for rejecting the bid. DHEC cannot authorize the Project Sponsor to award the construction contract(s) until this requirement is met.

PARTIES EXCLUDED FROM FEDERAL PROCUREMENT AND NONPROCUREMENT PROGRAMS

- ❖ Debarment and Suspension, Executive Order 12549
- ❖ Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,

Under the federal authorities listed above, funds provided by the federally-assisted SRF loan program may not go to individuals or entities that are prohibited from doing business with the federal government. Debarment status can be checked on the System for Award Management (SAM) Website, <https://sam.gov/>.

Sponsors, prime contractors, **and** subcontractors whose contract amount is expected to equal or exceed \$25,000 must submit a *Certification Regarding Debarment, Suspension, and Other Responsibility Matters* (DHEC 3590) certifying that they are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in a contract using federal funds.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- ❖ Public Law 115-232, section 889

Under the federal authority listed above, funds provided by the federally-assisted SRF loan program may not go to individuals or entities that are prohibited from doing business with the federal government. Debarment status can be checked on the System for Award Management (SAM) Website, <https://sam.gov/> and search for exclusions on "covered telecommunications equipment or services".

ENVIRONMENTAL REVIEW

- ❖ Federal Water Pollution Control Act (FWPCA), Pub. L. 80-845, as amended by Water Resources Reform and Development Act (WRRDA), Pub.L. 113-121

The Federal Water Pollution Control Act, as amended by WRRDA, requires all CWSRF treatment work projects and all DWSRF projects to undergo an environmental review. The project sponsor will submit an environmental evaluation as part of the Preliminary Engineering Report (PER). The evaluation must include sufficient information to enable DHEC to complete an environmental review to determine if the project will significantly impact the environment.

In general, the project sponsor should avoid alternatives which significantly affect, directly or indirectly, sensitive areas such as:

- | | |
|-----------------------------------|------------------------------|
| ▶ Endangered species | ▶ National natural landmarks |
| ▶ Flood plain | ▶ Special coastal resources |
| ▶ Historical/archaeological sites | ▶ Wetlands |
| ▶ Important farmlands | ▶ Wild and scenic rivers |

UTILITY SUSTAINABILITY ASSESSMENT

- ❖ Safe Drinking Water Act, as amended

The Technical, Managerial, and Financial (TMF) capacity of a utility must be deemed sustainable prior to a permit being issued by DHEC's SRF section for one or more prospective SRF-funded Clean Water or Drinking Water projects. A system that cannot meet the sustainability criteria and may not proceed to closing an SRF loan unless 1) the system chooses to improve its score by making improvements and submitting a revised assessment or 2) the proposed SRF project will make the system sustainable. The Project Sponsor submits information for the assessment on DHEC Form 0574, *Utility Sustainability Assessment*.

SINGLE AUDIT

- ❖ Single Audit; Single Audit Act of 1984, Pub L. 98-502
- ❖ Single Audit Act Amendments of 1996, Pub L. 104-156
- ❖ 2 CFR 200

The Single Audit Act requires sub-recipients to audit their federal assistance if they expend \$750,000 or more in a fiscal year. The single audit is triggered by expenditures from any source of federal funding, not just a single SRF project.

FFATA REPORTING

- ❖ Federal Funding Accountability and Transparency Act of 2006 (FFATA); Public Law 109-282

Federal Funding Accountability and Transparency Act of 2006 (FFATA) as amended, requires disclosure of all entities and organizations receiving federal funds over \$25,000. The following information will be collected by DHEC for each sponsor/project:

1. Award Date
 2. Award Amount
 3. DHEC Contract
 4. Place of Performance
 5. Area of Benefit (congressional district)
 6. Project Sponsor Unique Entity Identifier (UEI) (12-digit)*
 7. Project Sponsor Parent UEI*
 8. Project Sponsor Doing Business as Name
 9. Project Sponsor Address (include zip + 4 digits)
 10. The names and total compensation of the five (5) most highly compensated officers
- * UEI can be found at <https://sam.gov>

BUILD AMERICA, BUY AMERICA ACT

- ❖ Build America, Buy America Act. Pub. L. No. 117-58, §§ 70901-52
- ❖ Ensuring the Future Is Made in All of America by All of America’s Workers, Executive Order 14005

The Build America, Buy America (BABA) Act requires the following Buy America preference:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Additional information may be found at <https://www.epa.gov/cwsrf/build-america-buy-america-baba>.

Unless a BABA waiver has been approved, Project Sponsors must require the prime contractor to follow the BABA provisions and certify compliance using DHEC Form 4360, *Bidder’s Build America, Buy America Certification*, which must be submitted as part of the bid package. If a BABA waiver has been approved, the Project Sponsor must submit a list of significant manufactured products or construction materials likely subject to the waiver within the scope of the project and comply with American Iron and Steel provisions,

To certify a Sponsor’s compliance with BABA during construction, the *Project Sponsor’s Build America, Buy America Compliance Form*, DHEC Form 4359, must accompany all draw requests.

“AMERICAN IRON AND STEEL” PROVISIONS

- ❖ Clean Water Act, Section 608 and Consolidated and Further Continuing Appropriations Act, 2015- “Use of American Iron and Steel” (and as required by any subsequent continuing or annual appropriations act)

The American Iron and Steel (AIS) applies to projects with equivalency requirements only when a BABA waiver has been approved. The AIS provision requires Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States. This requirement applies to projects for the construction, alteration, maintenance, or repair of a public water system or treatment works. Project Sponsors are required to follow “American Iron and Steel” provisions and certify that all iron and steel products used in the project are produced in the United States, unless an AIS waiver is granted by the U. S. Environmental Protection Agency.

“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. Additional information may be found in Guidance posted to the EPA Website, <https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>.

Project Sponsors must require the prime contractor to follow the American Iron and Steel provisions and certify compliance using DHEC Form 2556, *Bidder's American Iron and Steel Certification*, which must be submitted as part of the bid package.

To certify a Sponsor's compliance with American Iron and Steel during construction, the *Project Sponsor's American Iron and Steel Compliance Form*, DHEC Form 0962, must accompany all draw requests.

DAVIS-BACON AND RELATED ACTS

- ❖ Clean Water Act, Section 513 and Safe Drinking Water Act, Section 1450(e)
- ❖ Public Law 107-217- [The Davis-Bacon Act, as amended, 2002] and Related Acts – the many laws that authorize federal assistance for construction that include provisions requiring Davis-Bacon labor standards apply to most federally-assisted construction

Wage Rate Requirements - All contracts and subcontracts for construction carried out in whole or in part with assistance made available by SC SRF shall insert in full in any contract in excess of \$2,000 the required contract clauses, which can be found in *Appendix A – Mandatory Supplemental Conditions for the South Carolina State Revolving Fund Program*.

Project Sponsors **must require the prime contractor(s)** to: follow the Davis-Bacon provisions; include a copy of the “wage rate requirements” and the proper Davis-Bacon wage determination(s) in all subcontracts over \$2,000; and maintain and provide all required documentation. To certify a Sponsor's compliance with Davis-Bacon and Related Acts, DHEC Form 2557, the *Project Sponsor's Davis-Bacon Certification*, must accompany all draw requests.

SIGNAGE

- ❖ EPA Memorandum of June 3, 2015; SUBJECT: *Guidelines for Enhancing Public Awareness of SRF Assistance Agreements*
- ❖ EPA Memorandum of December 8, 2022; SUBJECT: *Guidelines for Implementing the Bipartisan Infrastructure Law Signage Term and Condition for the State Revolving Fund Programs*

EPA desires to increase public awareness of EPA assistance agreements including those made with funds from the State Revolving Fund Programs. The primary objective is to improve public understanding of the positive benefits of CWSRF and DWSRF funding to towns, cities, municipalities and water systems. In addition, the federal government desires to increase the transparency of projects funded in whole or in part by the Infrastructure Investment and Jobs Act (IIJA), also referred to as the Bipartisan Infrastructure Law (BIL). Documents entitled, *Signage Guide—Base Equivalency* and *Signage Guide—Bipartisan Infrastructure Law Projects* are posted to the SC SRF Guidance webpage at <http://www.scdhec.gov/srfguidance> and contain information on meeting the signage requirement. The Guide used depends on the which IUP the project appears on.

The sign should satisfy the overall objective of communicating EPA's role in funding projects that achieve positive benefit but should not be burdensome in the investment of time and resources. Costs associated with meeting the signage requirement are an eligible SRF cost.

ARCHITECTURAL AND ENGINEERING PROCUREMENT

Clean Water Only

- ❖ Clean Water Act, Section 602(b)(14)

Clean Water SRF loan recipients who finance architectural and engineering (A&E) contracts as part of the eligible SRF project must ensure that such contracts are procured according to the elements of procurement processes as identified in 40 U.S.C. 1101 *et seq.*, or an equivalent State requirement. The SC State Procurement process has been determined to be equivalent to the federal process of 40 U.S.C. 1101 *et seq.* Projects that follow a Construction Manager At-Risk (CMAR) process do not require A/E procurement compliance so long as construction costs are greater than 50% of total project costs.

The Sponsor will need to document and prove to DHEC, prior to loan closing that A&E services were procured under proper state procurement process using the *Architectural/Engineering Procurement Compliance Form* (DHEC 4087). During project construction if additional architecture or engineering services are procured, the state procurement processes would need to be followed and presented to DHEC.

COST AND EFFECTIVENESS

Clean Water Only

- ❖ Clean Water Act, Section 602(b)(13)

All Clean Water SRF loan recipients must conduct a "cost and effectiveness analysis" of the project proposed for SRF funding. The cost of such analysis is an eligible SRF project cost. The cost and effective analysis should be part of the Preliminary Engineering Report.

At a minimum, the cost and effectiveness analysis must involve:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—
 - the cost of constructing the project or activity;
 - the cost of operating and maintaining the project or activity over the life of the project or activity; and
 - the cost of replacing the project or activity.

See *Guide to CWSRF Cost and Effectiveness Analysis* posted at <http://www.scdhec.gov/srfguidance> and consult with your DHEC Project Manager to learn what to include in the PER document regarding cost and effectiveness. The Sponsor will complete the *Cost and Effectiveness Certification* (DHEC 3152).

FISCAL SUSTAINABILITY PLAN

Clean Water Only

- ❖ Clean Water Act, Section 603(d)(1)(E)

For Clean Water SRF projects that involve the repair, replacement, or expansion of a treatment works, the loan recipient must develop and implement, a fiscal sustainability plan (FSP), for that section of the treatment works or certify that one has been developed and implemented. Development of an FSP is a CWSRF eligible expense.

FSPs must include, at a minimum:

- an inventory of critical assets that are part of the treatment works;
- an evaluation of the condition and performance of inventoried assets or asset groupings;
- a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

Project Sponsors must certify on DHEC form 3236, *Fiscal Sustainability Plan Certification*, that there is an FSP meeting the above requirements or the FSP requirement is not applicable. DHEC Form 3236 must be received before DHEC will approve the final disbursement of funds to the Project Sponsor. DHEC will not collect the FSP but may review the FSP during an on-site project evaluation.

The term “treatment works” [per 2014 amendment to FWPCA section 212(2)(A)] means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this Act [FWPCA}, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

Consult with your DHEC Project Manager to request guidance on the FSP process and learn of any upcoming Asset Management/FSP trainings.



ATTACHMENT A — CONTACTS FOR PROCUREMENT OF DBES

SC Division of Office of Small & Minority Business Assistance

1205 Pendleton Street, Suite 372A
Columbia, SC 29201
Telephone: (803) 734-5010
Website: <https://osmba.sc.gov/>

SC Commission for Minority Affairs

Small and Minority Business Division
293 Greystone Blvd
Columbia, SC 29210
(803) 333-9621

Website: <https://cma.sc.gov/community-wide-divisions/small-and-minority-business-division>

South Carolina Department of Transportation

Office of Business Development & Special Program
Post Office Box 191
Columbia, SC 29201-3959
Telephone: (803) 737-1372

Website: <https://www.scdot.org/business/bus-development-overview.aspx>

U.S. Small Business Administration

Website: www.sba.gov/

Columbia - Main office
1835 Assembly St., Suite 1425
Columbia, SC 29201
Phone: (803) 765-5377

Charleston
3294 Ashley Phosphate Rd.
North Charleston, SC 29420
Phone: (843) 225-7430

Spartanburg
1875 E. Main St.
Duncan, SC 29334
Phone: (803) 253-3123

Minority Business Development Agency (MBDA)

United States Department of Commerce

Website: <https://www.mbda.gov/>

Georgia MBDA Business Center
926 Dalney Street NW
Atlanta, GA 30332-0415
Telephone: (404) 385-6466
Website: georgiambdabusinesscenter.org/

North Carolina MBDA Business Center
600 Park Offices Dr., Suite LL-50
Research Triangle, NC 27709
Telephone: (919) 294-3740
Website:
ncadmin.nc.gov/businesses/historically-underutilized-businesses-hub/mbda

ATTACHMENT B — LIST OF FORMS

FORMS Available at <https://www.scdhec.gov/srfforms>

Form	Form Name	BABA Waiver Approved	No BABA Waiver
EPA 4700-4	Preaward Compliance Review Report for All Applicants Requesting Federal Financial Assistance	X	X
EPA 5700-52A	MBE/WBE Utilization Under Federal Grants and Cooperative Agreements	X	X
EPA 6100-3	DBE Subcontractor Performance Form	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> EPA 6100 forms are suspended as of 3/2016 </div>	
EPA 6100-4	DBE Subcontractor Utilization Form		
DHEC 0574	Utility Sustainability Assessment (UtSA)	X	X
DHEC 0962	Project Sponsor's American Iron and Steel Certification	X	
DHEC 2323	EEO Documentation Form	X	X
DHEC 2556	Bidders American Iron and Steel Certification	X	
DHEC 2557	Project Sponsor's Davis-Bacon Certification	X	X
DHEC 3152	Cost and Effectiveness Certification	X	X
DHEC 3236	Fiscal Sustainability Plan Certification	X	X
DHEC 3587	Monthly Construction Inspection Report — Projects without BABA Requirements	X	
DHEC 3590	Certification Regarding Debarment, Suspension and Other Responsibility Matters	X	X
DHEC 3591	Prime Contractor's Subagreement Certification	X	X
DHEC 3592	Certification by Proposed Prime or Subcontractors Regarding Equal Employment Opportunity	X	X
DHEC 3594	Certification Regarding Uniform Relocation Assistance and Real Property Acquisition Policies (URLAP) Act of 1970	X	X
DHEC 4087	Architectural/Engineering Procurement Compliance Form	X	X
DHEC 4359	Project Sponsor's Build America, Buy America Certification		X
DHEC 4360	Bidder's Build America, Buy America Certification		X
DHEC 4366	Monthly Construction Inspection Report — Projects with BABA Requirements		X