



## Equivalency Projects Contract Insert Language

### Instructions:

The following is the required standard contract insert language that must appear in bidding documents of the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) equivalency projects. Determination of equivalent versus non-equivalent projects is made on a yearly basis as indicated in the Intended Use Plan (IUP) and will be communicated by your SRF project engineer.

- **Domestic Preference Requirements**
  - All projects must comply with federal domestic preference requirements. For equivalency projects this means compliance with Build America, Buy America (BABA) requirements unless a waiver is received, then the project must comply with existing American Iron and Steel (AIS) requirements. Either the **BABA Contract Insert** or the **AIS Contract Insert** should appear in the bidding documents, not both.
- **Prevailing State Wages**
- **Davis-Bacon and Related Acts/Prevailing Federal Wages**
- **Disadvantaged Business Enterprise (DBE) Compliance Statement**

# **Build America, Buy America (BABA) Act**

## **Sample Construction Contract Language**

**(Revised July 2024)**

All construction contracts must have a clause requiring compliance with Public Law No. 117-58, §§70901-27, known as the BABA Act. This is an example of what could be included in a project's construction contract. EPA makes no claims regarding the legality of this clause with respect to state or local law:

The Contractor acknowledges to and for the benefit of the \_\_\_\_\_ (“Owner”) and the \_\_\_\_\_ (the “Funding Authority”) that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

## **AIS Requirement Sample Construction Contract Language**

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the \_\_\_\_\_ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund 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 Purchaser 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 Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser 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.

## **REPLACE THIS PAGE WITH THE APPROPRIATE STATE WAGE DECISION AND MODIFICATIONS**

NOTE: Borrowers shall obtain the wage determination, for the locality and activities subject to Davis Bacon (DB), prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts from the Alaska Department of Labor and Workforce Development (DOL) at: <https://labor.alaska.gov/lss/pamp600.htm>.

The Wage Decision in effect on the date 10 days before bid opening must be that which appears in the contract specifications. Updated Wage Decisions can be included in the contract documents as an addendum. These wage determinations shall be incorporated into solicitations and any subsequent contracts.

These rates will remain stable during the life of a contract or for 24 calendar months, whichever is shorter. The 24-month period begins on the date the prime contract is awarded. Upon expiration of the initial 24-month period, the latest wage rates issued by the department shall become effective for a subsequent 24-month period or until the original contract is completed, whichever occurs first. This process shall be repeated until the original contract is completed.

If you have questions about DB compliance, contact the SRF Program at [srf.eng@alaska.gov](mailto:srf.eng@alaska.gov). Additional contact information is available on the contacts list on SRF Program website at <https://dec.alaska.gov/water/technical-assistance/state-revolving-fund/contacts/>.

Questions regarding prevailing wage and labor standards provisions should be directed to the DOL Labor Standards and Safety Division. Regional offices can be found on the DOL website at [https://labor.alaska.gov/lss/forms/Contracting\\_Agency\\_Responsibilities.pdf](https://labor.alaska.gov/lss/forms/Contracting_Agency_Responsibilities.pdf) or by emailing [statewide.wagehour@alaska.gov](mailto:statewide.wagehour@alaska.gov).

## **REPLACE THIS PAGE WITH THE APPROPRIATE FEDERAL WAGE DECISION AND MODIFICATIONS.**

NOTE: Borrowers shall obtain the wage determination, for the locality and activities subject to Davis Bacon (DB), prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts from the United States Department of Labor (DOL) at: [sam.gov/content/wage-determinations](http://sam.gov/content/wage-determinations)

**The Wage Decision in effect on the date 10 days before bid opening** must be that which appears in the contract specifications. Updated Wage Decisions can be included in the contract documents as an addendum. These wage determinations shall be incorporated into solicitations and any subsequent contracts pursuant to 29 CFR 1.6(c)(2)(ii)(A).

**If the contract is not awarded within 90 days** of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the SRF Program, at the request of the borrower, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(2)(ii)(D).

If you have questions about DB compliance, contact the SRF Program at [srf.eng@alaska.gov](mailto:srf.eng@alaska.gov). Additional contact information is available on the contacts list on SRF Program website at <https://dec.alaska.gov/water/technical-assistance/state-revolving-fund/contacts/>.

Questions regarding prevailing wage and labor standards provisions should be directed to the DOL Wage and Hour Division. Regional offices can be found on the DOL website at [dol.gov/agencies/whd](http://dol.gov/agencies/whd) or by calling 866-487-9243. To submit an email inquiry, use the WHD Contact Form.

## Davis Bacon Insert for all Contracts over \$2,000

(Revised June 2025. Current version of 29 CFR, dated April 30, 2025)

The following clauses, from 29 CFR 5.5 (a), are required to be included in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds.

### 1. **Minimum wages** —

- i. **Wage rates and fringe benefits.** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in 29 CFR 5.5(d) and (e), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(v); 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 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 classifications and wage rates conformed under 29 CFR 5.5(a)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) must 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.

- ii. **Frequently recurring classifications.**

- A. In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:
    - 1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
    - 2. The classification is used in the area by the construction industry; and
    - 3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
  - B. The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.
- iii. **Conformance.**
- A. The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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. The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
  - C. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
  - D. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount

designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- E. The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5(a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5(a)(1)(iii)(C) or (D) must 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.
- iv. **Fringe benefits not expressed as an hourly rate.** 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- v. **Unfunded plans.** 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, in accordance with the criteria set forth in § 5.28, 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.
- vi. **Interest.** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. **Withholding** —

- i. **Withholding requirements.** The borrower may, upon its own action, or must, upon written request of EPA Award Official of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5 (a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from

the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), the SRF Program may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, 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.

- ii. **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:
  - A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
  - B. A contracting agency for its procurement costs;
  - C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
  - D. A contractor's assignee(s);
  - E. A contractor's successor(s); or
  - F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

3. **Records and certified payrolls** —

i. **Basic record requirements** —

- A. **Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- B. **Information required.** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

- C. **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.
- D. **Additional records relating to apprenticeship.** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.
- ii. **Certified payroll requirements —**
- A. **Frequency and method of submission.** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the EPA if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the EPA. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.
- B. **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at: <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last

known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

- C. **Statement of Compliance.** Each certified payroll submitted must be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
1. That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5(a)(3)(i), and such information and records are correct and complete;
  2. That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and
  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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- D. **Use of Optional Form WH-347.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the “Statement of Compliance” required by 29 CFR 5.5(a)(3)(ii)(C) of this section.
- E. **Signature.** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
- F. **Falsification.** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.
- G. **Length of certified payroll retention.** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- iii. **Contracts, subcontracts, and related documents.** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of

the work and for a period of 3 years after all the work on the prime contract is completed.

iv. **Required disclosures and access —**

- A. **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i) through (iii) of this section, and any other documents that the State, EPA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of the State, EPA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
- B. **Sanctions for non-compliance with records and worker access requirements.** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.
- C. **Required information disclosures.** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the EPA if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the SRF Program, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. **Apprentices and equal employment opportunity —**

i. **Apprentices** —

- A. **Rate of pay.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- B. **Fringe benefits.** Apprentices must 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, fringe benefits must be paid in accordance with that determination.
- C. **Apprenticeship ratio.** The allowable ratio of apprentices to journey workers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5 (a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- D. **Reciprocity of ratios and wage rates.** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journey worker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.
- ii. **Equal employment opportunity.** The use of apprentices and journey workers under this part must 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 must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the EPA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.
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 the contracting agency, 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 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 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
  - ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
  - iii. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.
11. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate

against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;
- iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or
- iv. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

## **Davis Bacon Insert for all Contracts over \$100,000**

**(Revised June 2025. Current version of 29 CFR, dated April 30, 2025)**

The following clauses, from paragraph (b) of 29 CFR 5.5, are required to be included in any contract in excess of \$100,000. As used in this paragraph, the terms “laborers and mechanics” include watchpersons 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 29 CFR(b)(1) the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in 29 CFR(b)(1) of this section, in the sum of \$33 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 29 CFR(b)(1).
3. **Withholding for unpaid wages and liquidated damages —**
  - i. **Withholding process.** The SRF Program may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this paragraph (b) on this contract, 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 that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

- ii. **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5 (a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:
  - A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
  - B. A contracting agency for its procurement costs;
  - C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
  - D. A contractor's assignee(s);
  - E. A contractor's successor(s); or
  - F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
  - i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
  - ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
  - iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
  - iv. Informing any other person about their rights under CWHSSA or this part.

# Disadvantaged Business Enterprise Compliance Statement

Disadvantaged Business Enterprise (DBE) requirements are applicable to a subset of loans issued by the SRF Program. To determine if DBE requirements are applicable to your project, refer to the loan agreement or contact the SRF Program project engineer assigned to your project for more information.

The purpose of the DBE program is to ensure nondiscrimination when awarding contracts and to help remove barriers for DBE participation under EPA financial assistance agreement. As such, federal regulations require that both loan recipients (borrowers) and prime contractors must make the following Good Faith Efforts as defined in 40 CFR Part 33 Subpart C whenever procuring construction, equipment, services and supplies.

## **Borrowers and Prime Contractors – Good Faith Efforts**

The following Good Faith Efforts apply to the procurement of construction, equipment, services, and supplies with SRF financial assistance funds:

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

The EPA does not allow self-certification of DBE status. Instead, businesses must be certified by an approved certifying entity. The Alaska Department of Transportation and Public Facilities and the Small Business Administration maintain a DBE Directory of certified DBEs. A DBE can also be certified under the US Small Business Administration's 8(a) Business Development Program, the US Department of Transportation's (DOT) Participation by DBE in DOT Programs, an Indian Tribal Government, State Government, Local Government, or an independent private organization that certifies entities in accordance with EPA's 8% or 10% statutes as applicable.

Both the borrower and the prime contractor are required to complete the Alaska SRF's *Disadvantaged Business Enterprise Program Good Faith Effort and Participation Form* or the EPA form. **For a copy of the forms, please email [dec.srfprogram@alaska.gov](mailto:dec.srfprogram@alaska.gov).**

### **Borrowers Only – Additional Requirements**

- Each procurement contract signed by a loan recipient must include the following term and condition (40 CFR Part 33, Appendix A):

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

- Include this form along with the *Disadvantaged Business Enterprise Good Faith Effort and Participation Form* in the bid and/or contract documents.
- For all contractor/subcontractor bids submitted, the entity receiving the bids is required to keep a copy of the bid on file, along with the Good Faith Effort and Participation form, for no less than the records retention period specified in the borrower's loan agreement.

### **Prime Contractors Only – Additional Requirements**

- The prime contractor must pay its subcontractors no more than 30 days after receipt of payment from the borrower when satisfactory work has been performed.
- The prime contractor is required to notify the borrower prior to any termination of a DBE subcontractor.
- If a subcontractor fails to perform the work under a subcontract, the prime contractor will employ the six Good Faith Efforts described in seeking a replacement.

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*The undersigned certifies that this recipient/contractor is aware that the above guidance is a summary of the requirements of EPA's Disadvantaged Business Enterprise regulations and is not all encompassing. Further, the undersigned certify they will comply with all applicable federal regulations in 40 CFR Part 33. Failure to demonstrate a Good Faith Effort through solicitation of a minority-owned business or women-owned businesses can result in ineligible expenses under the loan.*

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Organization Name

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Print Name and Title of Authorized Representative

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Signature of Authorized Representative

Date