

**REQUIRED "BOILERPLATE" CONTRACT LANGUAGE GUIDANCE  
WYOMING SRF 1ST ROUND FUNDS**

To: Engineers and Loan Recipients on projects using Wyoming SRF 1st round funds

From: Wyoming State Revolving Fund (SRF) Program

- Brian Mark, SRF Principal Engineer, WDEQ/WQD, 777-6371
- Kevin Frank, SRF Project Engineer, WDEQ/WQD, 473-3471
- Wade Verplancke, Project Manager, Water Development Office, 777-7626

Date: October 2015

*Failure to follow the instructions/requirements in this document may result in loss of SRF funding.*

*You need to incorporate the various clauses and forms discussed below into all bid documents and construction contracts for projects using 1st round SRF loan funds. There is a separate guidance document to use if your project is using 2nd round SRF loan funds. Check with the SRF Program if you are unsure which type funds your project is using.*

*The required location for these clauses and forms is based on an Engineers Joint Contract Documents Committee (EJCDC) type contract. Please discuss with the SRF Program if you intend to use a different type of contract or wish to place SRF required language in alternate locations. In addition to the specific language in this SRF guidance document, you also need to take into account the requirements in all applicable state statutes, including especially the following statutes dealing directly with public works projects: W.S. 16-6-101 through -121, 16-6-201 through -206, 16-6-701 through -708, 16-6-1001, and 15-1-113 (municipalities/joint powers boards).*

*You need to send your bidding/contract documents (including drawings, project manual, and checklist on page 5) to the SRF Program for approval prior to advertising for bids. Contact Kevin Frank (for any SRF projects) or Wade Verplancke (for Drinking Water SRF projects only). Do not begin advertising without SRF approval.*

*Arrange for SRF to attend a pre-bid conference.*

*After you receive bids on the project you must get SRF approval before you award the contract. Contact Wade Verplancke if it is a drinking water project or Brian Mark or Kevin Frank if it is a clean water project. Do not award the contract without SRF approval.*

*Advertising for bids:*

- Advertise twice minimum, at least one week apart, in a newspaper of general circulation for the project owner, following W.S. 15-1-113 (a) and (b). More stringent requirements apply for water and/or sewer districts; see W.S. 41-10-101(a)(xiv).

- As part of DBE good faith effort, ad must appear minimum 30 days before bid due date. Do not count bid due date as one of the 30 days.
- Bid opening must be public; see W.S. 16-6-1001(a)(iii).
- Do not advertise until you get SRF approval.
- Provide a copy of the affidavit of publication to SRF.

*Bid security, W.S. 15-1-113(f):*

- Require 5% minimum bid security.
- Must be a bid bond for bids greater than \$150,000. Owner can allow other types of security only for bids that are \$150,000 or less. EJCDC based documents often erroneously allow checks or other types of security and therefore should be revised.
- Successful bidder has 30 days to execute the contract once it is awarded. EJCDC based documents often allow only 15 days and therefore should be revised.
- State the bid security requirements in the advertisement for bids.
- Also modify as necessary any language on bid security or time to execute contract in the instructions to bidders, bid form, and notice of award.

*Require contract security (performance and payment bonds); see W.S. 15-1-113(d) and 16-6-112. State the required contract security in the advertisement for bids; see W.S. 15-1-113(d) and (f).*

*Require a completed Affidavit Acknowledging Payment to Materialmen, Subcontractors and Laborers (form attached) with all requests for progress payment beginning with the second request. See W.S. 16-6-1001(a)(iv).*

*Provide notification that final payment cannot be made until the requirements of W.S. 16-6-116, 16-6-117, and 15-1-113(h) are met.*

*Provide notification regarding the amount of retainage to be withheld on progress payments; see W.S. 16-6-702. Provide notification that contractor may designate an interest bearing account for retainage in accordance with W.S. 16-6-702, -704, and -705*

*Include the following two clauses in the Advertisement for Bids:*

Qualified Disadvantaged Business Enterprises (DBEs) are encouraged to submit bids on this project. Bidders that use a subcontractor(s)/supplier(s) are required to make a good faith effort at soliciting DBE subcontractor/supplier participation. Bidders shall submit the required DBE Good Faith Effort Documentation form and other related forms with their bids.

Pursuant to W.S. 16-6-106, "preference is hereby given to materials, supplies, agricultural products, equipment, machinery and provisions produced, manufactured or grown in Wyoming, or supplied by a resident of the state, quality being equal to articles offered by the competitors outside of the state".

*Include the following clause (or equivalent) in the Instructions to Bidders:*

**PREFERENCE FOR RESIDENT CONTRACTORS**

The Contract shall be let to the responsible certified resident making the lowest bid, if the certified resident's bid is not more than five percent (5%) higher than that of the lowest responsible nonresident bidder and the resident bidder does not propose to subcontract more than thirty percent (30%) of the work to nonresident contractors. A resident for this purpose must be certified as a resident by the Wyoming Department of Workforce Services prior to bidding upon the Contract. See W.S. 16-6-101, et seq. A resident bidder shall submit a copy of its certificate of residency with its bid.

*On the Bid Form (and possibly in the Instructions to Bidders) require all Bidders to submit the following with their Bids (in addition to the bid security, etc.):*

- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions
- DBE Good Faith Effort Documentation form
- Bidders List (listing all entities, DBE or not, that submitted a quote to Bidder; see form)
- EPA Form 6100-3—DBE Program Subcontractor Performance Form(s) (if using any DBEs)
- EPA Form 6100-4—DBE Program Subcontractor Utilization Form (if using any DBEs)
- Copy of Certificate of Residency, if bidding as a resident

*Include SRF Special Conditions section (attached pages 1-46) in the project manual, and complete the following:*

- *Specifically identify the SRF Special Conditions as part of the Contract Documents, in the Agreement/Contract.*
- *Fill in the blank on page 16 near the end of the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" with the correct county where the project is located.*
- *Insert the appropriate Davis Bacon Wage Decision and the WYDOT DBE directories in place of pages 45 and 46. Follow the additional directions on pages 45 and 46.*
- *The requirements known as "Buy American/Use of American Iron and Steel" apply to most SRF projects. If you believe Buy American may not apply to your project, check with SRF. You will be able to leave out the Buy American related pages (43 and 44) if SRF confirms it does not apply to your project.*

*Do not tell contractors that they are exempt from sales taxes on this project. In Wyoming, the tax exempt status of exempt entities does not pass on to contractors. See Wyoming Department of Revenue Rules and Regulations Chapter 2 Section 10(e).*

*Read the EPA guidance on required signage, available on the SRF Forms and Guidance website, <http://deq.wyoming.gov/wqd/state-revolving-loan-fund/resources/forms-guidance/>. Determine how you will meet the signage requirement and tell SRF when (or before) you turn in your plans and specifications for review. The simplest option in many cases may be to print a paper 11" x 17" sign using SRF's template, laminate it, and tack it up on a board at the project site in a*

*location visible to the public. Ask SRF for its template if desired. Other options include posters, inserts in monthly bills, posting something on your website, etc. Provide documentation (usually a photo) of your posted signage to SRF for its records.*

*Be sure to read through all of the boilerplate language. There are several requirements you must meet in addition to what the Contractor must meet.*

Submit this check sheet to SRF along with your documents to affirm and show where all the items discussed above have been addressed.

**SRF Boilerplate Checklist for 1st Round Projects**

Project: \_\_\_\_\_

Addressed? (Yes/No/NA)	Page #s	Abbreviated description of requirement
		ad for bids twice, one week apart, start 30 days before bid opening
		public bid opening
		5% min. bid security
		bid security must be bond if bid > \$150k (no checks, etc.)
		30 days to execute contract
		contract security/performance and payment bonds
		affidavit for progress payments
		final settlement and payment
		retainage to be withheld
		interest bearing retainage account
		DBE and W.S. 16-6-106 preferences ad for bids notice
		Preference For Resident Contractors
		items to submit with bid
		SRF Special Conditions section
		identify SRF Special Conditions as part of contract
		insert county name
		Davis Bacon Wage Decision
		WYDOT DBE Directories
		Buy American
		deletion or correction of incorrect reference to sales tax exemption
		signage

Comments/explanations:





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## **SRF SPECIAL CONDITIONS**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS**

#### **Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not

required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--  
Lower Tier Covered Transactions**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Organization Name

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Name and Title of Authorized Representative

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Signature

Date

## **DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION**

### **1. General**

This project includes federal financial assistance in the form of a State Revolving Fund (SRF) loan. Owner and Contractor/Bidder are required to make good faith efforts with adequate documentation to include disadvantaged business enterprises (DBEs) as subcontractors or suppliers on this project. More detailed regulations are published under 40 CFR Part 33.

### **2. DBE Certification**

DBEs include minority business enterprises (MBEs) and women's business enterprises (WBEs). MBEs and WBEs must be certified as such in order to participate as a DBE. Certification can be through the Wyoming Department of Transportation (WYDOT) under its DBE program, through the Small Business Administration (SBA) under its 8(a) Business Development Program or its Small Disadvantaged Business (SDB) Program, or through other valid government or private organizations. Please see the attached list of WYDOT certified DBE firms, current as of the date shown. WYDOT maintains their list of certified DBE firms on the internet at [http://www.dot.state.wy.us/home/business\\_with\\_wydot/contractors/Disadvantaged\\_Business\\_Enterprise.html](http://www.dot.state.wy.us/home/business_with_wydot/contractors/Disadvantaged_Business_Enterprise.html). SBA maintains a database of certified firms at [http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm).

### **3. Good Faith Efforts**

Owner and Contractor/Bidder must make the following good faith efforts when soliciting contractors, subcontractors, or suppliers to procure construction, equipment, services, and supplies on this project:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

#### **4. Fair Share Objective**

The Wyoming SRF Program has negotiated the following DBE fair share objective percentages with the United States Environmental Protection Agency:

MBE: Construction 1.5%, Supplies 1.0%, Services 1.0%, Equipment 2.5%

WBE: Construction 2.5%, Supplies 2.5%, Services 1.5%, Equipment 5.0%

These are goals, not quotas. The requirement is that Owner and Contractor/Bidder must make and document good faith efforts to solicit DBE participation.

#### **5. Documentation for Bidder to Submit with Bid**

(a) Contractor/Bidder shall submit the DBE Good Faith Effort Documentation form (use the form provided). If requested, Bidder shall provide complete documentation for the Good Faith Efforts.

(b) Contractor/Bidder shall submit its Bidders List with its bid, using the form provided. It shall include all entities that provided Contractor/Bidder a bid or quote on this project. It shall include both DBE and non-DBE bidders. Required information for each entity includes 1) entity's name and point of contact, 2) entity's mailing address, telephone number, and e-mail address, 3) procurement on which entity bid or quoted and when, and 4) entity's status as a MBE/WBE or non-MBE/WBE.

(c) Contractor/Bidder shall have each DBE subcontractor/supplier it proposes to use complete EPA Form 6100-3—DBE Program Subcontractor Performance Form and shall include all completed forms as part of the bid or proposal package. This form is not needed if Contractor/Bidder has no DBE participation.

(d) Contractor/Bidder shall complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the bid or proposal package. This form is not needed if Contractor/Bidder has no DBE participation.

#### **6. Documentation for Owner to Submit to SRF Program**

Before awarding the contract, Owner shall submit the following items to the SRF program for approval:

(a) Bid Tabulation of all bids submitted, including total and itemized prices

(b) Owner's or Engineer's proposed recommendation regarding contract award.

(c) The bid and all documentation of the apparent successful bidder.

(d) A composite Bidders List. This shall be created from the separate lists submitted by the various Bidders with their bids.

(e) Affidavit of publication of the Advertisement for Bids

On Drinking Water SRF projects, submit this information to  
Wade Verplancke  
Wyoming Water Development Office  
6920 Yellowtail Road, Cheyenne, WY 82002  
Phone 307-777-7626, email wade.verplancke@wyo.gov

On Clean Water SRF projects, submit this information to  
Kevin Frank  
DEQ Casper Field Office  
152 N. Durbin, Suite 100, Casper, WY 82601  
Phone 307-473-3471, Fax 307-473-3458, email kevin.frank@wyo.gov

## **7. Other Requirements and Information**

(a) Contractor must pay its subcontractors for satisfactory performance no more than 30 days from Contractor's receipt of payment from Owner

(b) Contractor must notify Owner in writing prior to any termination of a DBE subcontractor for Contractor's convenience. Owner must pass such notification along to the Wyoming SRF program.

(c) If a DBE subcontractor fails to complete work under the subcontract for any reason, Contractor must employ the six good faith efforts if soliciting a replacement subcontractor.

(d) Contractor must employ the six good faith efforts even if Contractor has achieved its fair share objectives.

(e) Contractor must provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator. The EPA DBE Coordinator is Veronica Parker, phone (202) 564-5347, email parker.veronica@epa.gov.

(f) Copies of EPA Form 6100-2—DBE Program Subcontractor Participation Form, EPA Form 6100-3—DBE Program Subcontractor Performance Form, and EPA Form 6100-4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU. Copies of these forms are also attached to this contract.

(g) Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. Contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance

agreements. Failure by 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.

(h) Bidders lists assembled from past SRF projects are available from the Wyoming SRF Program for Owner's or Contractor's/Bidder's information. Personnel and reproduction charges may apply.

**DBE Good Faith Effort Documentation**

Project: \_\_\_\_\_

Bidder: \_\_\_\_\_ Bid date: \_\_\_\_\_

Bidder shall complete the checklist to certify that it has complied with the requirement to make good faith efforts to ensure that certified DBEs have the opportunity to compete for procurements funded by EPA financial assistance funds. Bidder shall make good faith efforts prior to submission of bid/proposal.

1. Did you ensure that DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities?  Yes  No

2. Did you 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?  Yes  No

3. Did you consider in the contracting process whether firms competing for large contracts could subcontract with DBEs? This will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.  Yes  No

4. Did you consider contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually?  Yes  No

5. Did you use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce?  Yes  No

**Certification Regarding DBE Good Faith Effort**

Bidder certifies, by submission of this form that it has fulfilled the Good faith efforts required for this project. If requested, Bidder shall provide complete documentation for the Good Faith Efforts.

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Bidders List

Project: \_\_\_\_\_

Owner: \_\_\_\_\_

Bid Date: \_\_\_\_\_

Contractor/Bidder should list itself first. Then list all entities that provided Contractor/Bidder a bid or quote on this project. Include all subcontractors and suppliers, both DBE and non-DBE, regardless of whether you propose to use them. Add additional sheets as necessary.

Bidding entity name:

Contact person name:

Mailing address:

Telephone:

E-mail:

Work bid: bid contract as prime

Status: \_\_\_MBE \_\_\_WBE \_\_\_non-DBE

Bidding entity name:

Contact person name:

Mailing address:

Telephone:

E-mail:

Work bid:

Status: \_\_\_MBE \_\_\_WBE \_\_\_non-DBE

Bidding entity name:

Contact person name:

Mailing address:

Telephone:

E-mail:

Work bid:

Status: \_\_\_MBE \_\_\_WBE \_\_\_non-DBE

Bidding entity name:

Contact person name:

Mailing address:

Telephone:

E-mail:

Work bid:

Status: \_\_\_MBE \_\_\_WBE \_\_\_non-DBE

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

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

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

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

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

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



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

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

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

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

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

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

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

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

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

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

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

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

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

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

Continue on back if needed

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

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

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

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

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

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

**EQUAL EMPLOYMENT OPPORTUNITY and AFFIRMATIVE ACTION  
REQUIREMENTS on FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**

**Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity  
(Executive Order 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetable	Goal for minority participation for each trade	Goal for female participation in each trade
	See goal listed below for county where covered area is located.	6.9%

**Minority Participation Goals:**

For Albany, Campbell, Carbon, Converse, Fremont, Johnson, Laramie, Natrona, and Platte Counties - 7.5%.

For Big Horn, Hot Springs, Park, Sheridan, and Washakie Counties and Yellowstone National Park - 3.3%

For Lincoln, Sublette, Sweetwater, and Uinta Counties - 5.1%

For Crook, Niobrara, and Weston Counties - 7.9%

For Goshen County - 5.3%

For Teton County - 4.0%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action

obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number for the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed. Use the form on the next page. Contractor shall also complete and submit this form to report its prime contract, regardless of whether it has any subcontractors. Contractor shall provide copies to Owner and Engineer.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is \_\_\_\_\_ County, Wyoming.

This notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 41 CFR 60-4.6.

CONTRACTOR'S NAME, ADDRESS & TELEPHONE NUMBER

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor Employer ID  
Number: \_\_\_\_\_

**Return to:**

Joan Ford, Regional Director  
US Department of Labor  
Federal Building, Room 840  
525 South Griffin St.  
Dallas, TX 75202

**CONTRACT INFORMATION**

PROJECT AND LOCATION:				
Dollar Amount of Contract	Estimated Start Date	Estimated Completion Date	Contract No.	Geographical Area (County, State)

**NOTIFICATION OF SUBCONTRACTS AWARDED (>\$10,000)**

Subcontractor's Name Address, and Phone Number	Employer ID Number of Subcontractor	Estimated \$ Amount of Subcontract	Estimated Start Date	Estimated Completion Date

## Equal Opportunity Clauses

A. The Equal Opportunity Clause published at 41 CFR 60-1.4(b) is required to be included in, and is part of, all nonexempt federally assisted construction contracts and subcontracts (including this Contract). The Equal Opportunity Clause shall be considered to be a part of every contract and subcontract required by the regulations to include such a clause, whether or not it is physically incorporated in such contracts. The notices required to be posted by paragraphs (1) and (3) of the Equal Opportunity Clause shall be the "Equal Employment Opportunity is the Law" poster approved by the Office of Federal Contract Compliance Programs and available on the internet at <http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm>.

### EQUAL OPPORTUNITY CLAUSE (41 CFR 60-1.4(b))

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. The Standard Federal Equal Employment Opportunity Construction Contract Specifications published at 41 CFR 60-4.3(a) are required to be included in, and are part of, all federal and federally assisted construction contracts and subcontracts (including this Contract) in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to 41 CFR 60-4.6 and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under Executive Order 11246. These Specifications shall be considered to be a part of every contract and subcontract required by the regulations to include such a clause, whether or not it is physically incorporated in such contracts.

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY  
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As used in these specifications:

- a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area, (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the

covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was

taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to

minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7)(a) through (p) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has positive impact on the employment of minorities and

women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive order if a specific minority group of women is under-utilized).

10. The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed.

Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

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

## PROHIBITION AGAINST LISTED VIOLATING FACILITIES

### A. REQUIREMENTS

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Pub. L. 92-604) and section 308 of the Clean Water Act (33 U.S.C. 1251, as amended), respectively, which relate to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from the listing.

(3) To use his best efforts to comply with clean air and clean water standards at the facilities in which the contract is being performed.

(4) To insert the substance of the provisions of this clause, including this paragraph (4), in any nonexempt subcontract.

### B. DEFINITIONS

(1) Air Act means the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(2) Water Act means the Clean Water Act, as amended (33 U.S.C. 1251 et seq.).

(3) Clean Air Standards means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 (d) of the Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111 (c) or section 111(d), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) Clean Water Standards means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of Water Act (33 U.S.C. 1317).

(5) Compliance means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent

jurisdiction, the Environmental Protection Agency in accordance with the requirements of the Air Act or Water Act and regulations.

(6) Facility means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, to be used in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are located in one geographical area.

## **WILLIAMS-STEIGER OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

### **A. AUTHORITY**

(1) The contractor is subject to the provisions of the Williams-Steiger Occupational Safety and Health Act of 1970.

(2) These construction documents and the joint and several phases of construction hereby contemplated are to be governed, at all times, by applicable provisions of the Federal law(s), including but not limited to the latest amendment of the following:

a. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 94-596;

b. Part 1910 - Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;

c. Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations.

### **B. SAFETY AND HEALTH PROGRAM REQUIREMENTS**

(1) This project, its prime contractor and its subcontractors, shall at all times be governed by Chapter XVII of Title 29, Code of Federal Regulations, Part 1926 - Safety and Health Regulations for Construction (29 CFR 22801), as amended to date.

(2) To implement the program and to provide safe and healthful working conditions for all persons, general project safety meetings will be conducted at the site at least once each month during the course of construction, by the construction superintendent or his/her designated safety officer. Notice of such meeting shall be issued not less than three (3) days prior, stating the exact time, location, and agenda to be included. Attendance by the owner, architect, general foreman, shop steward(s), and trades, or their designated representatives, witnessed in writing as such, shall be mandatory.

(3) To further implement the program, each trade shall conduct a short gang meeting, not less than once a week, to review project safety requirements mandatory for all persons during the coming week. The gang foreman shall report the agenda and specific items covered to the project superintendent, who shall incorporate these items in his/her daily log or report.

(4) The prime contractor and all subcontractors shall immediately report all accidents, injuries, or health hazards to the owner and architect, or their designated representatives, in writing. This shall not obviate any mandatory reporting under the provisions of the Occupational Safety and Health Act of 1970.

(5) This program shall become a part of the contract documents and the contract between the owner and prime contractor, prime contractor and all subcontractors, as though fully written therein.

### **ANTI-KICKBACKS**

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR, Part 3). This Act provides that Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

Contractor certifies and warrants that no gratuities, kickbacks and contingency fees were paid in connection with this contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this contract.

Contractor certifies that, to Contractor's knowledge, no state employee has any personal or beneficial interest whatsoever in the services described in this Contract.

No staff member of Contractor, compensated either partially or wholly with funds disbursed pursuant to the Contract, shall engage in any Contract or activity which would constitute a conflict of interest as related to this Contract.

### **DISCOVERY OF ARCHAEOLOGICAL AND OTHER HISTORICAL ITEMS**

In the event of an archaeological find during any phase of construction, the following procedure will be followed:

1. Construction shall be halted, with as little disruption to the archaeological site as possible.
2. Contractor shall notify Owner who shall contact the State Historic Preservation Officer.
3. The State Historic Preservation Officer may decide to have an archaeologist inspect the site and make recommendations about the steps needed to protect the site, before construction is resumed.

4. The entire event should be handled as expediently as possible in order to hold the loss in construction time to a minimum while still protecting archaeological finds.

A similar procedure should be followed with regard to more recent historical resources. Should any artifacts, housing sites, etc., be uncovered, the same procedure should be followed as for an archaeological find.

In the event archaeological/historical data are evaluated to meet National Register criteria, the Advisory Council on Historic Preservation may be notified and asked to comment by the Wyoming State Revolving Fund Program.

## **ACCESS**

Contractor shall insure that authorized representatives of the Wyoming DEQ, Office of State Lands, Water Development Office, US EPA, Comptroller General, Inspector General, and other applicable federal and state agencies and officials will have access to the project work whenever it is in preparation or progress and shall provide proper facilities for such access and inspection. Contractor shall allow these representatives to have access to any books, documents, plans, reports, papers, and other records of Contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, copies and transcriptions thereof and to interview any officer or employee. Contractor shall insure that all subagreements will also afford access to such project work, sites, documents, records, and persons.

## **SITE EROSION AND SEDIMENT CONTROL MEASURES**

Every effort shall be made by Contractor and subcontractors to prevent and correct problems associated with erosion and runoff processes which could occur during and after project construction. The efforts should be consistent with applicable local ordinances and the Nonpoint Source Pollution Control Guidance. Whenever appropriate, Contractor's efforts shall reflect the following engineering principles:

- (a.) When appropriate, land grading and excavating should be kept at a minimum to reduce the possibility of creating runoff and erosion problems which require extensive control measures.
- (b.) Whenever possible, topsoil should be removed and stockpiled before grading begins.
- (c.) Land exposure should be minimized in terms of area and time.
- (d.) Exposed areas subject to erosion should be covered as quickly as possible by means of mulching or vegetation.
- (e.) Natural vegetation should be retained whenever feasible.
- (f.) Early completion of stabilized drainage systems (temporary and permanent systems) will substantially reduce erosion potential.
- (g.) Roadways and parking lots should be paved or otherwise stabilized as soon as feasible.

- (h.) Clearing and grading should not be started until a firm construction schedule is known and can be effectively coordinated with grading and clearing activity.

## **WYPDES CONSTRUCTION RELATED DISCHARGE PERMITS**

Construction projects which will disturb 5 acres or more require coverage under the State of Wyoming General Permit for Storm Water Discharges Associated with Large Construction Activities. Construction projects which will disturb 1 acre or more but less than 5 acres require coverage under the State of Wyoming General Permit for Storm Water Discharges Associated with Small Construction Activities. Contractor is responsible for obtaining coverage under the appropriate permit and maintaining compliance until Owner accepts the Work as complete. For additional information see <http://deq.wyoming.gov/wqd/storm-water-permitting/> or contact Barb Sahl at 307-777-7570.

Certain construction activities such as dewatering, flushing, testing, and disinfection require coverage under a State of Wyoming General Permit for Temporary Discharges or under a separate discharge permit. Contractor is responsible for obtaining any necessary coverage and maintaining compliance. For more information see <http://deq.wyoming.gov/wqd/permitting/resources/general-permits-and-notices-of-intent/> or contact Leah Coleman at 307-777-7093.

## **EQUIPMENT STAGING**

Equipment shall be staged, serviced, and fueled at least 300 feet from streams and riparian areas.

## **AQUATIC INVASIVE SPECIES**

Preventing the spread of aquatic invasive species (AIS) is a priority for the State of Wyoming, and, in many cases, the intentional or unintentional spread of organisms from one body of water to another would be considered a violation of state statute and Wyoming Game and Fish Commission Regulation. To prevent the spread of AIS, the following is required:

1. If equipment has been used in a high risk infested water [a water known to contain Dreissenid mussels\* (zebra/quagga mussels)], the equipment must be inspected by an authorized aquatic invasive species inspector recognized by the state of Wyoming prior to its use in any Wyoming water during all times of year.
2. Any equipment entering the State by land from March through November (regardless of where it was last used), must be inspected by an authorized aquatic invasive species inspector prior to its use in any Wyoming water.

3. If aquatic invasive species are found, the equipment must be decontaminated by an authorized aquatic invasive species decontaminator.
4. Any time equipment is moved from one 4th level (8-digit Hydrological Unit Code) watershed to another within Wyoming, the following procedure is required:
  - a. DRAIN: Drain all water from watercraft, gear, equipment, and tanks. Leave wet compartments open to dry.
  - b. CLEAN: clean all plants, mud, and debris from vehicle, tanks, watercraft, and equipment.
  - c. DRY: Dry everything thoroughly. Dry for 5 days in Summer (June-August), 18 days in Spring (March-May) and Fall (September-November), or 3 days in Winter (December-February) when temperatures are at or below freezing.
5. Any equipment used in Wyoming water that contains AIS must be inspected before use in another water. Species currently found in Wyoming waters include New Zealand mudsnail, Asian clam, and curly pondweed. Information on currently affected waters can be found at: [http://wgfd.wyo.gov/web2011/Departments/Fishing/pdfs/AIS\\_WYWATER\\_MONITOR130005236.pdf](http://wgfd.wyo.gov/web2011/Departments/Fishing/pdfs/AIS_WYWATER_MONITOR130005236.pdf).

\*A list of high risk infested waters and locations in Wyoming to obtain an AIS inspection can be found at [wgfd.wyo.gov/AIS](http://wgfd.wyo.gov/AIS).

## **AIR QUALITY PROTECTION MEASURES**

Contractor shall adhere to effective dust control procedures as required under the Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 3 Section 2 (Emission standards for particulate matter), especially part (f). If asbestos is encountered during this project, Contractor shall follow standards for handling according to WAQSR Chapter 3 Section 8. Contractor shall adhere to proper trade waste and materials disposal according to WAQSR Chapter 10 Section 2.

## **PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS' LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS**

The assistance recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Federal Register 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Federal Register 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

Amend 48 CFR Part 36.202 by adding paragraph (d) to read as follows:

(d) In accordance with Executive Order 13202, of February 17, 2001, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, as amended on April 6, 2001--

(1) The Government, or any construction manager acting on behalf of the Government, must not--

- (i) Require or prohibit offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations (as defined in 42 U.S.C. 2000e(d)) on the same or other related construction projects; or
- (ii) Otherwise discriminate against offerors, contractors, or subcontractors for becoming, refusing to become, or remaining signatories or otherwise adhering to agreements with one or more labor organizations, on the same or other related construction projects.

(2) Nothing in this paragraph prohibits offerors, contractors, or subcontractors from voluntarily entering into project labor agreements.

(3) The head of the agency may exempt a construction project from this policy if the agency head finds that, as of February 17, 2001--

- (i) The agency or a construction manager acting on behalf of the Government had issued or was a party to bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions in paragraph (d)(1) of this section; and
- (ii) One or more construction contracts subject to such requirements or prohibitions had been awarded.

(4) The head of the agency may exempt a particular project, contract, or subcontract from this policy upon a finding that special circumstances require an exemption in order to avert an imminent threat to public health or safety, or to serve the national security. A finding of "special circumstances" may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

## **REQUIRED WYOMING STATUTE LANGUAGE**

Pursuant to W.S. 16-6-104, Wyoming made materials and products, and Wyoming suppliers of products and materials of equal quality and desirability shall have preference over materials or products produced or supplied outside the state.

Pursuant to W.S. 16-6-203, Wyoming labor shall be used on this project except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. For further details see W.S. 16-6-201 through -206.

Pursuant to W.S. 16-6-121, Contractor is hereby provided written notice of the following:

(a) Any subcontractor or materialman entitled to the protection of a bond or other form of guarantee approved by the state or any political subdivision under W.S. 16-6-112 shall give notice of his right to that protection to the prime contractor. Failure to give notice to a prime contractor who has complied with subsections (f) and (g) of this section waives the subcontractor or materialman's protection under the bond or guarantee and waives any right to a lien for materials or services provided.

(b) The notice shall be given no later than sixty (60) days after the date on which services or materials are first furnished.

(c) The notice shall be sent to the prime contractor by certified mail or delivered to and received by the prime contractor or his agent. Notice by certified mail is effective on the date the notice is mailed.

(d) The notice shall be in writing and shall state that it is a notice of a right to protection under the bond or guarantee. The notice shall be signed by the subcontractor or materialman and shall include the following information:

- (i) The subcontractor or materialman's name, address and phone number and the name of a contact person;
- (ii) The name and address of the subcontractor's or materialman's vendor; and
- (iii) The type or description of the materials or services provided.

(e) This section shall only apply where the prime contractor's contract is for fifty thousand dollars (\$50,000.00) or more.

(f) The prime contractor shall post on the construction site a prominent sign citing this section and stating that any subcontractor or materialman shall give notice to the prime contractor of a right to protection under the bond or guarantee and that failure to provide the notice shall waive the subcontractor or materialman's protection under the bond or guarantee and shall waive any right to a lien for materials or services provided.

(g) The owner or his agent shall provide written notice of the information required by this section in the project specifications.

If Owner is a municipality or is a joint powers board wherein at least one member is a municipality, the following applies:

Pursuant to W.S. 15-1-113(p), the provisions of W.S. 15-1-113 are part of this contract.

## DAVIS BACON PREVAILING WAGE REQUIREMENTS

### Federal Labor Standards Provisions (from 29 CFR 5.5)

(a)

(1) *Minimum wages.*

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 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 classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) Owner shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Wyoming SRF Program shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

( 1 ) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

( 2 ) The classification is utilized in the area by the construction industry; and

( 3 ) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination, shall be sent by Owner to the Wyoming SRF Program. The Wyoming SRF Program will transmit the request to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the Wyoming SRF Program or will notify the Wyoming SRF Program within the 30-day period that additional time is necessary.

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

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

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

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

Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* Owner or the Wyoming SRF Program shall upon its own action or upon written request of EPA or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, Owner or the Wyoming SRF Program may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.*

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

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Owner. Owner will provide copies to the Wyoming SRF Program or EPA upon request. Owner shall provide written confirmation to the Wyoming SRF Program, in a form satisfactory to the Wyoming SRF Program, indicating whether or not the project is in compliance with the requirements of 29 CFR

5.5(a)(1) based on the payroll copies. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the US Department of Labor/Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to Owner. Owner shall provide such information, upon request, to the Wyoming SRF Program, EPA, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to Owner or other government agencies.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

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

(4) *Apprentices and trainees*

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be

permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Owner, the Wyoming SRF Program, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.*

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(b) *Contract Work Hours and Safety Standards Act.* As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty

hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

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

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

### **Compliance Verification by Owner and Other Information**

1. Based on 29 CFR 5.6(a)(3): Owner shall make such investigations as may be necessary to assure compliance with the labor standards provisions and related statutes and regulations. Investigations shall be made with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.
2. Owner shall periodically interview a sufficient number of employees entitled to Davis Bacon prevailing wages (covered employees) to verify that contractors and subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. Owner shall use Standard Form 1445 or equivalent forms to document interviews. Copies of the SF 1445 are available from EPA or the Wyoming SRF Program on request or at <http://www.gsa.gov/portal/forms/download/115910>.
3. Owner shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with Davis Bacon posed by contractors and subcontractors and the duration of each contract/subcontract. At a minimum, Owner shall conduct interviews with a representative sample of covered employees from each classification of worker for each contractor and each subcontractor at least once each month during construction. Owner must conduct more frequent

interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis Bacon. Representative sample from each classification means at least one from each classification. If there are more than just a few workers in a classification, the representative sample shall include more than one interview each month for that classification. Owner shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence. Owner shall cross check the interviews against the payrolls.

4. Owner shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors and subcontractors are paying the appropriate wage rates. Owner shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with Davis Bacon posed by contractors and subcontractors and the duration of each contract/subcontract. At a minimum, Owner shall spot check payroll data within two weeks of each contractor/subcontractor's submission of its initial payroll data, and two weeks prior to the completion date of the contract/subcontract, and at least monthly during construction. Owner must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with Davis Bacon. In addition, during the examinations Owner shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

5. Owner shall periodically review contractor's and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 3 and 4 above.

6. Owner must immediately report potential violations of the Davis Bacon prevailing wage requirements to the Wyoming SRF Program, the EPA Davis Bacon contact (Joyce Brame 303-312-6367), and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

7. Owner shall verify that the Davis Bacon poster and wage decisions are posted at the job site in a prominent and accessible place where both can be easily seen by the workers.

8. Owner shall verify that contractor and subcontractors are not listed as excluded from federally funded or assisted contracts at <https://www.sam.gov/portal/public/SAM/>.

9. Owner shall maintain the payrolls, interview records, and other compliance related records for a minimum of three years after completion of the contract and shall provide them upon request to the Wyoming SRF Program or to applicable federal agencies.

10. Additional compliance information and assistance is available at <http://www.dol.gov/compliance/guide/dbra.htm> and other related websites.

## **BUY AMERICAN/USE OF AMERICAN IRON AND STEEL**

### **General:**

All iron and steel products used in the project shall be produced in the United States, unless a waiver is provided by the United States Environmental Protection Agency (EPA).

The term "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.

Production of iron or steel products in the United States requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating, and coating. Steel means an alloy that includes at least 50 percent iron and between 0.02 and 2 percent carbon and may contain other elements.

International trade agreements have no effect on this provision for this contract. Local government entities, such as Owner, are not obligated under international trade agreements to treat foreign produced iron and steel the same as United States produced iron and steel. See the following EPA website for further information and details on this requirement: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm). See especially the "American Iron and Steel Requirement Guidance" at that website.

### **Documentation:**

Contractor shall collect Buy American documentation for each iron and steel product used in the project. The documentation shall show that all production processes for each product occurred in the United States. Documentation shall show the manufacturer(s) involved in production of the product and the city and state where each process occurred. Copies of all Buy American documentation shall be submitted to Engineer. This shall be submitted along with any other associated submittals for the products. If Contractor wishes to cover some iron and steel products under the EPA issued "De Minimus" waiver, Contractor shall collect the documentation required under that waiver and submit a copy to Engineer. Additional information, including example product certifications and the De Minimus waiver can be found at the above referenced EPA website.

### **Waivers:**

EPA may grant a waiver if it determines that:

1. Applying the requirement would be inconsistent with the public interest,
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality, or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Owner is the entity that formally makes the request for a waiver, including requests that originate from Contractor or subcontractors or suppliers. EPA requires detailed supporting information to evaluate a waiver request. See the above referenced EPA website for additional information on the waiver process. Owner shall send waiver requests, in the form of a Word document (.doc), along with all supporting documentation, to the Wyoming SRF program. The Wyoming SRF program will forward waivers to EPA. Send waiver requests to [kevin.frank@wyo.gov](mailto:kevin.frank@wyo.gov) for all CWSRF projects and to [wade.verplancke@wyo.gov](mailto:wade.verplancke@wyo.gov) for all DWSRF projects.

EPA will make available to the public on an informal basis a copy of the waiver request and information available to the EPA concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. EPA shall make the waiver request and accompanying information available on the above referenced EPA website. If EPA grants a waiver, it will publish such waiver on that website.

*Insert (in place of this page) the applicable Davis-Bacon Wage Decision. Current wage decisions are available at <http://www.wdol.gov/>. Use the wage decision that applies to the project county location and the type of construction.*

*Water and/or sewer line projects:*

- Usually classified as heavy.*
- If constructed in conjunction with a road construction project may be classified as highway.*
- If significant amount of both water/sewer construction and road construction, may need both heavy and highway.*

*Treatment plants may be heavy or building or both, depending on circumstances.*

*Meter projects may require heavy, or building, or residential, or a combination of these.*

*USDOL All Agency Memoranda Nos. 130 and 131 provide some guidance on proper classification under the heavy, building, residential, and highway construction types. These memoranda are available at <http://www.wdol.gov/aam.aspx>.*

*Discuss selection of the correct wage decision or decisions with the SRF Program if necessary, especially if multiple types of construction seem to apply.*

*Check the wage decision(s) periodically during the time leading up to bid submittal to make sure you are using the most up to date decision(s) as they get updated regularly. Wage decision modifications that occur 10 or more days before bid submittal will apply to the contract and must be included in an addendum.*

*Insert (in place of this page) the most recent version of the WYDOT DBE Directories found at [http://www.dot.state.wy.us/home/business\\_with\\_wydot/contractors/Disadvantaged\\_Business\\_Enterprise.html](http://www.dot.state.wy.us/home/business_with_wydot/contractors/Disadvantaged_Business_Enterprise.html). Include both the alphabetical order version and the work classification version.*