



Clean Water Revolving Fund Drinking Water Revolving Fund

CONTRACT PACKET (Includes Build America, Buy America Act (BABA))

January 2024

This packet and the appropriate federal Davis Bacon and Minnesota prevailing wages must be PHYSICALLY included in all bidding solicitation and contract documents, including subcontracts.

PLEASE NOTE: This Contract Packet includes provisions for Build America, Buy America (BABA).

Minnesota Public Facilities Authority

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1 GENERAL INFORMATION AND RESOURCES

This packet lists required contract conditions that apply to Clean Water and Drinking Water Revolving Fund projects. Please review this packet prior to bidding. This packet and the appropriate federal Davis Bacon and Minnesota prevailing wages must be physically included in all bidding solicitations and contract documents, including subcontracts.

1.1 BUILD AMERICA, BUY AMERICA (BABA)

1.1.1 BABA Resources

Environmental Protection Agency Guidance and Resources

Environmental Protection Agency main webpage: [Build America, Buy America \(BABA\) | US EPA](#)

Environmental Protection Agency BABA De Minimis Waiver: [US EPA BABA De Minimis Waiver](#)

Environmental Protection Agency BABA Minor Components Waiver: [Public Interest: Minor Components of Iron and Steel Products Waiver for Build America, Buy America Act \(epa.gov\)](#)

1.1.2 Sample Build America, Buy America Contract Language

The BABA language below is a sample from the Environmental Protection Agency's November 3, 2022 memorandum ([OW-BABA-Implementation-Procedures-Final-November-2022.pdf \(epa.gov\)](#)). Include actual BABA language into project specifications and construction contracts and sub-contracts.

Example Build America, Buy America (BABA) Act Construction Contract Language

ALL CONSTRUCTION CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE BABA REQUIREMENTS. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN A PROJECT'S CONSTRUCTION CONTRACT THAT USE STATE REVOLVING FUNDS (SRF). EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the _____ ("Owner") and the _____ (the "Funding Authority") that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as "Build America, Buy America;" that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States ("Build America, Buy America Requirements") including iron and steel, manufactured products, and construction materials provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the

Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.

1.1.3 Build America, Buy America De Minimis Waiver Tracking Form

The Environmental Protection Agency (EPA) granted a national waiver for de minimis components ([US EPA BABA De Minimis Waiver](#)) for eligible water infrastructure projects. Products that qualify for a de minimis waiver cumulatively may comprise no more than a total of five percent of the total project cost. Please note the BABA de minimis waiver is not additive to the existing American Iron and Steel national de minimis waiver.

To use the de minimis waiver, SRF recipients “should in consultation with their contractors determine the items to be covered by this waiver and must retain relevant documentation (i.e. invoices) as to those items in their project files.” Recipients must maintain documentation (i.e., invoices) for the de minimis items in the project file and submit a summary report to the PFA at project conclusion, or sooner, if available. An example tracking form for BABA de minimis is included on the next page.

Minnesota State Revolving Funds (CWRF and DWRF)
 Use of Build America, Buy America - De Minimis Final Utilization and Certification Form

Use of Build America, Buy America (BABA) is required for CWRF and DWRF-funded projects unless the project qualified for a waiver. The Environmental Protection Agency has issued a public interest waiver for De Minimis components. The PFA recipient wishing to use this waiver should consult with their contractor(s) to maintain an itemized list of components covered under De Minimis. At the conclusion of the project, this form must be completed and retained in the assistance recipient's project files and a copy provided to the Public Facilities Authority. **It is strongly recommended that you maintain a list as the project progresses.**

Please print clearly or type. EPA De minimis Waiver:
[US EPA BABA De Minimis Waiver](#)

PFA Recipient: _____ Loan #: _____

Project Name: _____

NOTE: The De Minimis waiver is only applicable to the cost of the total project. Recipients must have sufficient documentation to support all costs included in this calculation. NOTE: the BABA De Minimis waiver is not additive with the existing American Iron and Steel national de minimis waiver.

Funds used for de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total project

Total Project Cost: _____ 5% Limit: _____

Manufacturer & Component Description	Part/Model #	Quantity <small>(if applicable)</small>	Cost per Unit <small>(if applicable)</small>	Component's Total Cost	How is Cost Documented?*

Use additional sheets as necessary

Total Cost of Components deemed to be De Minimis: _____

If approaching the 5% limit, contact PFA immediately

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

Completed by: Name: _____ Title: _____
 Signature: _____ Date: _____

1.1.4 Build America, Buy America Documentation

Contractors must comply with and provide documentation that shows compliance with BABA requirements. Product certifications letters need to include the following five items:

1. Documentation linked to the project. Identify the project name, project location, contract number, or project number.
2. Documentation linked to the product used on the project. Description of product(s) (simple explanation sufficient to identify the product(s)), or an attached (or electronic link to) purchase order, invoice, or bill of lading.
3. Documentation includes statement attesting that the products supplied to the PFA Recipient are compliant with BABA requirement. Reference to the Infrastructure Investment and Jobs Act (IIJA) or the Bipartisan Infrastructure Law (BIL) are also acceptable. For iron and steel items under BABA, references to the American Iron and Steel (AIS) requirement are also acceptable and reciprocal with BABA for such items.
4. Documentation that manufacturing occurred in the United States, which could include, for example, the location(s) of manufacturing for each manufacturing step that is being certified. It is acceptable for manufactured products to note a single point of manufacturing, documenting that the final point of manufacturing is in the United States. Note that each BABA category may require different determinations for compliance.
5. Signature of company representative (on company letterhead and signature can be electronic). The signatory of the certifying statement affirms their knowledge of the manufacturing processes for the referenced product(s) and attests that the produce meets the BABA requirements.

1.2 DISADVANTAGED BUSINESS ENTERPRISES (DBE)

1.2.1 Good Faith Efforts

Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Disadvantage Business Enterprises (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach. This applies to procurement for construction, equipment, supplies and services.

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

1.2.2 Certified M/WBE Firms

M/WBE firms certified by the Minnesota Unified Certification Program, the Small Business Administration (SBA) of the Department of Transportation can be counted towards the M/WBE reporting to PFA. See “How do I find information on DOT’s and SBA’s certification programs?”

[Frequently Asked Questions for Disadvantaged Business Enterprises | US EPA](#)

[US DOT Office of Small and Disadvantaged Business Utilization | US Department of Transportation](#)

[Women-Owned Small Business Federal Contract program \(sba.gov\)](#)

[8\(a\) Business Development program \(sba.gov\)](#)

To see whether a firm is a certified firm eligible to be counted as a M/WBE firm, check the *Minnesota Unified Certification Program Directory* or the *SBA Dynamic Small Business Search Directory*. Links are listed below.

Minnesota Unified Certification Program: <http://mnucp.metc.state.mn.us/> includes a free search engine that lists certified DBE contractors and suppliers. Links to this directory are also on the MN Department of Transportation website: <http://www.dot.state.mn.us/civilrights/>

Small Business Administration **Dynamic Small Business Search** – search engine that lists businesses with 8(a) Certifications; Small Disadvantaged Business Certifications; HUBZone Certifications and DBE Certifications. Check contractor detail to see what current certifications are in place. Dynamic Small Business Search can be found at this link <https://www.sba.gov/partners/contracting-officials/small-business-procurement> under “Finding Contractors”.

1.2.3 Other Minority/Women Business Enterprises Resources

- Association of Women Contractors <http://www.awcmn.org/>
- Diversity Information Resources, Inc. www.diversityinforesources.com
- Metropolitan Economic Development Association <http://www.meda.net/>
- Minority Business Development Agency (U. S. Department of Commerce) <http://www.mbda.gov/>

1.2.4 Minnesota Targeted Business Vendors (State Funded Projects)

The Minnesota Department of Administration maintains a directory for Targeted Group Economically Disadvantaged and Veteran-Owned (TG/ED/VO) businesses [Equity in Procurement \(TG/ED/VO\) Directory / Minnesota Office of State Procurement \(mn.gov\)](#). The Environmental Protection Agency does not consider Minnesota Department of Administration TG/ED/VO listings as meeting EPA certification requirements; thus TG/ED/VO vendors cannot be counted as M/WBE vendors by the Environmental Protection Agency. However, state-funded projects are encouraged to consider and provide procurement opportunities to vendors on this list.

1.2.5 Definitions

Disadvantaged Business Enterprise (DBE) – an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized business (HUB) Zone Small Business Concern, or a concern under a successor program.

HUBZone – a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian Reservation.

HUBZone Small Business – a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Labor Surplus Area Firm (LSAF) – a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR Part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of approximate services in labor surplus areas exceed 50 percent of the contract price.

Minority Business Enterprise (MBE) – a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women’s Business Enterprise (WBE). See section on Certified M/WBE Firms, below.

Procurement – the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

Small Business in a Rural Area (SBRA) – a small business operating in an area identified as a rural county with a code 6 to 9 in the Rural-Urban Continuum Classification Code developed by the United States Department of Agriculture in 1980.

Small Business, Small Business Concern or Small Business Enterprise (SBE) a concern, including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Women’s Business Enterprise (WBE) – a business concern which is at least 51% owned or controlled by women for purposes of EPA’s 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA’s 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband’s 50% interest in her share. Similarly, a business concern which is more that 50% owned by a married man will not become a qualified WBE by virtue of his wife’s 50% interest in his share. See section on Certified M/WBE Firms, below.

1.2.6 Federal and State Prevailing Wages

Both Federal Davis Bacon prevailing wages and State of Minnesota prevailing wages (Minnesota Statute, sections 177.41-177.43) apply to this project. Payment of the wages, fringe benefits and overtime rates that are most beneficial to the employees are required. **All worker classifications must have a state and federal prevailing wage.** Overtime is governed by Minnesota Prevailing Wage Statutes at M.S. 177.42 which requires overtime for over 8 hours per day and for more than 40 hours per week, thus any employee working more than 8 hours in one day is entitled to overtime.

Both the proper Federal (Davis-Bacon) and State of Minnesota Prevailing Wage rates and contract conditions must be physically incorporated into the bidding and contract documents.

Required State posters can be obtained at the Minnesota Department of Labor and Industry at <http://www.dli.mn.gov/about-department/workplace-posters>

Federal posters can be obtained at <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>

Weekly certified payroll submittal is required under the Federal Davis Bacon laws.

2 GENERAL REQUIRED CONTRACT CONDITIONS

This project is being financed in whole or in part by the Minnesota Public Facilities Authority through the Clean Water or Drinking Water Revolving Fund. The PFA recipient is required to comply with certain state and federal laws, rules and regulations and to ensure that their contractor(s) also complies with these laws, regulations, rules, including, but not limited to the items below which will be included in all contracts and subcontracts.

1. Title VI of the Civil Rights Act of 1964 (P.L 88-352), the Rehabilitation Act of 1973 (P.L. 93-1123, 87 Stat. 355, 29 U.S.C. Sec. 794), the Older Americans Amendments of 1975 (P.L. 94-135 Sec. 303, 89 Stat. 713, 728, 42 U.S.C. Sec. 6102), and subsequent regulations, ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap.
2. Executive Orders 11246, as amended by Executive Orders 11375 and 12086 and subsequent regulations. Prohibits employment discrimination on the basis of race, color, religion, sex or national origin. Inclusion of the seven clauses in Section 202 of E. O. 11246 as amended by E. O. 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.
3. Executive Orders 11625, 12138 and 12432; 40 CFR part 33; Section 129 of P. L. 100-590 Small Businesses Reauthorization & Amendment Act of 1988; Public Law 102-389 (42 U.S.C. 437d); a 1993 appropriations act; Public Law 101-549, Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note). Encourages recipients to award construction, supply and professional service contracts to minority and women's business enterprises (MBE/WBE) and small businesses and requires recipients to utilize affirmative steps in procurement.
4. 40 CFR Part 33 Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements.
5. Executive Orders 12549 and 12689, 2 CFR Part 180, and 2 CFR Part 1532, Subparts B and C. Prohibits entering into contracts or sub-contracts with individuals or businesses who are debarred or suspended. Before contracts are awarded, PFA Recipients are required to

check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors and suppliers for contracts expected to be equal to or over \$25,000 via the U. S. General Services Administration System for Award Management website [SAM.gov | Home](https://sam.gov) or search the internet for sam.gov. Also verify the status on the Minnesota Department of Administration's listing: [Suspended/Debarred Vendors / Minnesota Office of State Procurement \(mn.gov\)](#).

6. Section 602(b)(6) of the Federal Water Pollution Control Act, as amended and section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)). Requires that all laborers and mechanics employed by contractors or subcontractors be paid wages at rates not less than those prevailing for the same type of work as determined by the U. S. Secretary of Labor in accordance with the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C., sec. 276a through 276a-5). Reorganization Plan Number 14 of 1950 (15 F.R. 3176) and section 2 of the Davis-Bacon Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).
7. Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, §§ 70901-52 that requires all of the iron and steel, manufactured products and construction materials used in the CWSRF and DWSRF Projects be produced in the United States, unless the PFA Recipient has requested and obtained a waiver from the Environmental Protection Agency pertaining to the products used in the project.
8. 2 CFR 200.216 Prohibition on certain telecommunications and video surveillance services or equipment (implementing Section 889 of Public Law 115-232).
9. Minnesota Statutes, Section 471.345, Uniform Municipal Contracting Law.
10. Minnesota Statutes, Section 574.26 to 574.32, the Public Contractors' Performance and Payment Bond Act, as applicable
11. Minnesota Statutes sections 176.181-176.182. Requires recipients and subcontractors to have worker's compensation insurance coverage.
12. Minnesota Statutes sections 177.41-177.43 and Minnesota Rules 5200.1000 to 5200.1120 (prevailing wage rate law and rules). Requires that contractors pay laborers and mechanics

prevailing wages established by the Minnesota Department of Labor and Industry for public works projects.

13. Minnesota Statutes 290.9705. Requires that 8 percent of payments made to out-of-state contractors be withheld once cumulative payments made to the contractor for work done in Minnesota exceed \$50,000 in a calendar year, unless an exemption is granted by the Department of Revenue.

14. Minnesota Statutes, Chapter 16C.285, Responsible Contractor Requirements.

15. Minnesota Statutes Sec. 363A.36, Minnesota Department of Human Rights (MDHR) affirmative action plan requirements for contracts exceeding \$250,000. An affirmative action plan and a workforce certificate for affected contractors is required prior to bidding ([Apply for a Workforce Certificate / Minnesota.gov \(mn.gov\)](#)).

16. Minnesota Statutes Section 363A.43, Minnesota Department of Human Rights (MDHR) equal pay certificate. Required for agreements and contracts for goods and services exceeding \$1,000,000 with a business that has 40 or more full-time employees in Minnesota or a state where the business has its primary place of business on a single day during the prior 12 months, unless the business has an equal pay certificate, or it has certified in writing that it is exempt.

17. Minnesota Statutes Section 181.59, Discrimination on Account of Race, Creed, or Color Prohibited in Contract.

3 BUILD AMERICA, BUY AMERICA (BABA) CONTRACT CONDITIONS

Insert Build America, Buy America Contract Language here for the Project

4 DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIRED CONTRACT CONDITIONS

4.1 GOOD FAITH EFFORTS

Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Disadvantage Business Enterprises (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach. This applies to procurement for **construction, equipment, supplies and services**.

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

4.2 REQUIRED CONTRACT CONDITIONS

These conditions must be included in all procurement contracts entered into by the Borrower for all DWRP and CWRP projects:

1. The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.

2. The prime contractor must notify the owner in writing prior to the termination of any Disadvantage Business Enterprise subcontractor for convenience by the prime contractor.
3. If a Disadvantage Business Enterprise contractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts if soliciting a replacement contractor.
4. The prime contractor must continue to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.
5. A Borrower must ensure that each procurement contract it awards contains the following terms and conditions:

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

5 EQUAL EMPLOYMENT REQUIRED CONTRACT CONDITIONS FOR CONTRACTS & SUBCONTRACTS OVER \$10,000

Inclusion of these seven clauses (excerpt from Executive Order No. 11246, Section 202 as amended by Executive Order 11375 and 12086) is required in all CWRP and DWRP project related contracts and subcontracts over \$10,000:

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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, 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 by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, 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 No. 11246 of Sept. 24, 1965, and all 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 No. 11246 of Sept. 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to his books, records, and accounts by the contracting 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 such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of Sept. 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 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 No. 11246 of Sept. 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 may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

6 FEDERAL DAVIS BACON PREVAILING WAGES – REQUIRED CONTRACT CONDITIONS

PLEASE NOTE: Both federal Davis Bacon prevailing wages and State of Minnesota prevailing wages (Minnesota Statute, sections 177.41-177.43) apply to this project. Payment of the wages, fringe benefits and overtime rates that are most beneficial to the employees are required.

Federal posters can be obtained at <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>

The “recipient” referred to throughout the Davis Bacon contract conditions is the PFA Borrower. The “PFA” is the Minnesota Public Facilities Authority.

This language must be included in all Davis Bacon covered construction contracts and subcontracts. (29 CFR Part 5.5)

(a) The Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWRP or a construction project under the DWRP, financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1 the following clauses:

(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 Sec. 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.

Recipients may obtain wage determinations from the <https://sam.gov/content/wage-determinations> .

(ii)(A) The Recipient, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Recipient's award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the

Recipient to the Administrator of the Wage and Hour Division, Conformance and CBA Update public email address:

WHD-CBACONFORMANCE_INCOMING@dol.gov and to the EPA DB Regional Coordinator concurrently at (USEPA REGION 5, 77 West Jackson Boulevard Mail Code: MC-10J, Chicago, IL 60604-3507. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Recipient or will notify the Recipient within the 30-day period that additional time is necessary.

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

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

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

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

(2) **Withholding.** The Recipient shall upon its own action or upon written request of the PFA, EPA award official or an authorized representative of the Department of Labor withhold or

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

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

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient. Such documentation shall be available on request of the PFA or EPA. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), **except that full social security numbers and home addresses shall not be included on 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](#) and [instructions](#) are available for

this purpose from the Wage and Hour Division Web site at [WHD | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov) or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient for transmission to the PFA or EPA, if requested by EPA, the PFA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient.

(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 Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the PFA, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or PFA 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 the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Recipient, PFA, 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. The Recipient shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR Sec. 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor 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. The Recipient, upon its own action or upon written request of the PFA, EPA Award Official or an authorized representative of the Department of Labor shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (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.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Sec. 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the PFA, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

7 U. S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION DAVIS-BACON PREVAILING WAGES

Insert applicable federal Davis-Bacon Prevailing Wages here

8 STATE OF MINNESOTA PREVAILING WAGES – REQUIRED CONTRACT CONDITIONS

Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. The applicable wage determination must be incorporated into proposals and all contracts.

Payrolls/Records

The contractor and subcontractor shall furnish to the OWNER copies of any or all payrolls not more than 14 days after the end of each pay period. The payrolls must contain all of the data required by Minnesota Statutes Section 177.30. Subcontractors must furnish payrolls to the contractor. The OWNER may examine all records relating to wages paid laborers or mechanics on work to which Minnesota Statutes Sections 177.41 to 177.44 apply.

Posting of Wage Rates/Required Posters

Each contractor and subcontractor performing work on a public project shall post on the project the applicable prevailing wage rates and hourly basic rates of pay for the county or area within which the project is being performed, including the effective date of any changes thereof, in at least one conspicuous place for the information of the employees working on the project. The information so posted shall include a breakdown of contributions for health and welfare benefits, vacation benefits, pension benefits, and any other economic benefits required to be paid.

For more information regarding prevailing wage and its application, contact:

Minnesota Department of Labor and Industry

Prevailing Wage unit

443 Lafayette Road North

St. Paul, MN 55155

Phone: (651) 284-5091

E-mail: dli.prevwage@state.mn.us

Web: [Prevailing-wage information | Minnesota Department of Labor and Industry \(mn.gov\)](#)

9 MN DEPARTMENT OF LABOR AND INDUSTRY PREVAILING WAGES FOR STATE FUNDED CONSTRUCTION PROJECTS

Insert applicable Minnesota Prevailing Wages here