



GAC Adsorption Water Treatment Vessels and Granular Activated Carbon

Request for Proposals

Sealed Bid Due No Later than 10:00 A.M. MST on April 2, 2024

Metropolitan Domestic Water Improvement District is requesting sealed bids from vendors / manufacturers for Two GAC Adsorption Water Treatment Vessels and 40,000 pounds of GAC Media. Sealed bids will be sent electronically to lmccabe@metrowater.com **no later than 10:00 a.m. MST on April 2, 2024**. Any bids received after the bid opening time will not be considered.

All electronic bids must have "GAC Vessels and Media RFP" in the subject line. E-mail's with this subject line will not be opened until the bid opening.

Attendance to the Bid opening is available through the web meeting link below:

GAC Vessels Bid Opening

Apr 2, 2024, 10:00 – 11:00 AM (America/Phoenix)

Please join my meeting from your computer, tablet or smartphone.

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Daily Territorial Publication Dates: February 1, February 2, February 5, 2024, and February 6, 2024 and March 4th, March 5th, and March 6, 2024

**Metropolitan Domestic Water Improvement District
GAC Adsorption Vessels and Granular Activated Carbon**

Request for Proposals

A. SCOPE:

A-1. Metropolitan Domestic Water Improvement District (District) is requesting proposals for the purchase of Two separate GAC Treatment Vessels, each with 20,000 pounds of Granular Activated Carbon (GAC) Media for the treatment of PFAS.

A-2. The pricing pages in this RFP reflect the two different site locations. The intent is one single vessel and associated GAC at each site.

A-3. Payment Terms to be Net 30.

A-4. Products under this solicitation will be delivered to the following addresses by the vendor as directed by the District:

DeConcini Well Site
6020 N. Shannon Road
Tucson, Arizona 85741

Riverside Well Site
1941 W. River Road
Tucson, Arizona 85704

Adsorption vessels will be offloaded by the vendor and set on the foundation. Anchoring and piping connections performed by others.

GAC installation will follow the completion of piping connections and related testing. Vendor shall provide and install the GAC into the vessels. Backwashing and sampling performed by others.

A-5. Build America Buy America Act: All products proposed under this RFP must comply with the Build America Buy America Act (BABA). BABA information is included in the Water Infrastructure Finance Authority (WIFA) Contract Packet included in this RFP.

A-6. Term: Pricing provided in this proposal shall be valid through June 30, 2024.

A-7. Proposal Preparation:

The proposal shall consist of this RFP, Requested Submittals, completed Proposal Forms, Price Pages, and Offer within this RFP.

A-8. Submittals:

1. Build America Buy America Act certification for each product offered.
2. Product information:
 - a. Adsorber vessel specifications and drawings including design pressure, dimensions, capacity, design flow rates, and 10 minute Empty Bed Contact Time flow rate.
 - b. System flow diagram showing all connections.
 - c. System general arrangement showing dimensions, weight, and elevations including influent, effluent, backwash, and carbon exchange pipe connection locations.
 - d. Pressure drop information across the system.
 - e. Specifications for the granular activated carbon to be utilized in the system.
 - f. Material specifications for pipe, fittings, and instrumentation.
 - g. Specifications for vessel lining.
 - h. Specifications for vessel painting.
3. DBE / SBE Certification if applicable.
4. Product Lead Times
5. Provide any clarifications or exceptions.

A-9. Ordering and Delivery: Provide a narrative on the ordering and submittal process and how the products will be shipped, off loaded and GAC media installation.

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B. SPECIFICATIONS:

B-1. All products and materials shall be certified NSF and ANSI 61.

B-2. The vessel shall be Calgon Carbon Model 12 DWC Single Adsorption Vessel or approved equal.

The materials and equipment covered by this specification are intended to be standard equipment of proven ability as manufactured by reputable concerns. Equipment shall be designed, constructed, and assembled in accordance with the best practice of the industry, and shall operate satisfactorily when installed in accordance with manufacturer's recommendations. The specifications call attention to certain features but do not purport to cover all details entering into the construction of the equipment.

B-3 The carbon adsorber vessel shall be fabricated of carbon steel, conforming to ASTM A516 grade 70, 12'-0" diameter by straight side height not to exceed 10'-0" with 2:1 elliptical top and bottom heads. The vessel shall be sized to contain 20,000 pounds of GAC and to accommodate approximately 30% bed expansion within the straight side of the vessel. The vessel shall be designed, constructed, and stamped in accordance with ASME Section VIII, Division 1 and registered with the National Board for a design pressure rating minimum of 125 PSIG at 140 degrees Fahrenheit. The vessel shall be provided with one (1) 20" diameter (minimum) round manway located on the lower straight side portion of the vessel and one (1) 14" x 18" (minimum) elliptical manway located on the bottom head. The vessel will be free standing utilizing four (4) structural steel support legs.

B-3. The structural aspects of the vessel shall meet the latest edition of the International Building Code.

B-4. Design Flow Rates: The adsorber vessel shall be designed to accommodate up to 1,100 GPM in normal operations and up to 1,700 GPM backwash flow rates.

B-5. Each vessel will be designed with an internal underdrain system that provides uniform distribution of the treated water and backwash water, and facilitates GAC removal.

Each vessel will be designed with an influent liquid flow from a top inlet distributor that provides an even distribution of downward flow through the granular activated carbon media.

- a. The District is requesting a bid option in the pricing pages for all stainless steel internals if not included in the vessel submitted.

B-6. Coating: All surfaces will be degreased prior to sandblasting. The adsorber internal surface will be blasted to a white metal finish (SSPC-SP5) to provide a 3 to 4 mil anchor pattern. The exterior surfaces of the adsorber will be prepared by blasting per SSPC-SP6.

The interior surfaces of the vessel will be lined with a nominal lining thickness of 35 to 45 mil dry film thickness (DFT). The lining material shall meet the requirements of ANSI 61 when applied and cured per the manufacturer's requirements. The lining material will be one of the following:

- a. Carboline's Plasite 4110, vinyl ester lining
- b. Blome International's TL-220S AR, vinyl ester lining
- c. Carboline's Reactamine 760, aromatic polyurethane hybrid

The exterior surface of the adsorbers will be painted with a 2-coat system to achieve a total dry film thickness of 10 to 14 mil with a high solids epoxy paint material (primer and finish coat). The District shall select final color.

a. Exterior Color to match Sherwin-Williams - Row House Tan

B-7. Process and Utility Piping: The process and utility piping on the adsorption vessel shall include a common pipe for influent water and backwash outlet water.

Separate 8" connection for treated water.

Separate 8" connection for backwash supply.

Process piping (influent, effluent and backwash) will be 8" diameter, constructed of schedule 40 carbon steel, ASTM A53 Grade B materials with 125# ASTM A126 Class B cast iron flanged fittings.

- a. The interior of the carbon steel piping shall be coated with an NSF 61 approved epoxy coating or cement lining

Vent piping will be 3" diameter, constructed of schedule 40 carbon steel, ASTM A53 Grade B materials.

Carbon fill piping will be 4" diameter, constructed of schedule 40 carbon steel, ASTM A53 Grade B materials or stainless steel.

Carbon discharge piping will be 4" diameter, constructed of schedule 40 polypropylene lined carbon steel, ASTM 53 Grade B materials with ppl lined flanged fittings or stainless steel.

Utility piping will be constructed of threaded schedule 80 carbon steel, ASTM 53 Grade B materials.

All piping surfaces will be prepared by blasting per SSPC-SP6.

The exterior surface of the piping will be painted to a dry film thickness of 10 to 14 mil with high solids epoxy paint prior to assembly to minimize oxidation at flanged connections. Final color shall be selected by the District.

a. Exterior Color to match Sherwin-Williams - Row House Tan

- B-8.** Process and Utility Valves -The carbon fill and discharge valves are 4” diameter full port ball valves, 316 stainless steel construction with TFE seats and seals. A total of two (2) valves will be supplied, one (1) for carbon fill and one (1) for carbon discharge.

Utility valves for the compressed air supply will be bronze or brass or barstock brass body regular port ball valves.

- B-9.** Miscellaneous - The carbon fill and discharge will be fitted with female hose connections, such that carbon transfer to and from the adsorber can be facilitated using carbon transfer hoses. These connectors will be 4” Quick Disconnect Adaptors constructed of aluminum as manufactured by Dover Corp. as Kamlock connectors or equal.

Two (2) flush connections will be provided on the GAC fill line, one upstream and one downstream of the valve. One (1) flush connection will be provided on the GAC discharge line, downstream of the valve. The connections will be welded into the steel or stainless-steel pipe or screwed into solid propylene “spacers” for the lined pipe. Flush connections will consist of a short section of 3/4” pipe, a 3/4” full port ball valve and a 3/4” quick disconnect adaptor to match with water hose fittings.

The vessel will be provided with one (1) 8” stainless steel strainer basket mounted in the effluent line from the vessel. The basket strainer shall be constructed of 316 stainless 14 gage plate with 1/8" diameter holes drilled on 3/16" centers, covered with 40 mesh 316 stainless steel screen and topped by a 4 mesh 316 stainless steel support screen (0.063" wire diameter). A total of one (1) will be provided for the vessel.

In-Bed Sample Taps: The adsorber will be provided with three (3) 2” side sample nozzles for use with in-bed water sample probes. Sample probes consist of a 12” stainless steel pipe with a stainless steel slotted septum to collect a water sample from within the carbon bed. The sample probe will be inserted through a 2” flanged nozzle and will be provided with stainless steel tubing drop line and stainless-steel shutoff valve external to the adsorber. A total of three (3) in-bed sample taps will be provided for the vessel.

Air/Vacuum Release Valve – The adsorber shall be provided with one (1) 1” combination air/vacuum release valve mounted at the highest elevation of the vessel or influent pipe. Two (2) 1” ball valves will be provided to isolate the air release valve, one ball valve positioned on the inlet side of the air release valve and the second mounted at the bottom of the air release discharge piping (near ground level). The discharge side of the Air/Vacuum valve shall be piped to near ground level.

Carbon absorbers shall be furnished with a valved side-stream sample cartridge to contain GAC media to allow for future acceptance testing of media when media change-out is anticipated/required.

B-10. Media: Granular Activated Carbon Media shall be Calgon Carbon Filtrasorb 400-M or approved equal.

GAC to be Bituminous Coal, compliant with all the applicable provisions of the AWWA Standard for Granular Activated Caron, B604, latest editions, the stringent extractable requirements of NSF / ANSI 61.

GAC Specification

Iodine Number, mg/g	1,000 (min)
Moisture by Weight	2% (max)
Effective size	0.55 - 0.75 mm
Uniformity Coefficient	1.9 (max)
Abrasion Number	75 (min)
Trace Capacity Number	mg/cc – 10 (min)
Screen Size by Weight, US Sieve Series	
On 12 mesh	5% (max)
Through 40 mesh	4% (max)
Apparent Density (tamped)	0.57 g/cc
Water Extractables	< 1%
Non-Wettable	< 1%

B-11. Required Documents: The Vendor / Manufacturer shall supply one set of Operation and Maintenance manuals for each site. The Operation and Maintenance Manual will include:

- a. Adsorption vessel design parameters, flow and backwash ratings and limitations, and physical characteristics.
- b. Adsorption vessel drawing / schematics
- c. Flow diagram for normal operation and backwash operations
- d. Component cut sheets for valves, air release valves, carbon acceptance canister, sample ports, in-bed sample probes.
- e. Internal component details, drawings, and materials: underdrains, distributors, laterals, and etc.
- f. Interior and exterior coating manufacture literature and product specifications.
- g. Granular Activated Carbon product sheet and specifications.

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C. GENERAL REQUIREMENTS

C-1. Term and Renewal: The term of the contract shall be through June 30, 2024

C-2. Warranty - Vendor warrants that its Work shall be free of defect, shall be suitable for the use intended, and shall be free from any security interest, lien, or encumbrance. In addition to other remedies, which District may have, Vendor shall bear the entire cost of correcting any portion of the Work, which is deficient or defective and discovered within one year after completion of the service. The period of warranty on any such corrected Work shall be extended for a period of one year from the date of completion of such correction. Parts replaced under this Agreement shall be warranted for one (1) year from the date of installation.

C-3. Defective Product: All defective products shall be replaced, repaired, or exchanged by the vendor. The cost of transportation, materials, labor, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the vendor.

Equipment / Recall Notices: In the event of any recall notice, technical service bulletin, or other important notification affecting equipment purchased from this contract, a notice shall be sent to the District within 7 days of issuance by the manufacturer. It shall be the responsibility of the vendor to assure that all recall notices are sent directly to the agency's representative.

C-4. Insurance:

Vendor agrees to:

1. Obtain insurance coverage of the types and amount required in this section and keep such insurance coverage in force through the life of this contract. All policies will contain an endorsement providing that written notice be given to the District at least ten (10) calendar days prior to termination, cancellations, or reduction in coverage in any policy.
2. The Commercial general liability, Commercial Automobile Liability and umbrella policies where applicable will include the District as an additional insured with respect to liability arising out of the performance of this contract. Such additional insured shall be covered to the full limits of the liability purchased by the vendor, even if those limits of liability are in excess of those required by this contract. The Vendor agrees that the insurance hereunder will be primary and that any insurance carried by the District will be excess and not contributing.
3. Provide and maintain minimum insurance limits as applicable.

Commercial General Liability - Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual liability:

Each Occurrence: \$1,000,000

General Aggregate: \$2,000,000

Products – Completed Operations Aggregate: \$1,000,000

Damage to Rented Premises: \$50,000

Business Automobile Liability - bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this contract.

Combined Single Limits: \$1,000,000

Workers' Compensation and Employers' Liability

A. Workers Compensation – Statutory

B. Employers' Liability

- | | |
|----------------------------|-------------|
| a. Each accident | \$1,000,000 |
| b. Disease - Each Employee | \$1,000,000 |
| c. Disease – Policy Limit | \$1,000,000 |

Verification of Coverage: Vendor shall furnish the District with certificates of insurance (Acord form or equivalent approved by the District) as required by this contract. The certificates for each insurance policy are to be signed by an authorized representative.

C-5. The District reserves the right to reject any and all Proposals and to waive any and all informalities or irregularities, and the right to disregard all non-conforming or conditional Proposals or counter proposals, whenever such rejection or waiver is in the interest of the District.

C-6. No Minimum Purchase: Vendor agrees that the District will not be obligated under any circumstances to purchase any inventories (residual or otherwise) which Vendor may have established under the Contract Documents.

C-7. Termination: At its sole discretion, the District may terminate this contract at any time by giving the vendor written notice of termination. The Vendor shall immediately discontinue performance except to minimize and mitigate the District's costs. Payment for services already completed or in the process of completion, including any direct costs of such termination actually incurred by the vendor, if any, shall be adjusted between the District and the vendor in a fair and reasonable manner, but such payment shall exclude any allowance for unperformed work or anticipated profits.

This Contract may be terminated at any time by mutual written consent, or by the District with or without cause, upon giving thirty (30) days written notice. The District, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the District shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the District before the effective date of termination.

Each payment obligation of the District created by this Contract is conditioned upon the availability of District, State, and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the District and available for the continued purchase of the services and/or

materials provided under this Contract, this Contract may be terminated by the District at the end of the period for which funds are available. The District will endeavor to notify the Contractor / Vendor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the District in the event this provision is exercised, and the District shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

C-8. Laws and Regulations: The vendor and its employees shall at all times comply with all applicable laws, ordinances, statutes, rules, and regulations. The vendor shall indemnify, defend and hold the District harmless from any loss, costs, or damage by reason of any actual or alleged violation thereof, and from any liability including fines, penalties, and other costs, arising out of vendors failure to so comply.

C-9. Indemnity: General Indemnification: To the fullest extent permitted by law, the vendor hereby indemnifies and holds harmless the District, and its employees, agents, officers, and consultants (who are in all respects intended third party beneficiaries of the vendor's covenants under the Contract Documents) from and against any and all claims, damages, losses, expenses, charges, fees (including attorneys' fees) and liability arising out of or resulting from the Work, and for all reasonable expenses (including attorneys' fees) and all costs of compromise or settlement which may be incurred by District on account of or arising out of or in connection with any of the foregoing. The foregoing indemnity shall not extend to matters resulting solely from the negligence or willful misconduct of District. In the event that any action or proceeding is brought against District, its employees, agents, officers or consultants arising out of the Contract Documents, Vendor shall, upon notice from District, resist and defend such action or proceeding on behalf of District, its employees, agents, officers or consultants by counsel designated by District; provided that failure of District to give such notice shall not relieve the vendor from any of its obligations under this Section unless such failure prejudices defense of such action or proceeding by vendor. District shall not be liable for any settlement without its consent. All agreements of indemnity hereunder shall survive the delivery and performance of the Contract Documents.

C-10. Health and Safety Indemnification: Contractor / Vendor shall indemnify and hold harmless District and its employees, officers, agents and consultants (who are in all respects intended third party beneficiaries of the vendor's covenants under the Contract Documents) from and against any and all claims, damages, losses, expenses, charges, fees (including attorneys' fees) and liability arising from any claimed violation of OSHA, any rule or regulation promulgated there under, of many state or local laws, ordinance or regulations pertaining to job safety and health arising out of or in any way connected with the performance of the Work or vendors performance under the Contract.

C-11. Non-Exclusive Contract: Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the District. The District reserves the right to obtain like goods or services from another source when necessary.

C-12. Inspection and Acceptance: All material or service is subject to final inspection and acceptance by the District. Material or service failing to conform to the specifications of this contract shall be held at the Vendor's risk and may be returned to the Vendor. If returned, all costs are the responsibility of the Vendor. Noncompliance may be deemed a cause for possible Contract termination.

C-13. Force Majeure: Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract

is prevented by reason of Force Majeure. The term “Force majeure” means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a manufacturer, vendor or subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with the Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

C-14. Contract: The Contract shall be based upon the Request for Proposal issued by the District and the Offer submitted by the Vendor in response to the Request for Proposal. The offer shall substantially conform to the term, conditions, specification and other requirements set forth within the text of the Request for Proposal. The District reserves the right to clarify any contractual terms with the concurrence of the Vendor; however, any substantial non-conformity in the offer, as determined by the District, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the District and the Vendor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

C-15. Applicable Law: This contract shall be governed, and the District and Vendor shall have all remedies afforded to each, by the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.

C-16. Rights and Remedies: No provision in this document or in the Contractor’s / Vendor’s proposal shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

C-17. Severability: Provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.

C-18. Provisions Required by Law: Each and every provision of law and any clause, required by law to be in the Contract Shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.

C-19. Independent Contractor: It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

C-20. Contract Amendments: This Contract shall only be modified through written contract amendment approved by the District and the Vendor.

C-21. Award. The District may make multiple awards. If awards are made, the award will be made to the lowest, responsive, responsible Offeror, whose qualifications indicate the award will be in the best interest of the District and whose bid is reasonable and complies with all the prescribed requirements. The District may approve multiple Offers in the event the lowest, responsive, responsible bidder is unable to fill the order at the time requested.

In the determination of the lowest, responsive, responsible Bidder, the District reserves the right to take into account and give reasonable weight to, (a) the Bidder's record as to dependability in the carrying out of other contracts, (b) the probability of this Document being carried to successful completion within the time specified by the methods and with the equipment the Bidder proposes to utilize in completing the Work, (c) applicable federal and state regulations, and (d) compliance with Bidder's Qualifications.

The District reserves the right to reject any and all Bids and to waive any and all informalities or irregularities, and the right to disregard all non-conforming or conditional Bids or counter proposals, whenever such rejections or waiver is in the interest of the District.

C-21. Taxes: Pipes and valves 4-inch diameter and larger are exempt from Arizona Transaction Privilege taxes.

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D. SPECIAL TERMS:

D-1. Build America Buy America Act:

All products must comply with the Build America Buy America Act (BABA):

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

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

D-2. Unique Entity ID# (UEI)

Not Required.

D-3. Conflict of Interest: An Offeror responding to this RFP acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure a Contract that may be awarded pursuant to this RFP upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the District Board, or any employee of the District has any financial interest in Offeror's firm.

D-4. Immigration Laws: Vendor certifies and warrants that it is in compliance with A.R.S. § 41-4401 and further acknowledges that any contractor or subcontractor who is contracted by the vendor to perform work related to this contract shall warrant its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214(A). Any breach of this warranty shall be deemed a material breach of this contract that is subject to penalties up to and including termination of this contract. The District retains the legal right to inspect the employment records of any employee of any contractor or subcontractor who performs work related to this contract to ensure that the contractor or subcontractor is complying with the warranty in this paragraph and that the vendor agrees to make all employment records of said employee available during normal working hours to facilitate such an inspection.

D-5. Non-Discrimination: Vendor certifies and warrants that it shall comply with the provisions of State Executive Order 2009-9. In performing this contract, vendor shall not, and shall ensure that any and all contractors, subcontractors, employees, agents, volunteers, officers, officials, directors, volunteers, and affiliates, also shall not discriminate, harass, or allow harassment against any person on the basis of sex, race, color, ancestry, religious cred, national origin, physical disability, mental disability, medical condition, age, marital status, or any other basis prohibited under law. Vendor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract.

D-6. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.
2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto; and
5. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
6. Israel Boycott Divestment: Acceptance of the contract warrants the vendor is in compliance with A.R.S. § 35-393 and does not participate in a boycott of Israel as that term is defined within A.R.S § 35-393

D-7. The vendor, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Grantees of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

D-8. Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms.

The District will take affirmative steps to solicit and include small, minority, and women owned businesses, when possible, in an effort to encourage participation and fair competition in providing supplies/services described in this solicitation. As set forth in 2 C.F.R. § 200.321(b)(1)-(5), such affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. If subcontracts are to be let, vendor shall take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used as required by 2 C.F.R. § 200.321.

D-9. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, vendor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

D-10. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), vendor should encourage its contractors to adopt and enforce on-the job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

D-11. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), vendor should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and vendor should establish workplace safety policies to decrease accidents caused by distracted drivers.

D-12. Debarment: By submission of an offer, the vendor certifies that, neither the vendor nor any owner, partner, director, officer, or principal of the vendor, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

1. Is presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any federal or state department/agency;
2. Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false

statements, or receiving stolen property;

3. Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
4. Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.

D-13. Brand Names or Trade Names: Any manufacturer's names, trade names, brand names or catalog numbers used in the solicitation are for the purpose of describing and/or establishing the quality, design and performance required. Any such reference is not intended to limit or restrict any bid/offer by any vendor, but is only listed in order to advise potential bidders/offers of the requirements of the District. Any bid/offer which proposes like quality, design or performance will be considered.

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E. INSTRUCTION TO OFFERORS

E-1. Inquiries: Any question related to the Request for Proposal shall be directed to the contact below. Any questions or inquiries may not be responded to less than seven days from the due date of the proposal. Any oral interpretations or clarifications will be without legal effect. Only questions answered by formal written amendment to the Request for Proposal will be binding. All written amendments will be sent to all plan holders.

Lucas McCabe
6265 N. La Cañada Drive
Tucson, Arizona 85704
(520) 209-2836
lmccabe@metrowater.com

E-2. Amendment of Request for Proposal: The Offeror shall acknowledge receipt of a Request for Proposal Amendment by signing and returning the document by the specified due date and time.

E-3. Familiarization of Scope of Work: Before submitting a proposal, each offeror shall familiarize itself with the Scope of Work, laws, regulations and other factors affecting contract performance. The Offeror shall be responsible for fully understanding the requirements of the subsequent Contract and otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a proposal will constitute a representation of compliance by the Offeror. There will be no subsequent financial adjustment, other than that provided by the subsequent Contract, for lack of such familiarization.

E-4. Preparation of Proposal:

1. All proposals shall be on the forms provided in this Request for Proposal package. It is permissible to copy these forms as required.
2. The proposal should include: this RFP, Requested Submittals, completed proposal forms, Price Pages, and Offer within this RFP.
3. The Offer and Acceptance shall be signed by a person authorized to submit and offer. An authorized signature on the Offer and Acceptance page, Proposal Amendment(s), or cover letter accompanying the proposal shall constitute an irrevocable offer to sell the goods and/or service specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the contract.
4. The authorized person signing the proposal shall initial erasure, interlineations or other modifications on the proposal.
5. In case of error in the extension of prices in the proposal, unit prices shall govern when applicable.
6. It is the responsibility of all offerors to examine the entire Request for Proposal package and seek clarification of any requirement that may not be clear and to check all responses for

accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time.

E-5. Exceptions to the Contract Provision: A response to any Request for Proposal is an offer to contract with the District based upon the contract provisions in the Request for Proposal. Offerors who wish to propose modifications to the contract provision must clearly identify the proposed deviations and any proposed substitute language. The provision of the Request for Proposal cannot be modified without the express written approval of the District. Only modifications approved in writing by the District will be accepted.

E-6. Certification: By signature on the Offer and Acceptance page, solicitation Amendments(s), or cover letter accompanying the submittal documents, Offeror certifies:

1. The submission and the offer did not involve collusion or other anti-competitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, meal, or service to a public servant in connection with the submitted offer.
4. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to bind the Offeror to the Contract.

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Pricing

Riverside

Description	Quantity	Unit	Total Cost \$
Adsorption Vessel complete per specifications including all costs such as materials, labor, fabrication, applicable taxes, shipping, delivery, unloading, freight, surcharges, and engineering	1	Lump Sum	
Granular Activated Carbon per specifications installed in the adsorption vessel including all costs such as materials, labor, applicable taxes, equipment, shipping, and delivery.	20,000	Pounds	
Cost adder, if applicable, for all stainless steel internal components	1	Lump Sum	

Estimated delivery time, _____ weeks from receipt of a purchase order.

DeConcini

Description	Quantity	Unit	Total Cost \$
Adsorption Vessel complete per specifications including all costs such as materials, labor, fabrication, taxes, shipping, delivery, unloading, freight, surcharges, and engineering	1	Lump Sum	
Granular Activated Carbon per specifications installed in the adsorption vessel including all costs such as materials, labor, taxes, equipment, shipping, and delivery.	20,000	Pounds	
Cost adder, if applicable, for all stainless steel internal components	1	Lump Sum	

Estimated delivery time, _____ weeks from receipt of a purchase order.

OFFER AND ACCEPTANCE

OFFER

To: Metropolitan Domestic Water Improvement District

The Undersigned hereby offers and shall furnish the materials or service in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as it fully set forth herein.

For clarification of this offer, contact:

Company Name

Name: _____

Address

Title: _____

City State Zip

Phone: _____

Signature of Person Authorized to Sign

Fax: _____

Printed Name

Email: _____

Title

ACCEPTANCE OFFER

The Offer is hereby accepted. The Vendor is now bound to sell the materials or services specified in the Contract. This Contract shall be referred to as Contract GAC Vessels and Media

METROPOLITAN DOMESTIC
WATER IMPROVEMENT DISTRICT:

ITS: _____

DATE: _____

APPROVED AS TO FORM:

Lewis Roca Rothgerber Christie LLP
Counsel to Metropolitan Domestic Water Improvement District

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

CONTRACT PACKET for Governmental Borrowers - Equivalency Projects

This packet lists required contract conditions that apply to all Clean Water and Drinking Water State Revolving Fund Equivalency projects and contains forms that must be used in the procurement process. Please review this packet prior to bidding. If you are unsure if your project is an equivalency project, please contact WIFA staff.

PLEASE NOTE

- **This packet, in its entirety, must be physically included in all bidding, solicitation and contract documents.**
- **Build America, Buy America (BABA) Act applies to this project.**
 - BABA covered items include products made of iron or steel, manufactured products, and construction materials.
- **Federal Davis-Bacon prevailing wages apply to this project.**
 - Payment of the wages, fringe benefits and overtime rates is required.
 - **The appropriate Federal (Davis-Bacon) Prevailing Wage Decision must be physically incorporated into the bidding and contract documents.**
 - The construction category of Heavy (excluding dam construction) should typically be applied to all projects funded by WIFA. If you believe that a different category of wages, such as Building, should be applied to your project or portions of your project, please contact WIFA in advance.
 - Weekly certified payroll submittal is required under the Federal Davis-Bacon laws.
- Compliance with the Civil Rights Act and Equal Employment Opportunity is required.
- Promotion of Small, Minority and Women-owned Businesses and participation in EPA's Disadvantaged Business Enterprise (DBE) Program is required.
- Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment.

Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund

Required Contract Conditions

This project is being financed in whole or in part by the Water Infrastructure Finance Authority of Arizona through the Clean Water or Drinking Water State Revolving Fund. The loan recipient is required to comply with the following federal and state laws, rules and regulations and must ensure that their contractor(s) also comply(ies) with these regulations, laws and rules.

1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 42 U.S.C. Sec. 2000d), (ii) the Rehabilitation Act of 1973 (Pub. L. 93-1123, 87 Stat. 355, 29 U.S.C. Sec. 794), (iii) the Age Discrimination Act of 1975 (Pub. L. 94-135 Sec. 303, 89 Stat. 713, 728, 42 U.S.C. Sec. 6102), (iv) Section 13 of the Federal Water Pollution Control Act (Pub. L. 92-500, 33 U.S.C. Sec. 1251), and subsequent regulations, ensures access to facilities or programs regardless of race, color, national origin, sex, age or handicap.
2. Equal Employment Opportunity (Executive Order 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 Executive Order 11246 as amended by Executive Orders 11375 and 12086 are required in all project related contracts and subcontracts over \$10,000.
3. Promoting the use of Small, Minority, and Women-owned Businesses (Executive Orders 11625, 12138 and 12432), (ii) Small Businesses Reauthorization & Amendment Act of 1988 (Section 129 of Pub. L. 100-590), (iii) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102-389, 42 U.S.C. Sec. 437d), and (iv) Title X of the Clean Air Acts Amendments of 1990 (Pub. L. 101-549, 42 U.S.C. Sec. 7601 note) (“EPA’s 10% statute”). 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. Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements (40 C.F.R. Part 33).
5. Debarment and Suspension (Executive Order 12549). Prohibits entering into contracts or subcontracts with individuals or businesses who are debarred or suspended. Borrowers are required to check the status of all contractors (construction and professional services) and must require contractors to check the status of subcontractors for contracts expected to be equal to or over \$25,000 via this Internet address: <https://www.sam.gov/SAM/>.
6. E-Verify (A.R.S. § 41-4401). A governmental entity shall not award a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A). Every government entity shall (i) ensure that every government entity contractor and subcontractor complies with the federal

immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A); (ii) require that every government entity contract include the required provisions listed under A.R.S. § 41-4401(A); and (iii) establish procedures to conduct random verification of the employment records of government entity contractors and subcontractors.

7. Build America, Buy America Act (Public Law No. 117-58, §§ 70901-52). Funds provided under this award may not be used for a project for infrastructure unless all iron and steel, manufactured products, and construction materials used meet the Build America, Buy America Act requirements.
8. Federal Davis-Bacon prevailing wages apply to this project. Payment of the wages, fringe benefits and overtime rates are required.
9. Prohibition on certain telecommunication and video surveillance services or equipment detailed in section 889 of Public Law 115-232 (CFR 200.216) applies.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Build America, Buy America Act

PLEASE NOTE: Build America, Buy America Act requirements apply to this project.

The “subrecipient” referred to throughout the Build America, Buy America contract conditions is the WIFA Borrower.

“WIFA” is the Water Infrastructure Finance Authority of Arizona, State Capitalization Grant recipient, recipient, or the Authority.

The Contractor acknowledges to and for the benefit of the subrecipient and WIFA that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement.

The Contractor hereby represents and warrants to and for the benefit of the subrecipient and WIFA:

- (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 subrecipient or WIFA.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the subrecipient or WIFA to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the subrecipient or WIFA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from WIFA or any damages owed to WIFA by the subrecipient). If the Contractor has no direct contractual privity with WIFA, as a lender or awardee to the subrecipient for the funding of its project, the subrecipient and the Contractor agree that WIFA 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 WIFA.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Build America, Buy America Act

Public Law No. 117-58, §§ 70901-52, enacted November 15, 2021

The Act requires that no later than May 14, 2022—180 days after the enactment of the IIA— “[N]one of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

Use of American Iron, Steel, Manufactured Products, and Construction Materials

Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

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

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Highlights from EPA Guidance on Build America, Buy America

Complete document available at www.epa.gov/cwsrf/build-america-buy-america-baba

Waivers

When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that:

- (1) applying the domestic content procurement preference would be inconsistent with the public interest;
- (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
- (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

Definitions

"Construction materials" includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Build America Buy America
De Minimis General Applicability Waiver**

Infrastructure projects involve the use of potentially thousands of miscellaneous, generally low-cost products that are essential for construction and are incorporated into the physical structure of the project. For many of these miscellaneous products, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business; for other miscellaneous products, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually or procured in bulk, mark them as potentially *de minimis* items.

Section 70914(b)(1) of the Infrastructure Investment and Jobs Act authorizes the Administrator to waive the requirements of Build America, Buy America if implementation would be inconsistent with the public interest. Due to the critical need to reduce the administrative burden for recipients and agencies and to ensure recipients can effectively carry out the EPA funded activity in a timely manner, it is in the public interest to waive Build America, Buy America requirements for products used in and incorporated into a project that cumulatively comprise **no more than five percent** of the total project cost.

Assistance recipients who wish to use this waiver 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.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Davis-Bacon Contract Conditions (Federal Prevailing Wages)

PLEASE NOTE: Federal Davis-Bacon prevailing wages apply to this project. Payment of the wages, fringe benefits and overtime rates is required.

The “subrecipient” referred to throughout the Davis-Bacon contract conditions is the WIFA Borrower.

“WIFA” is the Water Infrastructure Finance Authority of Arizona, State Capitalization Grant recipient, recipient, or the Authority.

Wage Rate Requirements **(Also referred to as Attachment 6)**

Preamble

With respect to the Clean Water and Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(3)(ii)(A) below and for compliance as described in Section 5.

Requirements for Subrecipients That are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient will contact EPA. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <https://www.dol.gov/agencies/whd/government-contracts/construction>.

1. Applicability of the Davis-Bacon prevailing wage requirements.

Davis-Bacon prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a Clean Water Revolving Fund and to any construction project carried out in whole or in part by assistance made available by a Drinking Water Revolving Fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the State recipient before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor <https://sam.gov/content/wage-determinations> weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination 10 days or less prior to the closing date, the subrecipient may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient,

at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor <https://sam.gov/content/wage-determinations> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from <https://sam.gov/content/wage-determinations> into the ordering instrument. Typically, the appropriate wage determination would be the one in effect on the date the task order, work assignment or similar instrument is awarded.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

The recipient shall insure that the subrecipient(s) 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 CWSRF or a construction project under the DWSRF 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 29 CFR § 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 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.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, <https://sam.gov/content/wage-determinations>.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve 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 the subrecipient(s) 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 subrecipient(s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official 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 subrecipient(s) 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 State award official, 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 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 subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the 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 subrecipient, that is, the entity that receives the subgrant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at 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 the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(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 the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(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 subrecipient(s), the State recipient, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

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

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

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

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3 above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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

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

(b) In addition to the clauses contained in Item 3 above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the subrecipient 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 subrecipient 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 recipient and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use WIFA's interview form, Department of Labor's Standard Form 1445, or equivalent documentation to memorialize the interviews. WIFA's interview form and instructions are included with this packet.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

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

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

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed below and to the appropriate DOL Wage and Hour District Office listed at www.dol.gov/whd.

Joe Ochab, EPA Region 9, 75 Hawthorne St. (P-22), San Francisco, CA 94105

**Clean Water Revolving Fund
Drinking Water Revolving Fund**

Equal Employment

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 CWRF and DWRF 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.

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Disadvantaged Business Enterprises (DBE)

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 Certified Disadvantaged Business Enterprises* (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach.

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.

Required Contract Conditions

These conditions must be included in all procurement contracts entered into by the Borrower for all DWRF and CWRF 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 er.
2. The prime contractor must notify the owner in writing prior to the termination of any Disadvantaged Business Enterprise subcontractor for convenience by the prime contractor.
3. If a Disadvantaged 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.

** 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.*

*** More information about DBE requirements can be found at <https://www.epa.gov/grants/frequently-asked-questions-disadvantaged-business-enterprises>*

**Water Infrastructure Finance Authority of Arizona
Clean Water Revolving Fund
Drinking Water Revolving Fund**

Prohibition on Certain Telecommunication and Video Surveillance Equipment

Public Law 115-232, enacted August 13, 2020

WIFA borrowers must comply with regulations at 2 CFR 200.216, *Prohibition on certain telecommunication and video surveillance services or equipment*, implementing section 889 of Public Law 115-232. The regulation prohibits the use of Federal funds to procure (enter into, extend, or renew contracts) or obtain equipment, systems, or services that use “covered telecommunications equipment or services” identified in the regulation as a substantial or essential component of any system, or as critical technology as part of any system. Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that “uses any equipment, system, or service that uses covered telecommunications equipment or services” as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list (<https://sam.gov/SAM/>).

As described in section 889 of Public Law 115-232, covered telecommunications equipment or services includes:

- **Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).**
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other security purposes, **video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).**
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

There is no exhaustive list of components and services that fall under the prohibition. Borrowers and contractors should be particularly mindful of project components with internet or cellular connections. For example, automatic meter reading (AMR) technology and advanced metering infrastructure (AMI), instrumentation control systems (e.g. process control systems, distributed control systems and programmable logic controls), and security cameras and other electronic security measures. Items included in the prohibition are not eligible costs, and WIFA cannot reimburse borrowers for these costs.