



Clean Water Revolving Fund & Drinking  
Water Revolving Fund  
*Includes Infrastructure Investment & Jobs  
Act Funds*

*PROGRAM GUIDANCE & INFORMATION*

*March 2023*

Minnesota Public Facilities Authority

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# 1 DEADLINES FOR PROJECTS ON THE 2023 INTENDED USE PLAN

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2023 IUP Carryover Projects (Part A) have previously met the loan application submittal deadlines and have submitted plans and specifications to the MDH and/or MPCA.

The deadline to submit Lead Service Line Replacement projects and Emerging Contaminants projects is **June 1, 2023**.

The Contract Packet includes documents that need to be included with all bid specifications and construction contracts. Note there are two versions of the Contract Packet, one with Build America, Buy America (BABA) contract provisions and one without BABA contract provisions.

Contact your [PFA loan officer](#) with any questions.

## 2 BASIC PROGRAM INFORMATION AND REQUIREMENTS

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Applicants with projects in the fundable range on the approved Clean Water Revolving Fund (CWRF) or Drinking Water Revolving Fund (DWRF) Intended Use Plans (IUP) are eligible to submit applications for financing to the Public Facilities Authority (PFA).

Prior to a determination of funding, PFA staff reviews and analyzes the applicant's creditworthiness, its financial capacity to undertake the project, its ability to comply with state and federal laws and requirements and whether total project funding is in place. Prior to receiving PFA approval, applicants must identify and establish dedicated source(s) of revenue sufficient to repay the PFA financing and to cover operational, maintenance and equipment replacement (O, M & r) costs for the drinking water and/or sewer system. Applicants proposing to levy special assessments for the project will need to provide additional information as a part of the application. Please contact your loan officer for the PFA's special assessment guidance.

The PFA purchases the general obligation bonds of Recipients to finance eligible projects, transactions which are commonly referred to as loans in this document.

### 2.1 ITEMS NEEDED FOR APPROVAL OF LOAN REQUEST

#### **Complete Application**

A complete loan application includes:

- Completed forms and submittal of supporting documents/attachments
- Documentation that total project funding is in place
- Documentation that a dedicated source(s) or revenue is in place or has been established. The dedicated source of revenue must be sufficient for existing and new debt service, operation and maintenance costs of the system, and short-term replacement items (OMr). Documentation includes governing body resolutions, city council minutes establishing the revenue stream, projected cash flows, assessment rolls, rate studies/analysis, etc.

#### **As-bid Costs**

PFA funds projects based on as-bid costs. Bid tabulations, engineer's recommendation letter to accept bids are required to determine total project costs.

#### **Project Certification**

Approval (called a project certification) from the Minnesota Department of Health (MDH) for drinking water projects; or Minnesota Pollution Control Agency (MPCA) for wastewater and stormwater projects.

## 2.2 RECIPIENTS REQUEST TO PROCEED WITH FINANCING AGREEMENT

PFA staff will notify applicant when a loan application is complete. The applicant then determines when they want to proceed with the financing agreement. PFA will provide a draft amortization schedule. The final interest rate will be set on the date the PFA receives the applicant's request to proceed with the financing agreement.

## 2.3 BIDDING REQUIREMENTS SUMMARY

Recipients must follow state municipal contracting requirements (i.e. Public Contractors Performance and Payment Bond Act, Uniform Municipal Contracting Law, surety deposits for out-of-state contractors, workers compensation, etc.), federal civil rights laws, federal Disadvantaged Business Enterprise (DBE), American Iron and Steel requirements and Build America Buy America (BABA) requirements.

NOTE: some projects may meet the Adjustment Period Waiver for BABA, please consult with PFA loan officer for information.

The Contract Packet includes information on state and federal laws related to procurement, pre-bid and post bid requirements. Required contract language for bid and contract documents and reporting forms is in the Contract Packet. If the Recipient's project qualifies for the BABA adjustment period waiver, use the Contract Packet "For Projects that Qualify for BABA Adjustment Period Waiver". If the Recipient's project does not qualify for the BABA adjustment period waiver, use the Contract Packet that "Includes Build America, Buy America Act (BABA)".

The proper Contract Packet must be physically incorporated into the bid and contract documents, along with the appropriate State and Federal prevailing wage rates. **IMPORTANT:** The Contractor will need to provide information to the Recipient for required reporting and to document compliance with specific contract conditions such as:

- Build America, Buy America (unless project qualifies for Adjustment Period Waiver)
- American Iron & Steel (certifications, letters, de minimis tracking)
- DBE/M/WBE fair share efforts and reporting
- Prevailing Wages (both state and federal)

***IDENTIFY THE DATA NEEDS UPFRONT IN THE CONTRACT SO THE INFORMATION IS INCLUDED IN THE CONTRACT AND DOES NOT RESULT IN EXTRA CHARGES FOR THE RECIPIENT.***

## 3 PROJECT SIGN AND PUBLIC NOTICE POSTING – ALL PROJECTS

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### 3.1 PHYSICAL PROJECT SIGNS

Physical project signs are to be displayed at the construction site for the duration of the project, be linked to the work taking place. A physical project sign containing the Build Back Better emblem, Environmental Protection Agency logo and Minnesota Public Facilities Authority logo is required. Reasonable costs of the sign are an eligible expense.

**Point Source Implementation Grant** -CWRP/DWRF projects that include Point Source Implementation Grant (PSIG) funds should also refer to the project sign requirements in the PSIG application materials.

Additional information including sign specifications will be provided when available.

### 3.2 PROJECT FUNDING NOTICE

All projects will be asked to post a PFA-provided funding notice on the project after funds are awarded. Most PFA Recipients post the notice on the City's website or at City Hall in a public area.

## 4 ALPHABETICAL TOPIC LIST

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**Accounting Procedures & Records** - The Recipient must keep all project accounts and records for the PFA-funded project (water and/or sewer fund) in accordance with Generally Accepted Accounting Principles (GAAP). Financial statements must comply with GASB 34 (Governmental Accounting Standards Board) standards related to the reporting of infrastructure assets.

**Affirmative Action Plans** - [Sec. 363A.36 MN Statutes](#) Subd. 1a, Minnesota Department of Human Rights' (MDHR) affirmative action plan. PFA Recipients are encouraged to prepare and implement an affirmative action plan for the employment of people with disabilities, people of color, and women, and submit the plan to the commissioner of Human Rights.

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

**Agreement** - See Bond Purchase and Project Loan Agreement.

**American Iron and Steel (AIS)** - A federal requirement for any project receiving financial assistance from the State Revolving Funds. AIS requires iron and steel products used in the project be produced in the United States. This requirement applies to projects receiving SRF s for construction, alteration, maintenance and/or repair of a public water system or treatment work. If any portion of the contract is using SRF funding, the whole project must be AIS compliant. Also see Build America, Buy America (BABA). Note, AIS is included in BABA. AIS continues to apply to projects, even if a project meets the BABA Adjustment Period Waiver.

**Amortization Schedule** - For CWRF/DWRF loans, the amortization schedule details the payment schedule of the loan. PFA debt service dates are February 20 (interest) and August 20 (principal and interest). Amortization schedules are updated during the disbursement phase and can be found on the Recipient's SharePoint site.

Draft Amortization Schedules are available upon request for applications. Contact your loan officer for a draft schedule.

**Annual Compliance Packets (Post Award)** - PFA financing agreements include on-going compliance-related requirements for the term of the Loan. Early each calendar year, PFA will notify Recipients that



compliance packet is available on their Minnesota PFA SharePoint site. The packet includes information, reminders, and forms to complete and upload onto PFA SharePoint.

**Acquisition of Land and Permanent Easements** - The cost of land necessary for construction, including fee-simple purchase and permanent and temporary easements, may be eligible for reimbursement in the DWRF or CWRP if included in the project certification. For the DWRF, land and permanent easements are eligible when purchased through voluntary transactions.

Land acquired under the CWRP/DWRF must comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Act). Costs associated with complying with the Uniform Act, including appraisals and related legal costs, are eligible costs.

- Appraisal - In general, a detailed full narrative appraisal report should be completed for all eligible land acquisitions. If the acquisition is uncomplicated, of low value (value of **\$10,000 or less**), and non-controversial a simpler appraisal or valuation method may be acceptable. Appraisals or valuations must be done in conformance with the requirements of the federal Uniform Act.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) Minnesota Department of Transportation's list of prequalified appraisers: <http://www.dot.state.mn.us/consult/prequal.html> scroll to "Current List of Pre-Qualified Consultants" for a list of prequalified appraisers.
- Minnesota Department of Commerce on-line look-up tool to search for licensed appraisers: [License Lookup Tool](#)

**Applicant (Recipient)** - The applicant must be the entity that will issue the General Obligation Revenue note or General Obligation Improvement note to the PFA as security for the PFA loan.

**Audit Requirements** - As a condition of the PFA financing, Recipients are required to have an annual independent audit conducted for the term of the loan and provide a copy of the audit and management letters to the PFA each year. The audit must report the PFA-funded utility (water and or sewer fund) on a GAAP basis. Applicants that do not currently have annual independent audits may incur significant costs with this requirement.

Recipients may need to comply with the single audit act of the federal Office of Management and Budget 2 CFR 200 Subpart, if total federal dollars expended annually equal or exceed the amount that triggers (currently at \$750,000) the single audit requirement.

The Minnesota Office of the State Auditor establishes audit requirements for governmental entities, and some small cities (population under 2,500 and budget under a specific dollar amount) are not required to have an annual audit.

**Bidders List** - All CWRP and DWRP recipients must maintain a Bidders List for their projects. The purpose of a bidders list is to provide the recipient with as accurate a database as possible about the universe of Minority Business Enterprise/Women Business Enterprise (MBE/WBE) and non-MBE/WBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or quote subcontracts. The Bidders List must be updated during the disbursement phase of the project. The Bidders List must be retained as part of the project records.

The Bidders List must contain the following information:

- Name of Contractor or Subcontractor
- Contact Name
- Telephone
- E-mail address
- Mailing Address
- Identify the procurement on which the contractor or subcontractor bid or quoted
- Identify the date of the procurement
- Identify whether the contractor or subcontractor is a:
  - Minority Business Enterprise (MBE)
  - Women Business Enterprise (WBE)
  - non MBE or WBE

**Bipartisan Infrastructure Law (BIL)** - See Infrastructure Investment and Jobs Act (IIJA).

**Bond Purchase and Project Loan Agreement** - The title of the financing agreement between the PFA and the Recipient. The Agreement incorporates the Recipient's application and includes the terms and conditions of the PFA financing.

**Bond Counsel** - A nationally recognized bond counsel must prepare bond documents. A bond counsel is an attorney that specializes in debt issuance. A list of bond counsel firms is included in this packet. Applicants should communicate with bond counsel about the project and proposed pledged revenue sources to ensure that the applicant has the authority to pledge said source(s) and that all procedures (i.e. special assessments) are followed. See Item 12 for a directory of Bond Counsels.

**Build America, Buy America Act (BABA)** - BABA is A federal domestic sourcing requirement for iron and steel, manufactured goods and construction materials for Clean Water and Drinking Water State Revolving Funded projects. BABA applies unless the project qualifies for a waiver. The American Iron and Steel (AIS) requirements are included within BABA. Additional information is in this packet.

**Certification** - Technical approval of a SRF project prepared by PFA partner agencies. Minnesota Department of Health certifies drinking water projects; Minnesota Pollution Control Agency certifies

wastewater and stormwater projects. Certification is one of the items needed before PFA can approve project financing.

**Credit Enhancement Program** - The Credit Enhancement Program is administered by the PFA and provides a limited state bond guarantee program which results in higher credit ratings for municipalities and lower interest rates on general obligation bonds. Projects not eligible for the CWRF or DWRF may want to consider the Credit Enhancement Program.

**Davis Bacon and Related Acts (Federal Prevailing Wages)** - Federal requirements for payment of workers prevailing wages and overtime established by the U.S. Department of Labor on federally funded projects. Davis Bacon wages and terms and conditions apply to SRF-funded projects. SRF-funded projects (unless only federal funded) also require Minnesota Prevailing wages. Minnesota Prevailing wages are sometimes referred to “mini-Davis-Bacon”. Additional information is in this packet.

**Debarment** - A contractor or subcontractor excluded from participating on contracts funded with federal funds. The prohibition from entering contracts or sub-contracts with individuals or businesses that have been listed as suspended or debarred ([SAM.gov](https://sam.gov) | [Exclusions](#)) and the Minnesota Department of Administration’s listing: [Suspended/Debarred Vendors / Minnesota Office of State Procurement \(mn.gov\)](#). PFA Recipients need to verify contractor eligibility before awarding any contracts for construction and non-construction activities.

**Debt Service Payments** - Debt service payments on PFA loans must begin no later than one year after approval of the financing, and are scheduled for February 20th and August 20th each year. Interest accrues immediately on funds disbursed to the Recipient. Updated Amortization Schedules are posted on the recipient’s SharePoint site.

**Disadvantaged Business Enterprise** - Umbrella term (federal) for Minority Business Enterprises and Women Business Enterprises. PFA recipients all have obligations regarding DBE procurement to undertake good faith efforts for procurement, and reporting for construction, equipment, supplies and services. Additional information is in this packet.

**Disbursement Requests** - After loan closing, SRF funds may be drawn by the Recipient as eligible project costs are incurred. A Recipient may also submit disbursement requests to reimburse for eligible project costs incurred prior to loan closing, provided these costs are identified and discussed with the PFA loan officer during the application process. A signed disbursement form (provided by PFA) along with copies of supporting documentation (invoices, signed contractor partial pay estimates, etc.) must be submitted to your PFA loan officer by the 15th of each month for reimbursement by the end of that same month.

**Equal Pay Certificates** - [Sec. 363A.43 MN Statutes](#), Minnesota Department of Human Rights (MDHR) Equal Pay Certificate. Requirement for all municipal contracts or agreements for goods and services that exceed \$1,000,000 with businesses that have 40 or more full-time employees in Minnesota or a state where the business has its primary place of business. This requirement will apply to capital projects for which the legislature appropriates funds on or after January 1, 2022.

**General Obligation Revenue/General Obligation Improvement Note** - The security for the amount of the PFA CWRP or DWRF loan. Consult with your bond counsel to specify the type of debt instrument (i.e. General Obligation Revenue Note; General Obligation Improvement Note; taxable or tax-exempt) the applicant expects to issue to the PFA. General Obligation Revenue notes are generally backed by user fees, connection fees and other net revenues of the system. General Obligation Improvement notes are generally backed by at least 20% special assessments. All General Obligation notes are backed by the full-faith and credit of the recipient.

**Green Project Reserve (GPR)** - Clean Water Revolving Fund projects that address green infrastructure, water and energy efficiency, or other environmentally innovative activities. PFA can award federal Principal Forgiveness to eligible GPR projects.

**Good Faith Efforts** - Six affirmative steps all Recipients must follow and document for procurement (construction, supply and professional services) to provide opportunities for of Disadvantaged Business Enterprises.

**Infrastructure Investment and Jobs Act (IIJA)** - Federal Act that authorized funds for the Clean Water and Drinking Water State Revolving Funds for a five-year period. All SRF funds appropriated under the IIJA go through the PFA's Clean Water Revolving Fund and Drinking Water Revolving Fund. Some refer to IIJA as the Bipartisan Infrastructure Law (BIL).

**LSLR** - Lead Service Line Replacement

**Loan Agreement** - See Bond Purchase and Project Loan Agreement.

**Minnesota Prevailing Wages** - Minnesota state requirements for payment of workers prevailing wages established by the Minnesota Department of Labor and Industry for state-funded projects (includes all PFA projects, unless they are wholly federally funded) U.S. Department of Labor on federally funded projects. Davis Bacon wages and terms and conditions apply to SRF-funded projects. SRF-funded projects (unless only federal funded) also require Minnesota Prevailing wages. Minnesota Prevailing wages are sometimes referred to "mini-Davis-Bacon". Additional information is in this packet.

**MN SWIFT Vendor ID No and MN SWIFT Vendor Suffix No.**- The Recipient's vendor number established in Minnesota Management and Budget's vendor system. Both the 10-digit vendor ID number and the 3-digit suffix number are needed in the application forms. The vendor number identifies where PFA payments are sent ([SWIFT Vendor Resources / Minnesota Management and Budget \(MMB\) \(mn.gov\)](#)).

**Municipal Contracting Requirements** - See Uniform Municipal Contracting Law.

**Operation, Maintenance and replacement (O, M and r)** - Municipal audits and budgets should reflect the expenditures of and costs for equipment replacement (pumps, motors, etc.,) and set aside funds annually to pay for the future replacement of these non-capital items. These items are also referred to as short-lived assets. The application Form 04 System Costs: Annual Operation and Maintenance requests the budgeted amounts for equipment replacement. Recipients should take short-term asset replacement costs into account for their water and sewer systems by budgeting for these costs, setting aside the budgeted funds annually and making expenditures for the replacement items when needed. Note: funds for the short-lived assets are not the same as the Capital Replacement Fund required for recipients of Water Infrastructure Fund (WIF) grants.

**Pre-Payments** – The PFA provides below-market rate financing to local units of government, through the Clean Water and Drinking Water State Revolving Funds (SRF). The low-rate plus lower issuance costs add up to significant interest and cost savings over the life of the loan. The PFA sells tax-exempt bonds to provide funds for the SRF programs and those bonds are subject to Internal Revenue Service tax law restrictions which impact the PFA's ability to accept prepayments on these loans. In order to preserve future lending capacity and avoid problems with tax-exempt bond restrictions, the PFA Bond Purchase and Project Loan Agreement will stipulate that these loans are not pre-payable.

**Prevailing Wages** - See Davis Bacon and Related Acts and Minnesota Prevailing Wages.

**Principal Forgiveness** - Federal funding that is granted to eligible projects (affordability, Green Project Reserve, private Lead Service Line Replacement projects) up front and is not required to be repaid.

**Private Activity** - Projects that benefit a private business above the level permitted in the Federal Internal Revenue Service Code may cause bonds issued for the project to be considered private activity bonds. Projects that have any possible private activity considerations, such as a large industrial user, need to consult with their bond counsel on these questions.

**Procurement** - Recipients are prohibited from entering into contracts (construction and engineering) and contractors are prohibited from entering into sub-contracts with individuals or businesses that are

debarred or suspended. For all contracts over \$25,000 Recipients are required to verify and keep a record of a debarment check. Check before contracts are awarded on the General Services Administration System for Award Management website ([www.sam.gov](http://www.sam.gov)) and place a copy of the debarment check on file. Contractors are required to check the status of their subcontractors. If you have trouble accessing the SAM site, try another browser.

### **Project Costs Non-Lead Service Line Projects – Eligible**

- Construction and capital costs for items identified in the MPCA and MDH project certification.
  - For additional information on CWRP projects, go to [MPCA's Cost Eligibility Guidelines for the Clean Water Revolving Fund](#)
- Engineering costs, including planning, design, construction and start-up
- Land costs (see Miscellaneous Administrative Items)
- Reasonable costs associated with labor standards, Build America, Buy American (BABA), and American Iron and Steel compliance
- Legal costs associated with establishment of the revenue stream for repayment of the PFA financing such as development of sewer/water ordinance and special assessments or for review of construction contracts
- Reasonable costs to set up and implement long term financial and asset management tools
- Financing costs directly associated with the PFA financing, such as bond counsel costs for preparation of the General Obligation Bond and related documents and limited financial advisor fees for establishing the dedicated source of revenue

### **Project Costs Non- Lead Service Line Projects – Ineligible**

- Costs associated with seeking, coordinating, or securing other financing for the project
- Operation and maintenance of the sewer or water system
- Administrative costs of a board, sanitary district or governmental unit
- Indirect costs
- MPCA or MDH permits
- Non-capital costs

### **Project Costs Lead Service Line Replacement – Eligible Costs**

- Directly connected to the planning, design, and replacement of lead service lines
- Removal of lead or galvanized goosenecks, pigtails, and connectors
- Replacement of curb stops, curb stop boxes, and other service line appurtenances that are removed as part of a full LSLR
- Site restoration, including landscaping, sidewalks, driveways, etc. if the removal was necessary to replace the lead service line
- Reasonable costs associated with labor standards, Build America, Buy American (BABA), and American Iron and Steel compliance

- Temporary pitcher filters or point-of-use (POU) devices certified by an American National Standards Institute accredited certifier to reduce lead for a short time period after LSLR is done

### **Project Costs Lead Service Line Replacement – Ineligible**

- Corrosion control activities and measures
- Premise/interior plumbing
- Water meters
- Funding for bottled water

**Project Sign** - A physical project sign containing the Building a Better America emblem, Environmental Protection Agency logo and Minnesota Public Facilities Authority logo is required. Reasonable costs of the sign are an eligible expense. Physical project signs are to be displayed at the construction site for the duration of the project, be linked to the work taking place.

Additional information including sign specifications will be provided when available.

**Project Award Notice** - The PFA will provide a Project Award Notice to the Recipient at the time of award. At a minimum, Recipients are required to post a public notice in a public location or on the Recipient's website. Recipients may opt to also use other methods to inform the public about the project.

**Real Property Declaration & Information on Waivers to the Real Property Declaration Filing** - Recipients must file a real property declaration at the county recorder's office identifying the project area as "state bond financed" unless a waiver is granted by Minnesota Management and Budget (MMB) for the recording of the declaration.

**Recipient** - Recipient refers to the PFA Recipient who is the legal entity that enters into the PFA financing agreement (Bond Purchase and Project Loan Agreement or Principal Forgiveness Agreement).

**Records (project files)** - The Recipient is responsible to maintain project records. Listed below are some of the main records that are to be maintained:

- General Project Related - loan application, signed loan agreement, bond transcript, financial plan for project, MDH or MPCA approvals/correspondence, Real Property Declaration and/or waiver

- Procurement Related - advertisements for bids, DBE fair share efforts and reports, bid tabulations, bidders list, executed contracts and debarment checks for engineers, other consultants, contractors and subcontractors
- Disbursement Records – disbursement requests, supporting documentation and invoices
- Financial records, in accordance with Generally Accepted Accounting Principles (GAAP)
- American Iron and Steel – documentation from contractor and de minimis tracking, waiver requests and waiver approval
- Build American, Buy American – documentation and de minimis tracking, waiver requests and approval
- Labor Standards – certified payrolls, employee interviews, correspondence related to compliance
- Project Closeout – evidence of project acceptance by Recipient

**Reimbursement of Construction Expenditures/Reimbursement Resolution** - Recipients intending to use the PFA loan funds to reimburse construction expenditures incurred prior to issuing its General Obligation Bond to the PFA must identify these intentions in the application resolution or in a separate “resolution of intent”. Recipients should consult with their bond counsel.

**Replacement Fund** - Statutory requirement for Principal Forgiveness of State Water Infrastructure Funds (WIF) awarded to water and wastewater system projects for affordability. Requires setting aside \$0.50/1,000 gallons in a restricted account for future capital projects. Use of the fund requires PFA approval. Recipient compliance is documented with an annual certificate (Compliance Packet) and listing the replacement fund in annual audited financial statements.

**Security** - Recipients issue a tax-exempt or taxable General Obligation Revenue or General Obligation Improvement Bond/Note to the PFA as security for the loan financing. The PFA purchases the general obligation bonds of Recipients to finance eligible projects, transactions which are commonly referred to as loans in this document. Also see General Obligation Revenues/General Obligation Improvement Note.

**SharePoint Site** - PFA will establish a SharePoint site for each Recipient. The SharePoint site includes financial information (disbursements, current amortization schedules, annual compliance packets). A link will be provided to recipients.

**Special Assessments and Connection Fees** - If special assessments or connection fees from another municipality are pledged as a revenue source for debt service, Recipients will be subject to specific covenants regarding the use of prepayments of special assessments and payment of connection fees.



PFA limits the interest rate that may be charged on special assessments. Contact your loan officer for details and for a copy of PFA's special assessment guidance.

**State Revolving Funds (SRF)** - In Minnesota the State Revolving Funds are the Clean Water Revolving Fund (CWRF) and the Drinking Water Revolving Fund (DWRF).

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

**Tax Compliance Certificate** - Certificate submitted annually by Recipients who secured their Bond Purchase and Project Loan Agreement with a tax-exempt note. Annual Compliance Packets are posted on the Recipient's SharePoint site.

**Temporary Financing** - DWRF or CWRF funds cannot be used to retire temporary debt without prior written approval from the PFA. Written approval must be granted by PFA before the applicant issues the temporary financing. If you have concerns about the project timing and when PFA funds will be available, please contact your [PFA loan officer](#).

**Uniform Municipal Contracting Law** - State statute that governs procurement for Minnesota governmental entities.

**Uniform Relocation Assistance and Real Property Acquisitions Act** - Federal requirement/procedures for relocation and acquisition activities.

**Unique Entity Identifier (UEI)** - A number to identify the applicant that is used by PFA for reporting and other purposes. Informational link on the UEI number: [SAM.gov | Entity Registrations](#)

**Vendor Number** - See MN SWIFT Vendor ID No and MN SWIFT Vendor Suffix No. [SWIFT Vendor Resources / Minnesota Management and Budget \(MMB\) \(mn.gov\)](#)

## 5 AMERICAN IRON AND STEEL REQUIREMENTS

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This section provides information on American Iron and Steel (AIS) requirements for projects funded in whole or in part with the CWRP or DWRP. This packet includes links to EPA guidance, sample construction contract conditions, sample certifications, an example de minimis tracking form, and information on waivers. (NOTE: The Environmental Protection Agency Sample Construction Contract Language and Certifications refer to the Clean Water and Drinking Water State Revolving Funds. In Minnesota the State Revolving Funds are the Clean Water Revolving Fund and the Drinking Water Revolving Fund.)

**NOTE:** Project eligible for the Build America, Buy America (BABA) Adjustment Period Waiver must still meet American Iron and Steel requirements. Projects not eligible for the BABA Adjustment Period Waiver are subject to BABA requirements. Refer to the BABA section of this document. Contact your loan officer with any questions.

### 5.1 RECIPIENT RESPONSIBILITIES

Each PFA Recipient is responsible to comply with and maintain documentation that shows compliance with AIS requirements. It is important that the recipient's consulting engineer is familiar with and understands the AIS requirements. Below are the recipient responsibilities for AIS:

#### 5.1.1 Plans and Specifications/Construction Contracts

Include AIS contract language and requirements in the plans and specifications and in construction contracts. Specifically, identify:

- What documentation the contractor will need to provide to show compliance with AIS requirements.
- The waiver process and what information is needed from the contractor to submit a waiver request.
- The de minimis waiver and what information the contractor needs to provide to support the de minimis waiver.
- Consulting engineers are encouraged to specifically identify those iron and steel products that must meet the AIS requirements on the bid summary and include a notation that states "This item must be produced in the U.S. and documentation must be provided to the owner prior to installation."

### 5.1.2 Waivers

Federal law sets forth certain circumstances under which EPA may waive the AIS requirement. EPA can issue waivers to the AIS requirement where:

- Applying the requirements is inconsistent with public interest.
- Iron and steel products are not produced in the U. S. in sufficient and reasonably available quantities and of a satisfactory quality.
- Inclusion of iron or steel products produced in the US will increase the overall project by more than 25%.

Instructions for the waiver process are outlined in Section 4.4.

EPA has also approved a de minimus waiver that will apply to all projects. PFA recipients will be required to obtain and maintain documentation on de minimus items and provide a de minimus summary at project conclusion to PFA. Links to EPA de minimis waiver and tracking spreadsheet are in the EPA Guidance and Links section below.

### 5.1.3 PFA Disbursement Request Certification

Sign (authorized representative of the Recipient) a certification (included on the PFA disbursement request) indicating that the project is in compliance with the AIS requirements. This certification is provided with each disbursement request.

### 5.1.4 Project Monitoring and Site Visits, Project Records

- Maintain project records, including AIS documentation on file for review.
- Show documentation and records to PFA/MPCA/MDH staff during on-site monitoring visits.
- When possible, show PFA/MPCA/MDH the physical project and iron and steel products prior to being installed and permanently incorporated into the project.

## 5.2 AMERICAN IRON AND STEEL DOCUMENTATION

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

1. Identify the product. The letter should list the specific product(s) delivered to the project site.
2. Identify where the product was made. The letter should include the location(s) of the foundry/mill/factory where the product was manufactured (City and State).
3. To whom was the product delivered? The letter should include the name of the project and the jurisdiction where the product was delivered.
4. Signature of company representative
5. Specifically reference the American Iron and Steel requirements.

PFA Recipients must maintain American Iron and Steel certifications and documentation in their project files.

### 5.3 EPA GUIDANCE AND LINKS

Information from EPA on the implementation of the AIS requirements can be found at:

[http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm), including:

EPA March 20, 2014 Memorandum “Implementation of American Iron and Steel Provisions of P. L. 113-76 Consolidated Appropriations Act, 2014” (See EPA link above for guidance documents, including the March 20, 2014 memorandum). Included is a detailed list of products that must comply with the requirements. An iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail-see EPA guidance);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail-see EPA guidance);
- Reinforced precast concrete; and
- Construction materials (defined in more detail-see EPA guidance).

[EPA De Minimis Waiver](#) - for incidental components of projects. Funds used for such de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project

#### [EPA Questions and Answers](#)

- Part 1: Valves and Hydrants:
- Part 2: Products, Projects and Process:
- Part 3: Plans and specification dates, Refinancing and Coatings (March 16, 2015)

Check EPA’s American Iron and Steel website frequently for updates.

[http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)

## 5.4 SAMPLE DOCUMENTS

The sample AIS documents are described below. The checklists and sample language are included in this section and are on the PFA website.

- **EPA Sample American Iron and Steel Construction Contract Language.** Contract language requiring use of AIS must be physically inserted into plans and specifications, bidding documents construction contracts and purchase agreements.
  
- **EPA Sample Step Certifications.** EPA recommends use of a step certification process, similar to the one used by the Federal Highway Administration, as the best practice to document American Iron and Steel. An alternative to the step certification is for the final manufacturer, who delivers the iron or steel product to the worksite, vendor or contractor, to provide a certification “asserting that all manufacturing processes occurred in the U.S.”. The EPA guidance material does not provide a sample of the alternative certification. EPA states that additional documentation may be needed if the certification lacks important information.
  - EPA sample step certification for iron and steel that is processed and/or manufactured
  - EPA sample step certification for iron and steel that is shipped and/or provided

### 5.4.1 SAMPLE Construction Contract Language Use of American Iron and Steel

From EPA ais-final-guidance-3-20-14.pdf (epa.gov)

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

#### SAMPLE Construction Contract Language

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the Minnesota Public Facilities Authority (the “Authority”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires that all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the Authority that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or the Authority to recover as damages against the Contractor any loss, expense or cost (including without limitation attorneys’ fees) incurred by the Purchaser or the Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Authority or any damages owed to the Authority by the Purchaser). While the Contractor has no direct contractual privity with the Authority, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Authority.

5.4.2 SAMPLE Step Certification (Processed/Manufactured)  
Use of American Iron and Steel

[\(From EPA ais-final-guidance-3-20-14.pdf \(epa.gov\)\)](#)

*The following information is provided as a SAMPLE letter of a step certification for American Iron and Steel compliance. Documentation must be provided on company letterhead.*

Date

Company Name  
Company Address  
City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel Requirement as mandated in the Environmental Protection Agency’s State Revolving Fund Programs.

Item, Products and/or Materials:

Xxxx  
Xxxx  
Xxxx

Such process took place at the following location:

If any of the above compliance statements change while providing materials to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative



5.4.3 SAMPLE Step Certification (Shipped/Provided)  
Use of American Iron and Steel

[\(From EPA ais-final-guidance-3-20-14.pdf \(epa.gov\)\)](#)

*The following information is provided as a SAMPLE letter of a step certification for American Iron and Steel compliance. Documentation must be provided on company letterhead.*

Date

Company Name  
Company Address  
City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel Requirement as mandated in the Environmental Protection Agency's State Revolving Fund Programs.

Item, Products and/or Materials:

Xxxx  
Xxxx  
Xxxx

Such process took place at the following location:

If any of the above compliance statements change while providing materials to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

## 5.5 AMERICAN IRON AND STEEL WAIVER PROCESS

### Applicant Information Checklist for Waiver Request

Submit completed Applicant Information Checklist for Waiver Request and the attachments identified in the Checklist via e-mail to the MPCA or MDH contact identified below. MPCA and MDH will review submitted waiver requests for completeness and forward to the Environmental Protection Agency (EPA) for review. EPA headquarters will use a checklist shown in this section to review waiver requests. An excel version of the [waiver checklist](#) can be found on the PFA website under the “forms” tab on the CWRP and DWRF pages.

EPA will post waiver requests received, approved and denied on their website ([http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)).

Clean Water State Revolving Fund Projects - Minnesota Pollution Control Agency (MPCA)

Abram Peterson

[Abram.Peterson@state.mn.us](mailto:Abram.Peterson@state.mn.us)

651-757-2105

Drinking Water State Revolving Fund Projects - Minnesota Department of Health (MDH)

Chad Kolstad

[Chad.Kolstad@state.mn.us](mailto:Chad.Kolstad@state.mn.us)

651-201-3972

Please copy your PFA loan officer on the e-mail waiver request to MPCA or MDH

<b>American Iron and Steel Waiver Process</b>		
<b>Applicant Information Checklist for Waiver Request</b>		
<p>The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application. (Source: March 20, 2014 EPA Memorandum "Implementation of American Iron and Steel provisions of P. L. 113-76, Consolidated Appropriations Act, 2014"). Complete and submit checklist along with supporting documents MDH or MPCA contacts listed below:</p>		
Clean Water Revolving Fund (CWRf) projects submit checklist and support documents to Abram Peterson, MPCA (651-757-2105)	<a href="mailto:Abram.Peterson@state.mn.us">Abram.Peterson@state.mn.us</a>	
Drinking Water Revolving Fund (DWRf) projects submit checklist and support documents to Chad Kolstad, MDH (651-201-3972)	<a href="mailto:Chad.Kolstad@state.mn.us">Chad.Kolstad@state.mn.us</a>	
Additional information at: <a href="http://water.epa.gov/grants_funding/aisrequirement.cfm">http://water.epa.gov/grants_funding/aisrequirement.cfm</a>		
Items	✓	Notes
<b>General</b>		
<ul style="list-style-type: none"> <li>• Waiver request includes the following information:                             <ul style="list-style-type: none"> <li>— Description of the foreign and domestic construction materials</li> <li>— Unit of measure</li> <li>— Quantity</li> <li>— Price</li> <li>— Time of delivery or availability</li> <li>— Location of the construction project</li> <li>— Name and address of the proposed supplier</li> <li>— A detailed justification for the use of foreign construction materials</li> </ul> </li> <li>• Waiver request was submitted according to the instructions in the memorandum</li> <li>• Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li> </ul>		
<b>Cost Waiver Requests</b>		
<ul style="list-style-type: none"> <li>• Waiver request includes the following information:                             <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li> </ul> </li> </ul>		
<b>Availability Waiver Requests</b>		
<ul style="list-style-type: none"> <li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:                             <ul style="list-style-type: none"> <li>— Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li> <li>— Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li> </ul> </li> <li>• Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought</li> <li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li> </ul>		

**Environmental Protection Agency HQ Review Checklist for Waiver Request**

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality (availability waiver)
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent (cost waiver).

Review Items	Yes	No	N/A	Comments
<b>Cost Waiver Requests</b>				
<ul style="list-style-type: none"> <li>• Does the waiver request include the following information?                             <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market</li> </ul> </li> <li>• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?</li> </ul>				
<b>Availability Waiver Requests</b>				
<ul style="list-style-type: none"> <li>• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?                             <ul style="list-style-type: none"> <li>— Supplier information or other documentation indicating availability/delivery date for materials</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials</li> </ul> </li> <li>• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?</li> <li>• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)</li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include:                             <ul style="list-style-type: none"> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State</li> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States</li> <li>— Correspondence with construction trade associations indicating the non-availability of the materials</li> </ul> </li> <li>• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?</li> </ul>				

## 5.6 AMERICAN IRON AND STEEL WAIVER PROCESS DE MINIMIS WAIVER

The EPA de minimis waiver dated April 15, 2014 ([national waiver for de minimis incidental components](#)) permits the use of non-American iron or steel products when they are for de minimis incidental components of projects. Funds used for de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.

To use this waiver, PFA Recipients should first consult with their contractors to determine the items to be covered by this waiver. Recipients must maintain documentation (i.e., invoices) for the de minimis items in the project file and submit a summary report to the PFA at project conclusion, or sooner, if available. An excel version of the [de minimis tracking report](#) shown on the next page can be found on the PFA website under the “forms” tab on the CWRF and DWRF pages.

The de minimis project summary report must include the following:

- PFA Recipient name
- Project name
- Name/Title/ Signature of person completing the report
- Signature date
- Total cost of materials for the project by type/categories and the estimated cost
- Total cost of materials for the de minimis items by types/categories (i.e. miscellaneous fasteners, nuts, bolts, fittings) and the estimated cost

Refer to the EPA De Minimis Waiver for additional information.

**Minnesota State Revolving Funds (CWRF and DWRF)  
Use of American Iron and Steel - De Minimis Final Utilization and Certification Form**

Use of American Iron & Steel is required for CWRF and DWRF-funded projects. The Environmental Protection Agency has issued a public interest waiver for De Minimis incidental components. The assistance recipient wishing to use this waiver should consult with their contractor(s) to maintain an itemized list of components covered under De Minimis. At the conclusion of the project, this form must be completed and retained in the assistance recipient's project files and a copy provided to the Public Facilities Authority. **It is strongly recommended that you maintain a list as the project progresses.** Please print clearly or type. EPA De Minimis Waiver:

<http://www.epa.gov/cwsrf/de-minimis-waiver-pursuant-section-436-pl-113-76-consolidated-appropriations-act>

PFA Borrower \_\_\_\_\_ Loan #: \_\_\_\_\_

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

NOTE: The De Minimis waiver is only applicable to the cost of materials for the entire project. Do not include other project costs (labor, installation costs, etc.) in the "Total Cost of Materials". The cost of a material must include delivery to the site and any applicable tax. Must have sufficient documentation to support all costs included in this calculation.

**Funds used for de minimis incidental components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into a project.**

Total Cost of Materials:  5% Limit:  1% limit:

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

Use additional sheets as necessary

**Total Cost of Components deemed to be De Minimis:**  **If approaching the 5% or 1% limits, contact PFA immediately**

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



Public Facilities Authority ● Pollution Control Agency ● Department of Health

## 5.7 AMERICAN IRON AND STEEL (AIS) QUICK REFERENCE SHEET

### What is AIS?

American Iron and Steel (AIS) is a requirement for any project receiving financial assistance from the State Revolving Funds (SRFs). In Minnesota, the SRFs are the Clean Water Revolving Fund (CWRF) and the Drinking Water Revolving Fund (DWRf). AIS requires iron and steel products used in the project be produced in the United States. This requirement applies to projects receiving SRFs for construction, alteration, maintenance, and/or repair of a public water system or treatment works. If any portion of the project contract is using SRF funding, the whole project must be AIS compliant.

### What is an American Iron and Steel product?

An iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail at the link below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail on the link below);
- Reinforced precast & prestressed concrete; and
- Construction materials (defined in more detail at the link below).

**How is AIS incorporated into the project specifications?**

The Public Facilities Authority's (PFA) contract packet must be directly incorporated into the specifications. MDH and/or PCA will verify that the contract packet is included during the plan and specification review process and recommends that bid items are individually identified if they have a potential to contain AIS components. The contract packet is available at:

[https://mn.gov/deed/assets/contract-packet\\_tcm1045-314698.pdf](https://mn.gov/deed/assets/contract-packet_tcm1045-314698.pdf)

The contract packet includes:

AIS sample language for the contractor - this is just sample language and needs to be completed with actual AIS language for the project by each contractor

An example De Minimis Waiver Tracking Form

**Is there a waiver process?**

Yes. Talk to the AIS state representatives:

CWRF – Abram Peterson, 651-757-2105, [abram.peterson@state.mn.us](mailto:abram.peterson@state.mn.us)

DWRF – Chad Kolstad, 651-201-3972, [chad.kolstad@state.mn.us](mailto:chad.kolstad@state.mn.us)

**What can constitute an AIS waiver?**

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

**What waivers have been granted approval and apply nationally?**

1. De Minimis Waiver (up to 1% of total material costs for 1 component or 5% of total material costs for all components)
2. Pig Iron and Direct Reduced Iron Waiver
3. Minor Component Waiver (up to 5% of total material cost of a component)



**What is required by supplier to certify the product as AIS compliant\*:**

1. Product Name/description
2. Where it was made (City & State)
3. To whom it was delivered
4. Reference to AIS compliance
5. Signature of product representative

\* All products meeting the AIS criteria above must have a certification form unless they qualify for one of the waivers above. Certification should not reference the previous American Recovery and Reinvestment Act (ARRA)

**Who verifies that the correct documentation has been submitted?**

PFA loan officers will do documentation checks of certifications and verify that the De Minimis Tracking Form is complete but it is ultimately the project owner's responsibility to assure all the correct documentation is available upon request.

For more information, see the Environmental Protection Agency's American Iron and Steel website:  
<http://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>

## 6 BUILD AMERICA, BUY AMERICA ACT (BABA)

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The Build America, Buy America Act was enacted in 2021 and expands existing domestic preference requirements of the CWSRF and DWSRF (in Minnesota these are the Clean Water Revolving Fund and Drinking Water Revolving Fund). See the Environmental Protection Agencies BABA site ([Build America, Buy America \(BABA\) | US EPA](#)) for guidance documents, waivers, and resources.

### 6.1 RECIPIENT RESPONSIBILITIES- FOR PROJECTS SUBJECT TO BABA

Each PFA Recipient is responsible to comply with and maintain documentation that shows compliance with BABA requirements. It is important that the recipient's consulting engineer is familiar with and understands the BABA requirements. Below are the recipient responsibilities for BABA:

#### 6.1.1 Plans and Specifications/Construction Contracts:

Include BABA contract language and requirements in the plans and specifications and in construction contracts. Specifically, identify:

- What documentation the contractor will need to provide to show compliance BABA requirements.
- The waiver process and what information is needed from the contractor to submit a waiver request.
- The de minimis waiver and what information the contractor needs to provide to support the de minimis waiver.
- Consulting engineers are encouraged to specifically identify those iron and steel, manufactured products and construction materials that must meet the BABA requirements on the bid summary and include a notation that states "This item must be produced in the U.S. and documentation must be provided to the owner prior to installation."

#### 6.1.2 Payment Application Recommended Certification:

The Environmental Protection Agency BABA guidance recommends bid solicitation documents include a statement for the consulting engineers and contractors/construction firms that states:

***"By signing payment application and recommending payment, Contractor certifies they have reviewed documentation for all products and materials submitted for payment, and the certifications are sufficient to demonstrate compliance with Build America, Buy America Act requirements."***

### 6.1.3 PFA Disbursement Request Certification:

Sign (authorized representative of the Recipient) a certification (included on the PFA disbursement request) indicating that the project is in compliance with the BABA requirements. This certification is provided with each disbursement request.

### 6.1.4 Project Monitoring and Site Visits, Project Records:

- Maintain project records, including BABA documentation on file for review.
- Show documentation and records to PFA/MPCA/MDH staff during on-site monitoring visits.
- When possible, show PFA/MPCA/MDH the physical project and iron and steel products prior to being installed and permanently incorporated into the project.

### 6.1.5 Build America, Buy America Documentation

Contractors must comply with and provide documentation that shows compliance with BABA requirements. Per the Environmental Protection Agency guidance ([OW-BABA-Implementation-Procedures-Final-November-2022.pdf \(epa.gov\)](#)) documentation may be received and maintained in hard copy, electronically, or could be embedded in construction management software. Signed certification letters are the most direct and effective form of compliance documentation. Letters need to demonstrate the following:

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

PFA Recipients must maintain Build America, Buy America certifications and documentation in their project files

## 6.2 COVERED PROJECTS

BABA requires projects funded in whole or in part with the CWRP and DWRP projects to use **iron, steel, manufactured products, and construction materials** that are produced in the United States. Compliance with American Iron and Steel (AIS) will satisfy the BABA iron and steel requirement.

**IMPORTANT:** some projects meet the Environmental Protection Agencies Adjustment Period Waiver and will not be subject to BABA. American Iron and Steel requirements still apply. Check with your loan officer to see if the Adjustment Period Waiver applies to your project. American Iron and Steel requirements still apply even if a project meets the BABA Adjustment Period Waiver.

## 6.3 COVERED ITEMS AND PRODUCTS

BABA covers iron and steel, manufactured products and construction materials that are consumed in, incorporated into or affixed to an infrastructure project (permanently incorporated).

BABA does not apply to items brought to and removed from the construction site prior to the completion of the infrastructure project (e.g., temporary scaffolding).

BABA does not apply to equipment and furnishings that are used at or within the finished infrastructure project (e.g., movable chairs, desks, portable computer equipment)

## 6.4 WAIVERS

Federal law sets forth certain circumstances under which EPA may waive the BABA requirement. EPA can issue waivers to the BABA requirement where:

- Applying the domestic content would be inconsistent with public interest (“public interest waiver”);

- Types of iron, steel, manufactured products, or construction materials are not produced in the U. S. in sufficient and reasonably available quantities and of a satisfactory quality (“nonavailability waiver”); or
- Inclusion of the covered item will increase the overall project by more than 25% (“unreasonable cost waiver”).

#### 6.4.1 EPA Approved Waivers

*Adjustment Period Waiver* of Section 70914(a) of P.L. 117-58 Build America, Buy America Act, 2021 for SRF Projects that have Initiated Design Planning prior to May 14, 2022 [EPA - SRF - Final Waiver - Adjustment Period September 2022 - Signed.pdf](#).

Projects meeting the Adjustment Period Waiver include:

*CWRF projects with a Facilities Plan submitted to the Minnesota Pollution Control Agency prior to May 14, 2022.*

*DWRF projects that submitted a Project Priority List request to the Minnesota Department of Health prior to May 14, 2022.*

*Small Project General Applicability Waiver* of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for U. S. Environmental Protection Agency Financial Assistance Awards. ([Small Project General Applicability Waiver \(epa.gov\)](#)). Applies to projects for less than \$250,000.

*De Minimis General Applicability Waiver* of Section 70914(a) of P.L. 11-58, Build America, Buy America Act, 2021 ( [US EPA BABA De Minimis Waiver](#)) for small value (5% or less) of products relative to the total project costs can be exempted from BABA requirements. The five percent threshold can be used for any products, independent of the purpose of the product. The BABA de minimis waiver is not additive with the existing American Iron and Steel de minimis waiver.

PFA recipients will be required to obtain and maintain documentation on de minimis items and provide a BABA de minimis summary at project conclusion to PFA. An example tracking spreadsheet is below:



## 7 DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION

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DBE requirements apply to the project which means Recipients and their prime contractors have specific obligations regarding DBE procurement for construction, equipment, supplies and services. Additional information is included in this document and in the Contract Packet. EPA FAQs on DBE provides additional information: [Frequently Asked Questions for Disadvantaged Business Enterprises | US EPA](#).

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

### 7.1 RECIPIENT RESPONSIBILITIES

#### 7.1.1 *GOOD FAITH EFFORTS.*

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

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically

feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in numbers 1 through 5 above.

#### 7.1.2 Examples of Good Faith Efforts Documentation:

- Use of current bidders/solicitation list or databases that include DBEs;
  - Use of trade journals/databases (local or national);
  - Date of last update to bidders/solicitation list or data base;
  - How were DBEs made aware of the solicitation;
  - Where and when posted;
  - Samples of letters or records of communications with DBEs, SABA, Minority Business Development Agency;
  - Sample of advertisement/posting;
  - How long/frequency of advertisement/posting;
  - Document good faith efforts of contractors;
  - Identify type of outreach that was conducted;
  - Date of pre-bid conference;
  - Attendance list for pre-bid conference;
  - Participation date of last DBE procurement outreach conference;
  - Process used to determine if large requirement could be divided into smaller requirements;
  - Include unsuccessful bidders on database or list
- Include the Required Contract Conditions along with the Six Good Faith Efforts language/conditions in all procurement contracts. (Refer to the Contract Packet).
  - Require bidders to provide the Recipient with information for a Bidder's List
  - Create and maintain the Bidders List.
  - PFA applicant signs and submits Form 6 – DBE Certification, with the PFA loan application.
  - Submit annual reports, EPA Form 5700-2a, if required by PFA, on DBE contract activity



## 7.2 CONTRACTOR RESPONSIBILITIES

### **ALL CONTRACTORS SHALL:**

- Follow Six Good Faith Efforts in all procurements
- Comply with required Good Faith Efforts contact language; Include specific language in sub-contracts
- Provide Recipient with information for annual DBE report and updates to the Bidders List

**NOTE 4-1-16: EPA SUSPENDED USE OF 6100 FORMS (6100-2, 6100-3 AND 6100-4) FOR PROCUREMENTS INITIATED AFTER MARCH 7, 2016. THESE FORMS HAVE NOT BEEN REINSTATED. PLEASE VERIFY THAT THE CURRENT PFA CONTRACT PACKET IS BEING USED.**

## 7.3 PRIMARY FEDERAL STATUTORY AUTHORITIES – DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

- 40 C.F.R. Part 33, Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements
- Public Law 102-389 (42 U.S.C. 437d), a 1993 appropriations act
- Public Law 101-549, Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note)
- Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988
- Executive Order 12138, related to Women’s Business Enterprise Policy, issued October 13, 1971
- Executive Order 12432, “Minority Business Enterprise Development,” issued July 14, 1983

## 7.4 DEFINITIONS

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

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

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

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

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

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

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

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

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

## 7.5 CERTIFIED DISADVANTAGED BUSINESS ENTERPRISE (DBE) FIRMS

DBE firms certified by the Minnesota Unified Certification Program, the Small Business Administration (SBA) of the Department of Transportation can be counted towards the fair share goals for DBE reporting to the PFA. See “How do I find information on DOT’s and SBA’s certification programs?” <https://www.epa.gov/grants/frequently-asked-questions-disadvantaged-business-enterprises#q17>

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

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

Small Business Administration Dynamic Small Business Search – search engine that lists businesses with 8(a) Certifications; Small Disadvantaged Business Certifications; HUBZone Certifications and DBE Certifications. Check contractor detail to see what current certifications are in place. [SBA - Dynamic Small Business Search](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm) [http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)

## 7.6 DISADVANTAGED BUSINESS ENTERPRISES RESOURCES

### Links to DBE Resources:

- Association of Women Contractors <http://www.awcmn.org/>
- Diversity Information Resources, Inc. [www.diversityinforesources.com](http://www.diversityinforesources.com)
- Metropolitan Economic Development Association <http://www.meda.net/>
- Minority Business Development Agency (U. S. Department of Commerce) <http://www.mbd.gov/>
- MN Department of Administration (at this time the MN Dept. of Administration listings are not certified and cannot be counted as DBE vendors by the EPA). [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us)

### Rural-Urban Continuum Codes for Metro & Non-Metro Counties

The following is a list of Minnesota Counties that have been coded by the U. S. Department of Agriculture as a rural or urban (which also can be a rural county adjacent to a metropolitan area). For the purposes of the U. S. Environmental Protection Agency's condition regarding Small Businesses in Rural Areas (SBRA), those counties coded 6 through 9 meet the definition of rural. Data are from the 2013 census. Codes are defined as follows:

#### Metro Counties:

- 1 Counties in metro areas of 1 million population or more
- 2 Counties in metro areas of 250,000 to 1 million population
- 3 Counties in metro areas of fewer than 250,000 population

#### Nonmetro Counties

- 4 Urban population of 20,000 or more, adjacent to a metro area
- 5 Urban population of 20,000 or more, not adjacent to a metro area
- 6 Urban population of 2,500 to 19,000, not adjacent to a metro area
- 7 Urban population of 2,500 to 19,999, not adjacent to a metro area
- 8 Completely rural or less than 2,500 urban population, adjacent to a metro area
- 9 Completely rural or less than 2,500 urban population, not adjacent to a metro area

## METROPOLITAN COUNTIES (Urban)

Anoka	1	Filmore	3	Ramsey	1
Benton	3	Hennepin	1	St. Louis	2
Blue Earth	3	Houston	3	Scott	1
Carlton	2	Isanti	1	Sherburne	1
Carver	1	LeSueur	1	Sibley	1
Chisago	1	Mille Lacs	1	Stearns	3
Clay	3	Nicollet	3	Wabasha	3
Dakota	1	Olmstead	3	Washington	1
Dodge	3	Polk	3	Wright	1

## NONMETROPOLITAN COUNTIES (Rural)

Aitkin	8	Kandiyohi	4	Pine	6
Becker	6	Kittson	9	Pipestone	6
Beltrami	7	Koochiching	6	Pope	8
Big Stone	9	Lac qui Parle	9	Red Lake	8
Brown	6	Lake	6	Redwood	7
Cass	9	Lake of the Woods	9	Renville	8
Chippewa	7	Lincoln	9	Rice	4
Clearwater	8	Lyon	7	Rock	6
Cook	9	McLeod	6	Roseau	7
Cottonwood	7	Mahnomen	8	Steele	5
Crow Wing	4	Marshall	8	Stevens	7
Douglas	6	Martin	7	Swift	7
Faribault	6	Meeker	6	Todd	6
Freeborn	7	Morrison	6	Traverse	9
Goodhue	4	Mower	4	Wadena	7
Grant	9	Murray	9	Waseca	6
Hubbard	7	Nobels	7	Watsonwan	6
Itasca	6	Norman	8	Wilkin	6
Jackson	7	Otter Tail	6	Winona	4
Kanabec	6	Pennington	6	Yellow Medicine	9

## 8 FEDERAL DAVIS BACON ACT, STATE PREVAILING WAGES & REQUIREMENTS

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Both Federal (Davis Bacon) prevailing wages and State prevailing wages apply to CWRP and DWRP projects. Payment of the wage and fringe benefits most beneficial to the employees are required. Overtime is governed by Minnesota Prevailing Wage statutes at M.S. 177.42 which requires overtime when an employee works more than 8 hours/day OR 40 hours/week. MN Department of Labor and Industry interprets that overtime applies to both 8 hours/day and 40 hours/week. Thus any employee working more than 8 hours in one day is entitled to overtime at the most beneficial wage (i.e. 4 days x 10 hours/day = overtime for 2 hours each day).

This section outlines PFA Recipient's responsibilities with respect to prevailing wages for the project from the pre-bid state to project completion.

This section also includes information on basic principles of the prevailing wage requirements, links to state and federal resources, forms (Notice of Contract Award and the Final Federal Labor Standards Form), and checklists.

## 8.1 PRE BID STAGE – SELECT, PRINT & INSERT THE PROPER WAGE DECISION(S)

The type/nature of the construction project governs which federal wage determination(s) and which state wage certification(s) apply. Some projects may trigger more than one Federal determination and/or state certification. To avoid problems and potential liability PFA strongly recommends the following steps be taken prior to final approval of plans and specifications and prior to advertising for bids:

Refer to Minnesota Department of Labor and Industry (DOLI) web site for information about State Prevailing Wages: <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>. Or telephone DOLI at (651) 284-5091

Review U. S. Department of Labor (DOL) Memorandums #130 and 131, DOL guidance on federal wage determinations and selecting the proper wage determination(s) for the project:

- <http://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf>
- (See Q & A #12) <http://www.dol.gov/whd/programs/dbra/faqs.htm>
- <https://www.dol.gov/whd/govcontracts/pwrb/Tab6.pdf>

PHYSICALLY include the contract conditions and applicable Federal and State wage determinations in the bidding documents and final contracts. The wage decisions are available on line and can be found:

- Federal Wage Determinations on line: [www.sam.gov](http://www.sam.gov)
- State Prevailing Wage Certifications: <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>

## 8.2 BID AND CONTRACT AWARD STAGE

PHYSICALLY include the contract conditions and applicable Federal and State wage determinations in the bidding documents and final contracts. Provide and apply prevailing wage updates as required to prospective bidders. It is the prime contractor's responsibility to include the prevailing rates and conditions into all subcontracts. Subcontractors are to include the prevailing rates and contract conditions in any lower tier subcontracts.

PHYSICALLY incorporate the following in all prime contracts and contractors to include in all subcontracts:

1. The standard Davis Bacon contract clauses found in 29 CFR 5.5(a) (located in the PFA Contract Packet)
2. Minnesota Department of Labor and Industry prevailing wage contracting clause (located in the PFA Contract Packet)
3. Applicable Federal and State wage determinations

**Federal Davis-Bacon Prevailing Wage Rate Trigger** - Federal wage decisions are “modified” and the “modifications” may be applicable to the project depending upon when issued. Monitor the U. S. Department of Labor web site for changes to Federal wage decisions. Modifications issued 10 or more days before bid opening must be applied to the project. If there are more than 90 days between bid opening and contract award, current modifications may apply to the contract. Consult with your PFA loan officer.

**State of Minnesota Prevailing Wages Trigger**- Contact the Minnesota Department of Labor and Industry for guidance on which Minnesota State Prevailing Wage Certification applies to the project. Please note that the State of Minnesota wage rates typically list two “effective dates” with different wage rates for the identified work classification. The second rate is a built-in increase that is to be paid to affected employees as of the effective date of the increase.

**BEFORE CONTRACT IS AWARDED, verify that prime contractor(s) is not debarred. Prime contractors are responsible to check that subcontractors are not debarred. Go to [www.sam.gov](http://www.sam.gov) Place SAM printout in project file.** Note if you are having trouble with the link, try another internet browser.

### 8.3 AFTER BID AWARD

Submit LABOR STANDARDS NOTICE OF CONTRACT AWARD to the PFA once information is known.

- Discuss labor standards requirements at the preconstruction conference.
- Review the state and federal wage determinations to see if all worker classifications needed for the project are included. All classifications needed must be in both Federal and State wage determinations.
  - If a classification is missing from the State wage determination, contact MN DOLI to request a classification.
  - If a classification is missing from the Federal wage determination, follow the process to propose an Additional Classification and Rate to the Federal U.S. Department of Labor. See the resources on page 43.
- Review all subcontracts subject to Davis Bacon entered into by prime contractors to verify that the prime contractors have required its subcontractors to include the applicable wage determinations and contract conditions.



## 8.4 DURING CONSTRUCTION

### 8.4.1 Obtain Weekly Payroll and Statement of Compliance

Certified payrolls are to be submitted weekly by the prime contractor. The prime contractor is responsible to collect and submit the subcontractor payrolls and statement of compliance weekly to the City. PFA recommends using MNDOT payroll format (Payroll and Statement of Compliance). The MNDOT format provides information on fringe benefits that is helpful for determining whether the contractor/subcontractor is in compliance. Employee home addresses and social security numbers must not be on the certified payrolls (Federal Requirement).

Prior to submitting a disbursement request to PFA for construction costs, the Recipient should have all certified payrolls for that period from the prime contractor (prime contractor responsible to provide subcontractor's payrolls) and conduct payroll verification and employee interviews as described in this section to ensure compliance with state and federal requirements.

#### LINK TO PAYROLL FORMS:

- MNDOT Payroll Forms: <http://www.dot.state.mn.us/const/labor/certifiedpayroll.html>
- U. S. Department of Labor Payroll Form WH347 and Instructions: <http://www.dol.gov/whd/forms/wh347instr.htm>

### 8.4.2 Verify Job Site Postings are in Place

The prime contractor is responsible to post the following at the construction site:

- Applicable state and federal wage rates
- “Notice to All Employees” poster the required federal Poster (WH 1321): <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
- The required Minnesota Department of Labor and Industry posters <http://www.dli.mn.gov/about-department/workplace-posters>

It is a good idea to take a photograph of the required postings and maintain it on file.

### 8.4.3 Verify Compliance with Prevailing Wage Requirements

The PFA Recipient or their representative must periodically conduct spot checks of a representative sample of weekly payrolls, verify fringe benefits, and conduct employee interviews to ensure that contractor/subcontractor is complying with requirements and paying the appropriate wage rates.

Establish and follow a payroll review and employee interview schedule based on an assessment of the risks of noncompliance and length of contract. Conduct more frequent spot checks if risks are higher or if contractor/subcontractor noncompliance.

Conduct immediate interviews in response to an alleged violation of the prevailing wage requirements.

Conduct employee interviews in confidence. Use [Form SF1445](#) or equivalent document for the interviews.

Verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

Periodically review contractors and subcontractors use of apprentices and trainees. Verify registration and certification of apprentices and trainees with respect to apprenticeship and training programs approved by US Dept. of Labor or a state program; to ensure that contractors and subcontractors are not using a disproportionate number of laborers, trainees and apprentices. Conduct these reviews in accordance with the payroll and employee interviews.

Maintain all Labor Standards records, including information on any restitutions (underpayments to laborers or mechanics), on file. Note: employee home addresses and social security numbers must not be on the certified payrolls.

#### 8.4.4 Submit a Compliance Certification Form to PFA if Requested

If requested by PFA, submit a COMPLIANCE CERTIFICATION FOR SUBMITTED PAYROLLS FORM. This form transmits payrolls and a certification on whether or not payrolls are in compliance with requirements.

#### 8.4.5 Immediately Report Potential Violations

Immediately report potential wage violations to:

1. Your [PFA loan officer](#)
2. Minneapolis District Office of the U. S. Department of Labor
3. U. S. Environmental Protection Agency, Grants Management Office

Mpls. District Office US Dept. of Labor  
ESA Wage & Hour Division  
Tri-Tech Center, Suite 920  
331 Second Avenue South  
Minneapolis, MN 55401-132177  
Phone: (612) 370-3371  
1-866-4-USWAGE (1-866-487-9243)

U. S. Environmental Protection Agency  
Grants Management Officer  
U. S. EPA Region 5  
West Jackson Boulevard  
Mail Code: MC-10J  
Chicago, IL, 60604-3507

## 8.5 PROJECT COMPLETION

Submit a FINAL FEDERAL LABOR STANDARDS REPORT to PFA at project completion.

Maintain labor standards records with the project files at the Recipient's office.

## 8.6 BASIC PRINCIPLES FOR PREVAILING WAGES AND OVERTIME PAY

**MOST BENEFICIAL WAGE AND OVERTIME REQUIREMENTS APPLY.** The most beneficial of the base hourly rate + fringe benefit (state base rate + state fringe rate OR federal base rate + federal fringe rate whichever is higher) is required to be paid to workers. Overtime is triggered when an employee works more than 8 hours/day OR 40/week (Minnesota DOLI interprets that overtime applies to both 8 hours a day and 40 hours a week.) Time and one-half must be paid for each hour of overtime worked.

**FRINGE BENEFITS** must be paid for each hour worked, including any overtime hours. The ½ time premium is not paid for fringe benefits. Fringe benefits must be bona-fide, and, if not paid in cash, must be paid to a 3rd party plan.

**EMPLOYEE INFORMATION ON PAYROLLS.** Payrolls cannot include home addresses or social security numbers of the employees (federal requirement).

**IDENTIFY STATE AND FEDERAL WORKER CLASSIFICATION.** Payrolls must clearly identify the work classification for each employee. The format/titles can differ between the State and Federal classifications (MN uses a numerical identifier, Feds typically uses titles). Both state and federal classifications are needed to determine whether the proper rate is being paid to employees. If a classification is missing from the State or Federal wage determinations contact the appropriate agency to secure the classification required.

- Federal Request for Additional Classification and Rate U. S. DOL – Wage and Hour Division: <https://www.dol.gov/whd/govcontracts/dbra-forms.htm>. Complete form and send to Conformance and CBA Update public email address:
- [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov) . The e-mail must be sent by the PFA Recipient and not their engineer or consultant.
- State Request for additional classification – contact MN DOLI at Phone: 651-284-5091 or email: [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)

**STATEMENT OF COMPLIANCE.** A Statement of Compliance is required with each weekly payroll submittal.

**OWNER-SUPERVISORS & FOREMEN** who do not engage in work on the project are not subject to prevailing wage. If they do work, Owner operators are not exempt from the prevailing wage requirements.

**TRACKING FORMS** can aid in efficient payroll review and compliance monitoring. It is suggested that the labor standards officer prepare a matrix which identifies all project job classifications which are expected to be utilized during construction and compares each classification under the Federal and State wage decisions referenced in the Notice of Contract Award. Such a matrix will help demonstrate that the highest wage rate was paid for the classification being reviewed. Maintain tracking sheets and matrixes in your labor standards compliance files. Contact PFA if you want to see examples of tracking forms.

**LABOR STANDARDS RECORDS.** All prevailing wage records (certified payrolls, correspondence, employee interviews, debarment search results, etc.) will need to be on file and maintained by the PFA Recipient at project conclusion.

**APPEALS ON CONFORMANCES (Additional Classifications)** – Refer to the “US DOL Prevailing Wage Resource Book-DB Conformances Tab 8” for information on reconsideration and appeal of additional classifications. See also Code of Federal Regulations ([eCFR :: 29 CFR Part 7 -- Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts](#)) for information on how to submit an appeal.

## 8.7 PREVAILING WAGE STEPS/CHECKLIST

1. Select the proper wage determination(s) for project
2. Physically insert federal and state wage rates and contract conditions (the PFA contract packet) into plans/specifications
3. Provide updated federal wage rates to all bidders prior to bid opening; and provide updates if more than 90 days between bid opening and contract award. If a modification is issued less than 10 days before the bid opening and there is not reasonable time still available to notify bidders of the modification, place a report of the finding to that effect into the contract file.
4. Bid Opening
5. Verify prime contractor is not debarred ([www.sam.gov](http://www.sam.gov)). Keep copy of printout on file. (NOTE: if you are having trouble with the link, try another internet browser.)
  - a. Prime contractor to verify that all subcontractors and suppliers are not debarred
6. Review all contracts (prime and subcontracts) to ensure PFA conditions, prevailing wage rates are included
  - a. Prime contractor to ensure that contract conditions are included in all lower tier contracts
7. Review wage determinations to determine if any additional classifications are missing but needed for the project.
  - a. If a federal additional classification is needed, complete this form: [Authorization Additional Classification and Rate](#) and send it along with any required information via e-mail to: U.S. DOL public e-mail address: [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov).
  - b. If a classification is missing from the Minnesota prevailing wages, contact MN DOLI
8. Award Contract
9. Submit "Labor Standards Notice of Contract Award" to PFA
10. Conduct preconstruction conference, review labor standards requirements/responsibilities with contractor/subs
11. Construct project
12. Compliance and Verification
  - a. Check that required postings are up; take digital photograph and place on file
  - b. Receive payrolls/statement of compliance on a weekly basis
  - c. Verify compliance with prevailing wage requirements.
  - d. Conduct employee interviews
  - e. Resolve any issues
13. IMMEDIATELY NOTIFY U.S. Dept. of LABOR, U.S. Environmental Protection Agency and PFA of violations
14. Submit "Final Federal Labor Standards Compliance Report" at project conclusion
15. Maintain files

## 8.8 FEDERAL AND STATE PREVAILING WAGE LINKS & RESOURCES

### STATE OF MINNESOTA DEPT. OF LABOR AND INDUSTRY RESOURCES

- Contact:
  - Phone: (651) 284-5091
  - E-mail: [dli.prevwage@state.mn.us](mailto:dli.prevwage@state.mn.us)
- Minnesota Prevailing Wages and posters <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>; [Workplace posters | Minnesota Department of Labor and Industry \(mn.gov\)](#)
- MNDOT Payroll Forms: <http://www.dot.state.mn.us/const/labor/certifiedpayroll.html>
- DOLI Rules: [Minnesota Rules 5200.1000 – 5200.1120](#)

### U. S. DEPT. OF LABOR DAVIS BACON PREVAILING WAGES RESOURCES

- Contact: Minneapolis District Office, U. S. Department of Labor, Wage and Hour Division 612-370-3341 (Officer of the Day will respond to inquiries/questions about federal labor laws including Davis Bacon)
- Guidance, posters, forms, guidance documents and laws on Davis Bacon requirements: <https://www.dol.gov/whd/govcontracts/dbra.htm>
  - Federal Wage Determinations on line: [www.sam.gov](http://www.sam.gov)
  - Guidance on selecting the proper federal wage determination: <http://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf>
  - U. S. DOL FAQ – Davis Bacon – Is it possible for more than one wage determination to apply to a project? (See Q & A #12) <http://www.dol.gov/whd/programs/dbra/faqs.htm>
  - Federal Poster (WH 1321): <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
  - Federal employee interview [Form: SF1445](#)
  - U. S. Department of Labor Payroll Form WH347 and instructions: <http://www.dol.gov/whd/forms/wh347.pdf>, <http://www.dol.gov/whd/forms/wh347instr.htm>
  - U. S. DOL FAQ – Davis Bacon <http://www.dol.gov/whd/programs/dbra/faqs.htm>
  - U. S. DOL – Wage and Hour Division – Request for Additional Classification and Rate: [Authorization Additional Classification and Rate](#)
  - U. S. DOL – [Wage and Hour Division Davis-Bacon Wage Determination Conformance Request Guide, September 2021 | U.S. Department of Labor \(dol.gov\)](#)
  - U.S. DOL – E-mail Conformance (additional classification) send requests to: [WHD-CBACONFORMANCE\\_INCOMING@dol.gov](mailto:WHD-CBACONFORMANCE_INCOMING@dol.gov)

**FEDERAL CONTACT DEBARMENT CHECK:** [www.sam.gov](http://www.sam.gov) (Note: check contractor debarment before awarding contract, debarment check applies to all procurement actions). If link does not open, try using another internet browser.

### 8.9 LABOR STANDARDS – NOTICE OF CONTRACT AWARD FORM

Fill out one form for each contract awarded and provide to your [PFA Loan Officer](#).

*Federal Wage Determinations - for contracts competitively bid, an exception provides that the wage determination updates (modifications) issued less than 10 days before the bid opening shall be effective unless there is not a reasonable time still available to notify bidders of the modification, and a report of the finding to that effect is inserted into the contract file. If contracts are awarded 90 days or more after bid opening, the modification issued closest to the award date must be used.)*

*State Wage Determinations - Check with Minnesota Department of Labor and Industry about which Minnesota State Prevailing Wage Certification applies to the project.*

Recipient Name: \_\_\_\_\_

PFA Project Number (if known): \_\_\_\_\_

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

County where project is located: \_\_\_\_\_

Advertising Date: \_\_\_\_\_

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

Contract Award Date: \_\_\_\_\_

Construction Start Date: \_\_\_\_\_

Contract amount: \_\_\_\_\_

Contractor Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated Construction Completion: \_\_\_\_\_

Contractor Debarment Check Date/Results: \_\_\_\_\_

*(Do debarment check before contract award. Print debarment check and retain in labor standards file)*



Labor Standards – Notice of Contract Award (cont.)

**FEDERAL** wage decision number(s) used in contract: \_\_\_\_\_

Federal Wage decision type used in contract (building, heavy, highway): \_\_\_\_\_

Federal Modification number used in contract: \_\_\_\_\_

Federal effective date of wage decision: \_\_\_\_\_

**STATE** wage decision type (commercial, heavy/highway) used in contract: \_\_\_\_\_

County Number (commercial projects) where project is located: \_\_\_\_\_

Region Number (heavy/highway projects) where project is located: \_\_\_\_\_

Effective date of wage type used in contract: \_\_\_\_\_

Revised Date: \_\_\_\_\_

I certify the correct wage decision is being applied to the above noted project and that the contractor and subcontractors are not debarred or suspended from participating on federal contracts, verified by [www.sam.gov](http://www.sam.gov) :

Name: \_\_\_\_\_ Organization: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

### 8.10 FINAL FEDERAL LABOR STANDARDS COMPLIANCE REPORT FORM

Please complete and submit this form to the PFA when each construction contract is completed.

Recipient Name: \_\_\_\_\_

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

PFA Project Number: \_\_\_\_\_

Completion Date (mm/dd/yy): \_\_\_\_\_

Number of construction (face to face) wage interviews completed: \_\_\_\_\_

Number of interview forms mailed and completed: \_\_\_\_\_

Number of trades reviewed through interviews, including mailed forms: \_\_\_\_\_

If no interviews were conducted face to face or by mail, provide explanation in comments section.

If the answer to any of the following questions is "NO" please explain in comments

Were the required postings (posters, decisions) observed on site?	Yes	No	
Have all payrolls been received?	Yes	No	
Are all payroll submissions complete and compliant?	Yes	No	
Were wage interviews compared to payroll submissions?	Yes	No	NA
Have all known labor standards non-compliances been resolved?	Yes	No	NA
Have all known restitutions been received by employees?	Yes	No	NA
Were willful violations or complaints forwarded to DOL, EPA and PFA staff?	Yes	No	NA

If not, provide explanation in comments section.

Final Report Comments (if any) attach comments if additional space is needed:

Final Federal Labor Standards Compliance Report Form (cont.)

I certify to the best of my knowledge that all laborers and mechanics employed by this construction contract were paid in accordance with Federal labor provisions, except as noted. There are no outstanding or unresolved Federal labor standards underpayments, complaints or disputes.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Organization: \_\_\_\_\_

(Individual signing the form should be the one responsible for payroll review and monitoring.)

## 9 REAL PROPERTY DECLARATIONS, WAIVERS AND CERTIFICATIONS

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Real Property Declaration Recording Requirement – Recipients receiving PFA funds that include state general obligation bond proceeds (includes PFA loans) are required to record a Real Property Declaration that identifies the project area as “state bond financed property”, unless the project qualifies for a waiver from the filing requirements described below. The Declaration places limitations on the use and sale of the property under Minn. Stat. Sec. [16A.695](#) and the [Fourth Order Amending Order of the Commissioner of Finance dated July 30, 2012](#) (the “Commissioner’s Order”). An example of the Real Property Declaration is included in this document. The Recipient should have their attorney draft the Real Property Declaration.

Real Property Declaration Recording Waiver - Section 7.02 of the Commissioner’s Order allows the Commissioner of Minnesota Management and Budget (MMB) to waive the declaration recording requirement described above for projects or portions of projects located within roads, highways or utility or transit corridors, easements or rights or way where recording would be problematic. Thus, the Recipient request a waiver from MMB for the portions of their projects that fall within that description. An example of the request is included in this document.

MMB Waiver Certification - If MMB grants the waiver from the Real Property Declaration Recording Requirement, the Recipient will only need to sign a MMB prepared Waiver Certification for those parts of the project, which do not need to be recorded. In the Waiver Certification the Recipient acknowledges that those project areas are “state bond financed property”. A description or map of the project areas, which does not have to be a legal description, is attached to the MMB Waiver Certification. Portions of projects that are located on parcels of land that do not fit that description (such as treatment plants and ponds, lift stations, etc.), are not eligible for the waiver and the Recipient will need to record a Real Property Declaration against those parcels. An example of the Waiver Certification is included in this document.

The following documents are attached:

- Example Real Property Declaration
- Example Form letter to MMB requesting a waiver for the portion of the project that cannot be recorded with the County under the Real Property Declaration Filing Requirements
- Example MMB Waiver Certification

Provide Completed Document to PFA

The Recipient must provide the signed Waiver Certification and/or a copy of the recorded Declaration to PFA and MMB prior to disbursement of money for construction activities or as soon thereafter as practicable.

**NOTE:** *Do not sign a **MMB Waiver Certification** or **Declaration**, or record a **Declaration** until you have requested a waiver from MMB for the eligible portions of your project and received MMB's response. MMB's response to your request will indicate which portion(s) of your project has been granted a waiver and which portion(s) must have a recorded Declaration.*

*The **Declaration** must be recorded at the County Recorder's office.*

## 9.1 EXAMPLE OF REAL PROPERTY DECLARATION

FOR USE BY FILING OFFICER ONLY

### Minnesota Public Facilities Authority REAL PROPERTY DECLARATION

The undersigned has the following interest in the real property located in the County of \_\_\_\_\_, State of Minnesota, that is legally described in Exhibit A attached and all facilities situated thereon (collectively, the "Restricted Property"):

(Check the appropriate box):

- a fee simple title  
 a lease  
 an easement

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, which approval must be evidenced by a written statement signed by the said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain Bond Purchase and Project Loan Agreement between the Minnesota Public Facilities Authority and \_\_\_\_\_ [name of Recipient] for Loan No. MPFA - \_\_\_\_\_, dated \_\_\_\_\_;

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Executive Director of the Minnesota Public Facilities Authority and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way

modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

\_\_\_\_\_  
[name of Recipient],  
a political subdivision of the state of Minnesota

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF                    )

This forgoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ the \_\_\_\_\_ [insert name and title of first signatory], and \_\_\_\_\_, the \_\_\_\_\_ [insert name and title of second signatory], respectively, of the \_\_\_\_\_, [insert name of Recipient] a political subdivision of the state of Minnesota.

\_\_\_\_\_ Notary Public

This Declaration was drafted by:  
[insert name and address]

Exhibit A  
LEGAL DESCRIPTION



## 9.2 WAIVER REQUEST FROM REAL PROPERTY DECLARATION RECORDING REQUIREMENT

An example request letter appears on the next page. Submit electronically to [Roger Behrens, Roger.Behrens@state.mn.us \(651-201-8131\)](mailto:Roger.Behrens@state.mn.us) at MMB for review and response. Please also copy your PFA loan officer on the waiver request email.

Delete instructions in [brackets] before submitting to MMB.

9.2.1 Example of Letter Requesting a Waiver

*(Put on City Letterhead)*

\_\_\_\_\_, 20\_\_\_\_\_

Commissioner of Minnesota Management and Budget  
c/o Roger Behrens [roger.behrens@state.mn.us](mailto:roger.behrens@state.mn.us)  
Minnesota Management and Budget  
400 Centennial Office Building  
658 Cedar Street  
St. Paul, MN 55155

RE: Real Property Declaration Waiver Request - \_\_\_\_\_ Project  
MPFA-\_\_\_\_\_ [insert MPFA project no.]

Dear Commissioner:

The City of \_\_\_\_\_ has submitted an application to the Minnesota Public Facilities Authority (“PFA”) requesting funding for a project within its jurisdiction. The project will be funded with a PFA [include only the applicable funding sources:] Clean Water Revolving Fund Loan/Drinking Water Revolving Fund Loan/Wastewater Infrastructure Grant. As described in the application to the PFA, the project is as follows:

[describe project]

The financing above will be funded in whole or in part with State bond proceeds, and the City must comply with the requirements applicable to Real Property Declarations set forth in Section 7.02 of Minnesota Management and Budget’s (MMB’s) Fourth Order Amending Order of Commissioner of Finance dated July 30, 2012 (the “Commissioner’s Order”).

[use one of the following two paragraphs:]

[if the entire project is eligible for a waiver] This letter constitutes the City’s written request for a waiver of the Declaration requirement because the entire project lies within roads, highways or utility or transit

corridors, easements or rights of way, and the recording of the Declaration against such property would be unduly onerous or impracticable. I understand that the City will have to sign a Waiver Certification that the property improved by the funding described above is State bond financed property and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of MMB.

[if only a portion of the project is eligible for a waiver] This letter constitutes the City's written request for a waiver of the Declaration requirement only for the portion of the project within roads, highways or utility or transit corridors, easements or rights of way, and the recording of

the Declaration against such property would be unduly onerous or impracticable. I understand that the City will have to sign a Waiver Certification that the property subject to the waiver is State bond financed property and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of MMB. I also understand that the City will be required to record a real property Declaration for the remaining parcel(s) of land in the project that is/are not eligible for the waiver, stating that such parcel(s) is/are State bond financed property and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of MMB.

I am including for your review a map which shows the location of the project. If you need any additional information, please contact me at (\_\_\_\_)\_\_\_\_\_.

Sincerely,

cc: \_\_\_\_\_, PFA [insert name and email of PFA loan officer]

9.2.2 Example of MMB Waiver Certification

(ACTUAL WAIVER CERTIFICATION WILL BE PROVIDED BY MMB - DO NOT SIGN THIS FORM)

Minnesota Management and Budget  
State of Minnesota  
General Obligation Bond Financed Property

The undersigned has a fee simple, leasehold and/or easement interest in the real property located in the County(ies) of \_\_\_\_\_, State of Minnesota that is generally described or illustrated graphically in Exhibit A attached and all facilities situated thereon (the "Restricted Property") and acknowledges that the Restricted Property is or may become State bond-financed property. To the extent that the Restricted Property is or becomes State bond-financed property, the undersigned acknowledges that:

- a. The Restricted Property is state bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget;
- b. The Restricted Property is subject to the provisions of the Bond Purchase and Project Loan Agreement between the Minnesota Public Facilities Authority and [name of Recipient] for Loan No. MPFA - \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_;
- c. The Restricted Property shall continue to be deemed state bond financed property for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[name of Recipient],  
a political subdivision of the state of Minnesota

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A

GENERAL DESCRIPTION OF RESTRICTED PROPERTY

[Insert a narrative or graphic description of the Restricted Property. It need not be a legal description.]

## 10 ASSET MANAGEMENT

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The PFA strongly recommends that all of its Recipients have an asset management program. An asset management program for a water or sewer system can help decision makers better understand the condition of the major components of their system, establish priorities for repair and replacement to maximize useful life, and guide financial decisions for implementing projects.

The basic premise of infrastructure asset management is to intervene at strategic points in an asset's normal life cycle to extend the expected useful service life, and thereby maintain its performance. Initial steps of an asset management program:

- Conduct a detailed inventory and develop a comprehensive list of the utility's assets, including information on location, condition, remaining useful life, and criticality to the utility operations.
- Identify daily/monthly/yearly operation and maintenance tasks to maximize the useful life of the assets and strategies to keep the utility operating at its best.
- Develop a clear organizational system for financial records to help identify trends and determine the full cost of operating the utilities.
- Prioritize projects and develop a long-range capital improvement plan, to implement the identified projects.

Activities related to the development or enhancement of an asset management plan may be eligible for PFA clean water or drinking water funds. Contact your PFA loan officer for more information.

### *Resources*

- Minnesota Rural Water Association offers programs and training that can help a community develop an asset management program. See website for more information. <http://www.mrwa.com/index.html>
- [Asset Management Resources for Small Drinking Water Systems \(EPA\)](#) several links to resources on asset management, computer software (Check Up Program for Small Systems CUPSS), reference guides and more.
- Planning for Sustainability Handbook - EPA handbook describing steps utilities can undertake to enhance their planning processes to ensure that water utilities are sustainably managed using cost-effective life cycle analysis. [Planning for Sustainability: A Handbook for Water and Wastewater Utilities \(PDF\)](#)
- Environmental Finance Center Network - <http://efcnetwork.org/> includes many resources on system management, asset management, rate setting, etc.

## 11 TECHNICAL ASSISTANCE- ENERGY AND LEAD SERVICE LINES

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### 11.1 ENERGY - MNTAP – MINNESOTA TECHNICAL ASSISTANCE PROGRAM

The University of Minnesota’s MnTAP (Minnesota Technical Assistance Program) is a non-regulatory program in the School of Public Health at the University of Minnesota.

MnTAP’s work in water focuses on reducing water consumption and wastewater loadings. For additional information on MnTAP services and resources, visit their website:

<http://www.mntap.umn.edu/>

### 11.2 ENERGY MINNESOTA RURAL WATER ASSOCIATION ENERGY ASSESSMENT TOOLS

The Minnesota Rural Water Association has energy assessment tools and technical assistance for cities under 10,000 in population. For additional information contact:

Paul Hoeschen, MRWA Energy Efficiency Technical Advisor

Office: 800-367-6792

Cell: 218/820-0479

[Paul.hoeschen@mrwa.com](mailto:Paul.hoeschen@mrwa.com)

[www.mrwa.com](http://www.mrwa.com)

### 11.3 LEAD SERVICE LINE REPLACEMENT RESOURCES

Minnesota Department of Health [Lead and Copper Rule Revisions For Minnesota Public Water Systems - MN Dept. of Health \(state.mn.us\)](#) includes information and templates for lead service line inventories

Minnesota Rural Water [Lead & Copper Rule Revision Resources – Minnesota Rural Water Association \(mrwa.com\)](#)

# 12 MUNICIPAL BOND LISTING (MINNESOTA AND NORTH DAKOTA)

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## **Municipal Bond Listing** **(Minnesota and North Dakota)**

The borrower is required to use the services of a “nationally recognized bond counsel” to prepare the authorizing resolution and related bond documents for the transaction. This listing includes “nationally recognized bond counsels”.  
(Listed in *The Bond Buyer’s Municipal Marketplace Directory*, Fall 2018)

**BALLARD SPAHR, LLP**

2000 IDS Center, 80 S.Eighth St  
Mpls, MN 55402-2119  
Tel: 612-371-3122  
[www.ballardspahr.com](http://www.ballardspahr.com)

**BARNES & THORNBURG, LLP**

225 South Sixth Street, Suite 2800  
Mpls, MN 55402  
Tel: 612-333-2111  
[www.btlaw.com](http://www.btlaw.com)

**BEST & FLANAGAN, LLP**

60 South Sixth Street, Suite 2700  
Mpls, MN 55402-4452  
Tel: 612-339-7121  
[www.bestlaw.com](http://www.bestlaw.com)

**TAFT**

2200 IDS Center  
80 S. Eighth Street  
Mpls, MN 55402  
Tel: 612-977-8400  
[www.taftlaw.com](http://www.taftlaw.com)

**DORSEY & WHITNEY LLP**

50 South Sixth Street, Suite 1500  
Mpls, MN 55402  
Tel: 612-340-2600  
[www.dorsey.com](http://www.dorsey.com)

**ECKBERG LAMMERS**

1809 Northwestern Avenue  
Stillwater, MN 55082  
Tel: 651-439-2878  
[www.eckberglammers.com](http://www.eckberglammers.com)

**FAEGRE BAKER DANIELS, LLP**

2200 Wells Fargo Center  
90 South Seventh Street  
Mpls, MN 55402-3901  
Tel: 612-766-7000  
[www.faegrebd.com](http://www.faegrebd.com)

**FREDRICKSON & BYRON, P.A.**

200 South Sixth Street, Suite 4000  
Mpls, MN 55402-1425  
Tel: 612-492-7000  
[www.fredlaw.com](http://www.fredlaw.com)

**FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.**

700 Lonsdale Bldg.  
302 West Superior Street  
Duluth, MN 55802  
Tel: 218-722-0861  
[www.fryberger.com](http://www.fryberger.com)

**KENNEDY & GRAVEN, CHARTERED**

470 U. S. Bank Plaza  
200 South Sixth Street  
Mpls, MN 55402  
Tel: 612-337-9300  
[www.kennedy-graven.com](http://www.kennedy-graven.com)

**KNUTSON, FLYNN & DEANS P.A.**

1155 Centre Pointe Drive, Suite 10  
Mendota Heights, MN 55120  
Tel: 651-222-2811  
[www.kfdmn.com](http://www.kfdmn.com)

**KUTAK ROCK LLP**

U.S. Bank Plaza South, Ste 1750  
220 South Sixth Street  
Mpls, MN 55402-4513  
Tel: 612-334-5000  
[www.kutakrock.com](http://www.kutakrock.com)

**MCGRANN SHEA ANDERSON CARNIVAL**

**STRAUGHN & LAMB, CHARTERED**  
800 Nicollet Mall, Suite 2600  
Mpls, MN 55402  
Tel: 612-338-2525  
[www.mcgrannshea.com](http://www.mcgrannshea.com)

**OHNSTAD TWICHELL, P.C.**

P. O. Box 458  
West Fargo, ND 58078-0458  
Tel: 701-282-3249  
[www.ohnstadlaw.com](http://www.ohnstadlaw.com)

**WINTHROP & WEINSTINE, P.A.**

Capella Tower, Ste 3500  
225 South Sixth Street  
Mpls, MN 55402  
Tel: 612-604-6400  
[www.winthrop.com](http://www.winthrop.com)