Program Specific Requirements

These are specifically required of SRF assistance recipients in the CWA, program regulations, and/or EPA policy. These requirements are beyond basic eligible assistant recipient and eligible project/activity requirements.

Equivalency Only?	Program-Specific Requirement	Resource(s)	Updated On
	American Iron and Steel, 33 U.S.C. 1388 and 42 U.S.C. 300j-12(a)(4)	EPA AIS Guidance and Questions and Answers Website	March 2022
√	**Architecture and Engineering Procurement (Brooks Act)**, *(CWSRF Only)* 33 U.S.C. 1382(b)(14)	Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act (page 7)	January 2015
	Cost and Effectiveness, *(CWSRF Only)* 33 U.S.C. 1382(b)(13)	Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act (page 6)	January 2015
	Davis-Bacon Wages, 33 U.S.C. 1382(b)(6) and 42 U.S.C. 300j-12(a)(5)	2023 Updates to the Davis-Bacon and Related Acts Regulations; Dept of Labor Final Rule Updating the Davis-Bacon and Related Acts Regulations Website	November 2024
	Environmental Review, (i.e., the State Environmental Review Process) 40 CFR 35.3140; 40 CFR 35.3580	**CW**: Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act; Appendix A to Subpart K of Part 35, Title 40	CW: January 2015
	Fiscal Sustainability Plans, *(CWSRF Only)* 33 U.S.C. 1383(d)(1)(E)	Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act (page 12)	January 2015
	Generally Accepted Accounting Principles, 33 U.S.C.	**CW**: Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles	CW: January 2015

	1382(b)(9) and 42 U.S.C. 300j-12(g)(3)	I, II, V, and VI of the Federal Water Pollution Control Act (page 4)	
√	**Signage** - Enhancing Public Awareness of SRF Assistance Agreements (2015)	Guidelines for Enhancing Public Awareness of SRF Assistance Agreements	June 2015
√	**Single Audit**, 2 CFR part 200, Subpart F	Requirements for State Revolving Fund Auditing and Subrecipient Monitoring; Clarification of Single Audit Requirements Under the CWSRF and DWSRF Programs.pdf; OMB Audit Compliance Supplement	January 2025

2023 Updates to the Davis-Bacon and Related Acts Regulations

Updated: November 12th, 2024

Description

The U.S. Department of Labor (DOL) updated the Davis-Bacon and Related Acts (collectively, the DBRA) regulations to address a number of issues that have arisen over time in the administration and enforcement of the DBRA. This document provides a brief summary of those regulatory updates that may be relevant to State Revolving Fund (SRF) programs and recipients of SRF assistance. For the entire set of regulatory updates, please see the link to the August 2023 final rule provided under "Additional Resources."

Background

On August 23, 2023, the DOL published the final rule, "Updating the Davis-Bacon and Related Acts Regulations." This regulation updated the DBRA rules for the administration and enforcement of the Davis-Bacon labor standards that apply to federal and federally assisted construction projects. The DOL issued the final rule to update and modernize the regulations at 29 CFR parts 1, 3, and 5, which have not been comprehensively updated in nearly 40 years. The regulatory updates are intended to provide clarity to contracting agencies, contractors, and workers, and to enhance the effectiveness and consistency of the administration and enforcement of the DBRA.

Modifications

The final rule's modifications to the DBRA are categorized under the following six topic areas: Content of Wage Determinations, Incorporation and Applicability of Wage Determinations, Coverage Principles, Fringe Benefits, Recordkeeping, and Enforcement.[1] The final rule amends or introduces new methodologies, procedures, and technical changes; revises or clarifies definitions for several terms; and codifies DOL's longstanding positions for implementing several administrative and enforcement practices and procedures of the DBRA. A brief summary of some of those changes that may be relevant to the Clean Water and Drinking Water State Revolving Fund Programs are outlined below.

Wage and Hour Division's Original Methodology for Determining Prevailing Wages

The final rule implements the DOL Wage and Hour Division's (WHD) original methodology for determining prevailing wages, known as the "three-step process," that was in effect before 1983. In the absence of a wage rate paid to a majority of workers in a particular classification, a wage rate will be considered prevailing if it is paid to at least 30 percent of such workers. Only if no wage rate is paid to at least 30 percent of workers in a classification will a weighted average rate be used.

[1] See the DOL's All Agency Memorandum Number 244.

Adopting State or Local Wage Rates as Davis-Bacon Prevailing Wage Rates

The final rule adds a new provision which permits the WHD Administrator to determine DBRA wage rates by adopting wage rates set by state and local governments. The process for adoption requires: 1) the state or local government to set prevailing wage rates, and collect relevant data, using a survey or other process that generally is open to full participation by all interested parties; 2) a state or local wage rate must reflect both a basic hourly rate of pay as well as any locally prevailing bona fide fringe benefits, and that each of these can be calculated separately; 3) a state or local government must classify laborers and mechanics in a manner that is recognized within the field of construction, and 4) the state or local government's criteria for setting prevailing wage rates must be substantially similar to those the WHD Administrator uses in making wage determinations.

In order to adopt wage rates of a State or local government entity, the WHD Administrator must obtain the wage rates and any relevant supporting documentation and data from the State or local government entity. Such information may be submitted via email to dba.statelocalwagerates@dol.gov, via mail to U.S. Department of Labor, Wage and Hour Division, Branch of Wage Surveys, 200 Constitution Avenue NW, Washington, DC 20210, or through other means directed by the WHD Administrator.[2]

Enforcement of DBRA Requirements when Contract Clauses and Appropriate Wage Determinations are Wrongly Omitted from a Contract

The final rule contains an operation-of-law provision that applies the DBRA labor standards and/or applicable wage determinations to any DBRA-covered contract (retroactively to the date of the contract award or beginning of construction, whichever occurs first) regardless of whether the appropriate contract clause or wage determination was incorporated into the contract. If the DOL must invoke the operation-of-law provision, then the contractor is required to receive compensation from the contracting agency to account for any increase in the contractor's costs caused by the application of the wage determination. As of the date of this document, this provision is subject to a nationwide injunction, which means the DOL cannot currently enforce the provision, but that injunction decision is being appealed.[3]

The operation-of-law provision will be generally applicable only to new contracts entered into after the effective date of the final rule (October 23, 2023). For any contracts awarded prior to the effective date of the final rule that are missing required contract clauses or wage determinations, the DOL will seek to address any omissions solely through the already existing post-award modification provisions. However, with respect to contracts entered into after October 23, 2023, the labor standards contract clauses and appropriate wage determinations are effective by operation of law and are considered to be incorporated even if they have been wrongly omitted from a covered contract. See 29 CFR 3.11 and 5.5(e). Where operation of law applies, prime contractors must be compensated for any difference in labor costs resulting from the incorporation in accordance with applicable law. See 29 CFR 5.5(e).

[2] 29 CFR 1.3(h)

[3] See *Associated Gen. Contrs. of Am. v. United States DOL*, No. 5:23-CV-0272-C, 2024 U.S. Dist. LEXIS 137938, at *58 (N.D. Tex. June 24, 2024).

New Procedure for Identifying Wage and Fringe Benefit Rates for Certain Classifications

If there are labor classifications for which WHD regularly receives conformance requests coupled with insufficient survey data for those classifications, WHD will be permitted to provide wage and fringe benefit rates for those classifications ahead of time. WHD will list such classifications and wage and fringe benefit rates on wage determinations where: 1) the work to be performed by the requested classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined; 2) the classification is used in the area by the construction industry; and 3) the wage rate, including any bona fide fringe benefits, for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

Wage Determinations for the Life of the Contract

A wage determination, once incorporated into a contract, generally applies for the life of the contract, with three limited exceptions: 1) where there is new out-of-scope construction, 2) where there is an additional time period not previously obligated, or 3) where the contract is an indefinite-delivery-indefinite-quantity (IDIQ) or similar long-term contract. For exceptions 1 and 2, the most recent revision of any applicable wage determination(s) must be incorporated when those changes or modifications to a contract occur. For exception 3, wage determinations must be updated annually.

Definition of Site of the Work is Revised to Define "Secondary Construction Sites"

Secondary construction sites that are covered under the DBRA include any site away from the primary worksite where all of the following requirements are met: a "significant portion" of the building or work is constructed; the "significant portion" is constructed for specific use in that building or work and is not just a product made available to the general public; and the site is either established specifically for the performance of the contract or project, or is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time. The regulations further define a "significant portion" of a building or work to mean one or more entire portions or modules of the building or work, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the building or work will remain. See the definition of "site of the work" at 29 CFR 5.2.

Public Buildings and Public Works Clarification

Under the updated Davis Bacon and Related Acts regulations, the definition of a "public building or public work" includes construction projects "carried on directly by the authority of or with funds of a federal agency to serve the interest of the general public." 29 CFR 5.2. Department of Labor's Prevailing Wage Resource Book also states: "While government ownership or operation of a project is an indicator that a project is a public building or public work, it is not required, as government funding alone strongly indicates that the project serves the public interest and may be covered by the DBA."

Lead service line replacement (LSLR) projects that occur on private property, regardless of ownership status, are for the benefit of the general public. Davis Bacon will apply to LSLR on private property if the overall project is receiving DWSRF funding.

Additionally, the Prevailing Wage Resource Book states that "contractors covered under the Davis-Bacon labor standards include: any individual or other legal entity that enters into or is awarded a covered contract, including a prime contract or a subcontract of any tier under a covered prime contract." Note that this is consistent with the DBRA regulations that include "any individual" within the definition of "contractor" at 29 CFR 5.2. Therefore, Davis Bacon will apply to customer-side LSLR if the overall project is receiving DWSRF funding, regardless of whether the replacement is occurring on private property. However, note that sole proprietorship or partnership business owners, such as individual plumbers who perform work and also qualify as "management" under the requirements in 29 CFR 541.102, do not have to pay themselves DBRA wages. Note also that DBRA wage requirements only apply to contracts for construction, alteration, and repair that are greater than $2000.

All CWSRF-related questions may be directed to Karen Sughrue at Sughrue.Karen@epa.gov. For any DWSRF-related questions, contact Belle Sullivan at Sullivan.Belle@epa.gov.

Additional Resources:

1. Final Rule: Updating the Davis-Bacon and Related Acts Regulations
2. DOL FAQ: Updating the Davis-Bacon and Related Acts Regulations Final Rule
3. DOL DBRA Comparison Charts: Existing Regulation/Policy and Final Rule

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 3 2015

OFFICE OF WATER

MEMORANDUM

SUBJECT: Guidelines for Enhancing Public Awareness of SRF Assistance Agreements

FROM: Andrew D. Sawyers, Ph.D., Director
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I-X

Last year, the Environmental Protection Agency (EPA) implemented an agency-wide initiative to enhance public awareness of EPA assistance agreements nationwide. The Office of Water has developed guidelines to inform states how this initiative should be implemented in the State Revolving Fund (SRF) Programs.

The guidelines were developed with input from EPA and state SRF staff. The guidelines recognize that each of the state SRF programs and the projects they fund are different and that one implementation method will not work for everyone. Therefore, as a result of input from the states, the guidelines offer a number of options that can be used to enhance public awareness of SRF assistance agreements.

Implementation of these guidelines will begin with the awarding of the FY 2015 SRF capitalization grants. A term and condition on compliance with the guidelines is to be included in all new SRF grants.

Please have your staff provide copies of the guidelines to your states. Questions regarding the guidelines should be directed to Sheila Platt (202/564-0686) or Howard Rubin (202/564-2051).

Attachment

Enhancing Public Awareness of SRF Assistance Agreements

Introduction

The Environmental Protection Agency (EPA) is currently implementing an agency-wide initiative focused on signage to enhance public awareness of EPA assistance agreements nationwide. The intention of this effort is to communicate the positive impact and benefits of EPA funding around the country and increase awareness surrounding the improvements communities receive as a result of State Revolving Fund (SRF) assistance. Projects implemented with Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) monies are included in this initiative, as many CWSRF and DWSRF assistance agreements have direct and tangible benefits to populations around the country.

EPA's Office of Water developed these guidelines as a way to inform states of this directive and how it should be implemented in the SRF programs. The primary objective is to enhance public understanding of the positive benefits of CWSRF and DWSRF funding to towns, cities, municipalities and water systems. To that end, states are presented with a range of options for implementing these guidelines. All of these options achieve the ultimate goal of communicating to a broad audience the positive role EPA funding of the state CWSRF and DWSRF programs plays in communities across the country.

The information in the guidelines was developed with input from EPA and state staff across the country as well as the members of the State-EPA Workgroup. The guidelines recognize the wide range of project types, varied locations and different institutional approaches among states and communities. Therefore, providing states and SRF assistance recipients maximum flexibility is optimal. The guidelines allow selection of the implementation method which best balances two goals. First, it should satisfy the overall objective of communicating EPA's role in funding assistance agreements that achieve positive benefit. Second, the implementation method should be practically and financially viable for states and communities and avoid any overly burdensome investment of time and resources. In some cases, it might be appropriate for a state to select a combination of options listed below, provided this does not result in excessive cost to communities.

Project Selection Requirements

Signage requirements will not be required to apply to all SRF projects. Signage will be considered an equivalency requirement for SRF programs. States should select a set of borrowers and/or projects totaling a funding amount equivalent to the amount of their federal capitalization grant to satisfy the signage requirement. There are no other requirements or restrictions on which projects should or should not participate in this initiative. Therefore, it is at the discretion of the state SRF program to select projects most able to efficiently and effectively comply in a way that

meets the intention to enhance public awareness without significant financial hardship to the state or its borrowers. This can be done either through the selection of specific projects or borrowers, or by setting a threshold within the state for which projects will be requested to meet signage requirements. States should note that they have the option of selecting different implementation options for different borrowers depending on the location, project type and available resources. Borrowers and/or projects complying with the signage requirement must ensure limited English proficient individuals have meaningful access to activities receiving EPA funds, consistent with Executive Order 13166 and EPA Order 1000.32.

In this regard, to increase public awareness of projects serving communities where English is not the predominant language, States should encourage recipients when implementing a particular signage option to translate the language used (excluding the EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

Although the signage requirement does not apply to all SRF projects, we recommend that states encourage all borrowers/projects to notify the public of the benefits of the projects and the role of the SRF, using one of the options below.

Summary of Options

The guidelines present a number of options which communities can explore to implement EPA's signage policy. The option selected should meet all of the above basic requirements while remaining cost-effective and accessible to a broad audience. The guidelines describe the following strategies as acceptable options for communities to follow:

- Standard signage
- Posters or wall signage in a public building or location
- Newspaper or periodical advertisement for project construction, groundbreaking ceremony, or operation of the new or improved facility
- Online signage placed on community website or social media outlet
- Press release

Each of these options is described in more detail in the sections below.

Implementation Option: Standard Signage

EPA recommends that large projects that involve significant expansion or construction of a new facility elect to publicize through standard signage. This option should be selected for projects where the sign would be near a major road or thoroughfare or where the facility is in a location at which this would effectively publicize the upgrades. Some facilities will not find this an appropriate or cost-effective solution. For example, investing in a large road sign for a facility that is located in a rural area or where access is limited to a smaller service road would likely not be an optimal solution.

Signs can also be located away from the project site if there is another reasonable alternative. For example, a community may elect to place a sign advertising the project near a body of water that receives discharge from a particular facility.

States selecting projects that will implement this requirement through use of a traditional sign should ensure the following are included:

- The name of the facility, project and community
- Project cost
- The State Agency/SRF administering the program
- The EPA and State Agency logos (EPA logo may only be used on a sign)

If the EPA logo is displayed along with logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the recipient received financial assistance from EPA for the project. As provided in the sign specifications from the EPA Office of Public Affairs (OPA), the EPA logo is the identifier for assistance agreement projects. States are required to ensure that recipients comply with the sign specifications provided by the OPA, available at http://www.epa.gov/ogd/tc/epa_logo_seal_specifications for_infrastructure grants.pdf. To obtain the appropriate EPA logo graphic file, the recipient should send a request directly to OPA and include the EPA Project Officer in the communication.

Implementation Option: Posters or Brochures

Smaller projects, projects located in rural areas, and other efforts may find that it is more cost-effective and practical to advertise efforts through creation of a poster or smaller sign. If the project involves nonpoint source or green infrastructure components, those can be described at the discretion of the state or community.

The poster or brochure and acknowledgement should be visible, as well as a website or other source of information for individuals that may be curious about the SRF program. The community could also implement this option as a short pamphlet or brochure that is placed in one of these locations for community members to read.

Posters or brochures should be placed in a public location that is accessible to a wide audience of community members. This can include, but is not limited to:

- Town or City Hall
- Community Center
- Locally owned or operated park or recreational facility
- Public Library
- County/municipal government facilities
- Court house or other public meeting space

Given the low cost for producing multiple copies of the same poster, pamphlet, or brochure, communities can explore options for displaying these posters in several locations simultaneously. This would achieve the overall objective of reaching a broad audience and publicizing the project.

States have the option of creating a template verbiage and layout to provide to borrowers, particularly smaller or disadvantaged communities. This could reduce the burden on small municipalities which may or may not have the staffing capacity to meet signage requirements on their own.

States selecting projects that will implement this requirement through use of posters or brochures should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of project
- Brief description of the water quality benefits the project will achieve

Implementation Option: Newsletter, Periodical or Press Release

For communities where there is no suitable public space or where advertisement through signage is unlikely to reach community members effectively, projects can be advertised in a community newsletter or similar periodical. States can use guidelines from their standard public notice practices. For new construction, if a groundbreaking ceremony is to be held, an announcement could publicize or accompany publicity for this event.

In some cases, it may be appropriate for the state agency to issue a formal press release announcing construction of a new facility. Distributing a single prepared statement concisely summarizing the project purpose and the joint funding from EPA and state resources can reach a wide audience as the statement goes through multiple news outlets. Programs should consider whether or not this is an option that is likely to effectively publicize the CWSRF or DWSRF program in local news sources.

If a recipient decides on a public or media event to publicize the accomplishment of significant events related to construction as a result of EPA support, EPA must be provided with at least a ten working day notice of the event and provided the opportunity to attend and participate in the event.

States selecting projects that will implement this requirement through use of a newsletter, periodical or press release should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program

- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Insert or Pamphlet in Water/Sewer Bill

Utilities can consider including a single-page insert within water and sewer bills that are mailed to residents and users in the area. This approach would effectively publicize the project to those individuals directly benefitting from the project. The flyer or insert could emphasize the interest rate and financial savings that the community achieved by taking advantage of SRF funds as well as the environmental and public health benefits to the community.

States selecting projects that will implement this requirement through use of an insert or pamphlet in water/sewer bill should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project is wholly or partially funded with EPA funding
- Brief description of the project
- Brief listing of water quality benefits to be achieved

Implementation Option: Online & Social Media Publicity

Many communities are increasingly finding that the online forum is the most cost-effective approach to publicizing their SRF programs and reaching a broad audience of stakeholders. Online "signage" should follow the minimum information guidelines above and may appear on the town, community or facility website if available. In some cases, communities may be active on social media sites such as Facebook or Twitter. These can be used as an opportunity for publicizing projects and information about how SRF funds are being used in the community. These online announcements/notices may be appropriate for settings where physical signage would not be visible to a wide audience. They can be a more cost-effective option than traditional signs or publicity in print media outlets. This option may be most useful where the community's website is a well-recognized source of information for its residents.

In the case of some projects, such as nonpoint source or sponsorship projects, there might be additional opportunities for online publicity through partner agencies or organizations. This could take place either on the organization's website or again through social media outlets.

States selecting projects that will implement this requirement through use of online & social media publicity should ensure the following are included:

- Name of facility, project and community
- State SRF administering the program
- Project was wholly or partially funded with EPA funding
- Brief description of the project

- Brief listing of water quality benefits to be achieved

Suggested Language for Alternate Options

For any of the alternate implementation options listed above, SRF programs have discretion to structure their signage as they see appropriate. The language below is offered as an option for use in posters, pamphlets, brochures, press releases, or online materials. States may consider using the following:

> "Construction of upgrades and improvements to the [Name of Facility, Project Location, or WWTP] were financed by the [Clean Water/Drinking Water] State Revolving Fund. The [CWSRF/DWSRF] program is administered by [State Agency] with joint funding from the U.S. Environmental Protection Agency and [State Name]. This project will (description of project) and will provide water quality benefits [details specifying particular benefits] for community residents and businesses in and near [name of town, city, and/or water body or watershed to benefit from project.] [CWSRF/DWSRF] programs operate around the country to provide states and communities the resources necessary to maintain and improve the infrastructure that protects our valuable water resources nationwide. "

For projects in certain areas, states should consider whether or not it is appropriate to include additional details about the projects. Specific benefits, such as reduction of CSO events, lessening of nutrient pollution, reducing contaminant levels or water pumping costs, or improvements to a particular water body, may be of interest to community residents. In these cases, including them would further serve to showcase positive efforts financed by the SRF programs. Additionally, for projects with components that meet Green Project Reserve (GPR) criteria, States may elect to detail these particular improvements. For example, the state could include quantitative improvements in energy efficiency or water conservation achieved by project upgrades. If the project includes green infrastructure components such as rain gardens and green roofs that have environmental and aesthetic benefits to the community, these can be described briefly as well. Again, this additional information can be included at the discretion of the state when it is appropriate, given the project type, location, and the type of signage or publicity effort selected.

OFFICE OF WATER
WASHINGTON, D.C. 20460

January 16, 2025

MEMORANDUM

SUBJECT: Requirements for State Revolving Fund Auditing and Subrecipient Monitoring

FROM: Anita Maria Thompkins, Director
Drinking Water Infrastructure Development Division
Office of Ground Water and Drinking Water

ANITA THOMPKINS Digitally signed by ANITA THOMPKINS Date: 2025.01.17 10:09:05 -05'00'

Raffael Stein, Director
Water Infrastructure Division
Office of Wastewater Management

Raffael Stein Digitally signed by Raffael Stein Date: 2025.01.17 11:18:10 -05'00'

TO: Water Division Directors, Regions I-X

This memorandum reminds EPA regions and state managers of the State Revolving Fund (SRF) programs about SRF auditing and subrecipient monitoring requirements. Recent EPA Office of Inspector General (OIG) reports on these topics underscore the importance of these aspects of SRF oversight.

SRF Auditing

All SRF programs are subject to the requirements of the Single Audit Act (SAA) of 1984, as amended. The SAA established thresholds and auditing requirements for non-federal entities spending $1 million or more in federal funds in a year. On July 13, 2023, the EPA released the "*Clarification of Single Audit Act Requirements Under the Clean Water and Drinking Water State Revolving Fund Programs*" memorandum (attached). The 2023 memo clarifies the SAA-related roles and responsibilities for states and SRF assistance recipients and this memo does not change those roles and responsibilities. By design, single audits are designed to streamline required state audits, and in some cases these state-level audits may not provide significant insight into the SRF programs. For example, SAA audits may miss elements of the SRF programs if:

- The size of the SRF program is below the threshold required for more thorough annual auditing,
- The SRF program is part of the audit for a larger infrastructure bank or agency where its financial details are combined and included with other programs, or

- The SRF program is split between multiple state agencies, and one of those agency's portfolios is not part of the SRF Single Audit. For example, DWSRF set asides might be left out of an SAA audit because the audit included the Infrastructure Bank but not the state's Department of Health (which manages the set asides).

Under the above (and similar) scenarios, the EPA encourages states to consider additional auditing to improve transparency and maintain more effective SRF program management and oversight. Notably, most state SRF programs already perform auditing beyond that required by the SAA. The costs associated with additional auditing are an eligible use of CWSRF and DWSRF administrative funds.

As a reminder, when SAA audits, voluntary program audits, or any other program reports are available, states must provide that information to the OIG if requested. While the OIG can access the SAA audits through the Federal Audit Clearinghouse, the EPA has suggested that the OIG develop a method to receive voluntary program audits if they plan to ask for them regularly. If the OIG develops such a platform (i.e., Outlook In-box, Teams site) and puts a process in place, the EPA will share it with states.

In the EPA's Inspector General's September 19, 2024, testimony to the House Committee on Energy and Commerce, Inspector General O'Donnell stated that the OIG is considering resumption of auditing state SRF programs in states where those programs are not fully covered by a SAA audit. States are required to work cooperatively with the OIG if the OIG audits a state's SRF program.

SRF Subrecipient Monitoring

SRF loans are exempt from the OMB subrecipient monitoring requirements found at 2 CFR 200.331 through 2 CFR 200.333. This exemption is found in the EPA's regulations at 2 CFR 1500.3(b), which became effective on November 12, 2020, and codified a longstanding practice. Note that if a state provides additional subsidy to recipients as a "grant" or provides subawards from DWSRF set aside funds, this funding must comply with the requirements in 2 CFR part 200, including 2 CFR 200.331-200.333 (see the attached July 13, 2022 memo "*Understanding State Revolving Fund Subsidy as a Grant*"). As explained in the rule preamble, the CWSRF and DWSRF programs are mature federal grant programs, and SRF assistance has a low rate of failure with few defaults (85 FR 61571, 61572 Sept. 30, 2020). Although the EPA provides capitalization grants to states, this funding is ultimately administered by state agencies through their SRF programs, and states provide much of this funding to eligible recipients via loan agreements. The SRF programs have well-established processes for managing these loans and for monitoring borrower compliance with loan agreements. As such, states follow their own procedures for monitoring borrowers, rather than those procedures mandated by 2 CFR 200.331 through 200.333 for grant subrecipients. Note that the requirements for reporting subaward and executive compensation in 2 CFR part 170 and internal control requirements described at 2 CFR 200.303 continue to apply to CWSRF and DWSRF borrowers.

In addition, as noted in the preamble to the rule, the SRF programs also have extensive and specific program requirements in the authorizing statutes, the Clean Water Act and the Safe Drinking Water Act, and the accompanying CWSRF and DWSRF regulations at 40 CFR part 35, Subpart K and Subpart L, respectively. These authorizing statutes and regulations detail unique SRF requirements that provide oversight of SRF assistance recipients. These requirements include, among others, that:

- SRF assistance recipients must meet technical, managerial, and financial capacity (for DWSRF) or ability to repay (for CWSRF) requirements to receive SRF assistance;
- DWSRF assistance recipients must not be out of compliance with SDWA requirements or in significant noncompliance with any requirement of a national primary drinking water regulation or variance, unless receiving assistance will ensure compliance;
- Proposed SRF projects undergo public notice and comment; and
- SRF equivalency projects must comply with all federal cross-cutting requirements as part of the state environmental review process.

The full list of SRF assistance recipient requirements can be found in the EPA's project file review checklist, which is revised each year and used as part of the EPA's oversight of state SRF programs. States are expected to review projects for each item on the checklist and have accessible files for EPA or third-party review.

Thank you for your attention to these matters.

Attachments

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Clarification of Single Audit Requirements Under the Clean Water and Drinking Water State Revolving Fund Programs

FROM: Anita Maria Thompkins
Director, Drinking Water Infrastructure Development Division
Office of Ground Water and Drinking

ANITA THOMPKINS Digitally signed by ANITA THOMPKINS Date: 2023.07.13 17:58:14 -04'00'

Raffael Stein
Director, Water Infrastructure Division
Office of Wastewater Management

Raffael Stein Digitally signed by Raffael Stein Date: 2023.07.13 18:12:02 -04'00'

TO: Regional SRF Branch Chiefs
Regions I-X

This memorandum provides a resource for State Revolving Fund programs (SRFs) and recipients of SRF assistance to clarify requirements concerning single audits, federal funds, and responsibilities for recipients of SRF assistance and the state programs.

Background

The Single Audit Act (SAA) of 1984, as amended, sets out requirements for recipients and sub-recipients of federal financial assistance. To implement the SAA, the Office of Management and Budget (OMB) issued audit requirements in Subpart F of the Uniform Grant Guidance (UGG), which states that non-federal entities must have an audit of their use of federal financial assistance any time they expend $750,000 or more in federal financial assistance in a fiscal year. For purposes of the audit requirements in Subpart F, sub-grantees as well as loan recipients are considered non-federal entities that are subject to the SAA provisions. See 2 CFR § 200.101(b).

The implementing regulations state:

> *2 CFR § 200.501(b) Single audit. A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 2 CFR § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.*

For the Clean Water SRF (CWSRF) and the Drinking Water SRF (DWSRF) programs, complying with the SAA requirements is a two-stage process:

- First, for each capitalization grant that an SRF receives, the state identifies a group of projects for which funding is equal to the amount of the capitalization grant. For the DWSRF, the list of projects must equal the amount of the capitalization grant that is being used for loans or grants. Set-aside funds are considered federal funds and they cannot be switched with project funds to determine who received federal funding. This list of projects must meet SRF equivalency requirements, including the SAA requirements.
- Second, those sub-recipients identified in the first step must annually determine if their expenditure of federal financial assistance received from all sources equals $750,000 or greater, thereby requiring them to conduct SAA audits. Sources of federal financial assistance may include the SRF programs; other federal water infrastructure funding programs (e.g., USDA RD, CDBG, and EPA's WIFIA and Community Grants, among others); as well as health care, social services, highways, and education funding programs.

When does SAA apply to SRF Assistance Recipients?

Federal Funding: For each CWSRF and DWSRF state program, an amount equal to funds "directly made available by" the capitalization grant to the state is considered to be federal funding and recipients of these funds, whether they receive the funds as loans or grants, must comply with SAA requirements, in addition to a variety of federal requirements. To meet the requirements of the SAA, the state must choose to designate a specific group of recipients of funds for projects to which the SAA will apply.[1] This specific group of projects must be the same group of projects that the state has designated to meet other federal cross-cutting and Federal Funding Accountability and Transparency Act (FFATA) requirements.

Further, in accordance with Section 606(c)(3) of the Clean Water Act and Section 1452(b)(2)(A) of the Safe Drinking Water Act, this SAA requirement must be included in the terms of the financial assistance agreement stated in a state's annual SRF Intended Use Plan.

Finally, as is the case with other federal cross-cutting and FFATA requirements, the application of SAA requirements may not be banked (i.e., in a given fiscal year, a state cannot apply the SAA requirements to loans in an amount greater than their capitalization grant in order to reduce what is considered federal funding for these requirements for the following fiscal year).

$750,000 Threshold: The SAA and UGG specify that the sub-recipient reporting threshold is met when the sub-recipient's expenditure of any federal financial assistance (including SRF and non-SRF federal funding) equals or exceeds the $750,000 threshold during a fiscal year. For the purposes of the CWSRF and DWSRF, an expenditure occurs at the time that funds are disbursed by the sub-recipient for the purpose for which the assistance is provided. For example, for an SRF loan, the expenditure occurs at the time the loan recipient pays an invoice.

For refinancing assistance, the expenditure occurs at the time the loan recipient uses the proceeds

[1] For the DWSRF, set-aside funding is considered federal funding, so the value of the group of projects selected would equal at least the capitalization grant amount, minus the amount taken for set-asides. The set-aside funds themselves can trigger a single audit as federal funds for their recipients.

of the loan to refinance the existing debt. The period for reporting is the fiscal year of the entity receiving financial assistance.[2]

How do State SRF Programs implement SSA requirements?

The responsibilities of the state SRF program with respect to SAA requirements that apply to sub-recipients is limited to the group of projects identified by the SRF as recipients of federal financial assistance (an amount equal to funds "directly made available by" the capitalization grant).

SRF Program Responsibilities

SRF programs are responsible for:

- Identifying in the assistance agreements with sub-recipients the amount of federal financial assistance provided by the SRF.
- Including in the assistance agreement the requirement that the sub-recipient conduct a SAA audit if they expend $750,000 or more in federal financial assistance in a fiscal year.
- Requiring in the assistance agreement that the recipients notify the state SRF program when a SAA audit has been conducted.
- Requiring in the assistance agreement that the sub-recipient notify and provide the state SRF program with a copy of the SAA audit if the sub-recipient expends $750,000 or more in SRF federal financial assistance in a fiscal year. This audit must be received within 30 days of completion. The audit can be collected directly from the borrower, or any other means where the state can get the audit in the 30-day period (e.g., Federal Audit Clearinghouse).
- Requiring in the assistance agreement that the sub-recipient inform the SRF program of findings and recommendations pertaining to the SRF funding contained in SAA audits conducted by the sub-recipient.
- Notifying the sub-recipient on an annual basis of the amount of SRF federal financial assistance disbursed to the sub-recipient for project expenditures. In situations where a sub-recipient has received several loans over time from the SRF, the total amount of SRF funds disbursed and reported to a sub-recipient in any single year may include monies to cover expenditures emanating from overlapping loans and for several projects.
- Reviewing, approving, and monitoring to resolution, actions taken under a sub-recipient's corrective action plan to address SAA audit findings and recommendations insofar as they pertain to SRF federal financial assistance.
- The SRF program is not responsible for the resolution of findings that do not pertain to SRF financial assistance.
- Notifying your EPA project officer of any state-wide and sub-recipient findings and recommendations pertaining to the SRF and when corrective actions have been successfully implemented.

[2] The Single Audit Act dollar threshold that requires performance of an audit increases periodically, so please be sure to know the threshold for a given year.

SRF Sub-Recipient Responsibilities

SRF recipients identified as having received federal assistance are responsible for:

- Maintaining an annual (fiscal year) accounting system and identifying all expenditures of federal financial assistance (2 CFR § 200.302).
- Conducting a SAA audit in those fiscal years when expenditures of total federal financial assistance equal or exceed $750,000 (2 CFR § 200.501). It is the sub-recipient's responsibility for determining if the $750,000 threshold is reached and if a SAA audit is required. The sub-recipient must notify the SRF Program that they have reached the threshold.
- Submitting its SAA audit to the Federal Audit Clearinghouse within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months of the end of the audit period (2 CFR § 200.512).
- Notifying the state SRF program that the SAA audit has been submitted to the Federal Audit Clearinghouse and providing a copy to the state SRF program upon request.
- Initiating corrective actions for audit reports with findings and recommendations that impact the SRF financial assistance. Management decisions for corrective actions shall be made by the state SRF program within six months of the receipt of the audit report (2 CFR § 200.521(d)).
- Notifying state SRF program when corrective actions are complete.

SAA requirements placed on SRF borrowers in financing agreements are not "continuing compliance requirements." SRF borrowers are not required to continue submitting a SAA audit for the duration of the loan repayment in years the borrowers received no SRF federal financial assistance. Under the SAA, "continuing compliance requirements" provisions apply only to recipients of loans made by the federal government. Under the SRF program, loans are made by the state SRF, not by the federal government.

As part of the annual reviews, the EPA Regions will document all findings, recommendations, and corrective actions pertaining to the SRF programs. EPA Headquarters will review and consolidate this information so that it can be provided to the Office of the Inspector General by the end of each Federal Fiscal Year.

If you have any questions, please contact either of us, or for CWSRF questions contact Mark Mylin, at 202-564-0607, or for DWSRF questions contact Howard Rubin at 202-564-2051.

Attachments

cc: Michael Deane, Chief, CWSRF Branch, EPA HQ
Kiri Anderer, Supervisor, DWSRF Water Infrastructure and Technical Support Branch, EPA HQ
Damaris Christensen, Supervisor, DWSRF Water Finance Branch, EPA HQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Understanding State Revolving Fund Additional Subsidy as a Grant

FROM: Kiri Anderer, Acting Associate Chief
Infrastructure Branch
Drinking Water Protection Division
Office of Ground Water and Drinking Water

KIRSTEN ANDERER Digitally signed by KIRSTEN ANDERER Date: 2022.07.13 16:33:17 -04'00'

Michael Deane, Chief
State Revolving Fund Branch
Water Infrastructure Division
Office of Wastewater Management

MICHAEL DEANE Digitally signed by MICHAEL DEANE Date: 2022.07.13 17:28:13 -04'00'

TO: SRF Branch Chiefs & Regional Coordinators
Regions I-X

This memorandum explains the additional procurement and monitoring requirements for states and assistance recipients under the Clean Water and Drinking Water State Revolving Fund (SRF) programs where a state provides additional subsidization in the form of a grant, as opposed to a loan with principal forgiveness or a negative interest rate. These requirements are in addition to the standard requirements for all SRF financial assistance.

EPA anticipates that state SRF programs will work with many new local assistance recipients as a result of the unprecedented federal investment from the Bipartisan Infrastructure Law (BIL), also known as the Infrastructure Investments and Jobs Act (IIJA), P.L. 117-58. The purpose of this memorandum is to assist states and EPA in understanding the "grant" additional subsidy option available under the BIL and base appropriations to SRF programs.

Background

The SRF programs are inherently "subsidized" financial assistance programs. By law, the programs offer below-market interest rates and extended financing terms that result in significant long-term cost savings to local recipients. "Additional subsidization" refers to particular SRF financial assistance options that go *beyond* that inherent SRF subsidization. Additional subsidization is a tool for SRF managers to help make critical public health and water quality infrastructure more affordable, particularly in disadvantaged communities.

Each additional subsidy option available to state SRFs under the Clean Water and Safe Drinking Water Acts has pros and cons, and state SRF managers should carefully weigh each option when designing their state's program. Additional subsidy may take several forms, but most commonly, states issue additional subsidy as 1) loans with principal forgiveness and 2) grants.

A grant may be a preferable additional subsidy option in certain circumstances. Some prospective local assistance recipients might seek SRF additional subsidy as a grant if they are near or at their local debt ceiling. In some areas, even a fully principal-forgiven loan (i.e., a loan that requires no repayment) might count against that local debt ceiling. In some states, issuing a grant may avoid underwriting fees and other expenses associated with loans, even for fully principal-forgiven loans.

A "grant" is a distinct legal instrument, and federal grant regulations impose additional requirements on the entity receiving the grant (e.g., an SRF assistance recipient, such as a public water system) and on the state SRF administrating the grant. Additional subsidy in the form of a grant is considered a *subaward* under 2 CFR 1500.3(b), and recipients of additional subsidy "grants" are "subgrantees" under federal grant regulations. In addition to other SRF requirements, as a subaward, entities receiving additional subsidy in the form of a grant and state programs providing the grant must comply with the following requirements:

- Subaward procurement requirements in 2 CFR 200.317 through 2 CFR 200.327, and the
- Subaward monitoring requirements in 2 CFR 200.331 through 2 CFR 200.333.

In accordance with 2 CFR 1500.3(b), SRF additional subsidy awarded as principal forgiveness or negative interest is *not* considered a subaward, and therefore, is not subject to the additional requirements identified above.

Below are summaries of the subaward procurement and monitoring requirements associated with subawards.

Subaward Procurement Requirements

Attachment A lists the provisions of 2 CFR 200.317 through 2 CFR 200.327. In summary, these provisions require subawardees and state programs to have, among other requirements:

- Transparent and fair competition on the use of these funds,
- Oversight of subawards and contractors to ensure terms are met,
- Records for third party verification of compliance, and
- Solicited proposals from minority and women owned businesses.

Subaward Monitoring Requirements

Attachment B lists the provisions of 2 CFR 200.331 through 2 CFR 200.333. In summary, these provisions require subawardees and state programs to have, among other requirements:

- Their risk assessed in receiving federal funds and proper steps taken to protect those funds, including subaward monitoring, subaward training, and special conditions as needed to ensure funds are used appropriately, and
- State documentation of their subaward assessment process and oversight efforts.

Conclusion

Attachment C contains a non-exhaustive list of commonly asked questions and answers about this topic. Recipients are encouraged to thoroughly review the applicable regulations. If you have questions, contact us or Howard Rubin (Rubin.HowardE@epa.gov).

Attachment A: Procurement Requirements for Subawards with Additional Subsidy as a Grant

2 CFR § 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

2 CFR § 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.

Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

2 CFR § 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state

licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

2 CFR § 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) ***Informal procurement methods.*** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT),* as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) ***Micro-purchases*** -

(i) ***Distribution.*** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) ***Micro-purchase awards.*** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) ***Micro-purchase thresholds.*** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) ***Non-Federal entity increase to the micro-purchase threshold up to $50,000.*** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) ***Non-Federal entity increase to the micro-purchase threshold over $50,000.*** Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) ***Small purchases*** -

(i) ***Small purchase procedures.*** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate

quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) ***Simplified acquisition thresholds.*** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) ***Formal procurement methods.*** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids.*** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) ***Proposals.*** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) ***Noncompetitive procurement.*** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

2 CFR § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

2 CFR § 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

2 CFR § 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2 CFR § 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

2 CFR § 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

2 CFR § 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2 CFR § 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

Attachment B: Sub-Award Monitoring Requirements for Additional Subsidy as a Grant

2 CFR § 200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) ***Subrecipients.*** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in § 200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) ***Contractors.*** A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in § 200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) ***Use of judgment in making determination.*** In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

2 CFR § 200.332 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal award identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see the definition of *Federal award date* in § 200.1 of this part) of award to the recipient by the Federal agency;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;

(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;

(xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;

(xiii) Identification of whether the award is R&D; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414.

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) (i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:

(A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (*e.g.,* if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (*e.g.,* has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.

2 CFR § 200.333 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201.

Attachment C: Sample Questions from SRF Assistance Recipients Receiving Additional Subsidy in the Form of a Grant

May I use my usual support contractors?

These SRF assistance recipients must follow procurement requirements in 40 CFR - 200.17-200.20. These requirements vary depending on the size of the procurement but can include a requirement for transparent Request for Proposals (RFPs) with documented selection criteria and scoring.

May I use rules favoring local hiring?

These SRF assistance recipients are prohibited from having requirements favoring state, local, or tribal service providers.

Do special monitoring requirements apply to me?

These SRF assistance recipients must have their risk specifically assessed and documented, which will determine the level of oversight required.

What indirect cost rate must I use?

If an already-negotiated rate does not exist, the SRF assistance recipient must establish a rate though discussion with the state SRF.

May I implement special local requirements?

Special requirements may not run afoul of the procurement requirements, which in addition to prohibiting preferences for state and local hiring, also prohibit clauses that can be seen as limiting competition.