

FEDERAL REQUIREMENTS
FOR
DWSRF LOAN APPLICANTS



SEPTEMBER 2010

FEDERAL REQUIREMENTS FOR
DWSRF PROJECTS

For any DWSRF loan, the Applicant is required to certify that it has complied, or will comply, with all the federal regulations listed herein as "Cross-cutter" regulations which have been determined as applying to the DWSRF loan program.

The Applicant must insert a copy of the "DWSRF Boilerplate - Federal Requirements for Consultants and Contractors" as provided, into all consultant and construction contracts and subcontracts.

A. CROSS-CUTTER REGULATIONS

1. ENVIRONMENTAL AUTHORITIES:

a. ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974,
16 USC 469a-1

Should the discovery of potential archaeological or historical resources occur during construction, all work in the area of the find shall stop and the construction management consultant shall be called in to evaluate the situation and make recommendations to the State Historic Preservation Officer, Department of Land and Natural Resources, State of Hawaii. The Historic Preservation Officer will determine what will be necessary for construction to proceed.

b. CLEAN AIR ACT, 42 USC 7401

The recipient must determine the direct and indirect emissions from the proposed treatment works project and their impact on air quality. This analysis must determine if the project conforms to the State Implementation Plan (SIP).

c. COASTAL BARRIERS RESOURCES ACT, 16 USC 3501

This Act does not apply to the State of Hawaii at this time.

d. COASTAL ZONE MANAGEMENT ACT, 16 USC 1451

DWSRF assistance recipients should consult with the coastal zone management program to ensure that the project will be consistent with the state program. Certification must be approved by the coastal zone agency prior to DWSRF assistance.

e. ENDANGERED SPECIES ACT, 16 USC 1531

DWSRF assistance recipients must determine whether any endangered or threatened species or critical habitat exist within the locale of the proposed project.

f. ENVIRONMENTAL JUSTICE, EXECUTIVE ORDER 12898

DWSRF assistance recipients shall attempt to identify and address disproportionately high and adverse human health or environmental effects of this project on minority populations and low-income populations.

g. FARMLAND PROTECTION POLICY ACT, 7 USC 4201

DWSRF assistance recipients must determine whether the proposed project will have an effect on significant agricultural lands.

h. FISH AND WILDLIFE COORDINATION ACT, 16 USC 661

DWSRF assistance recipients should seek the assistance of wildlife officials to determine the effect the proposed project may have on wildlife and its habitat.

i. FLOODPLAIN MANAGEMENT, EXECUTIVE ORDER 11988 (1977), AS AMENDED BY EXECUTIVE ORDER 12148 (1979)

DWSRF assistance recipients must determine if the proposed project will be located in or affect a floodplain. Projects within floodplains must document flood protection mitigation and design measures.

j. NATIONAL HISTORIC PRESERVATION ACT, 16 USC 470

DWSRF assistance recipients must determine whether historic properties that are included or are eligible for inclusion on the National Register are in the project area.

k. PROTECTION OF WETLANDS, EXECUTIVE ORDER 11990 (1977), AS AMENDED BY EXECUTIVE ORDER 12608 (1997)

DWSRF assistance recipients must determine whether their proposed project will be in or will affect a wetland, and whether an alternative will be necessary.

l. SAFE DRINKING WATER ACT, 42 USC 300f

DWSRF assistance recipients must determine if their proposed project will affect a sole source aquifer, and whether further investigations will be necessary.

- m. WILD AND SCENIC RIVERS ACT, 16 USC 1271

This Act is not applicable to the State of Hawaii at this time.

- n. ESSENTIAL FISH HABITAT CONSULTATION PROCESS UNDER THE MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT, 16 USC 1801

DWSRF assistance recipients must determine whether a proposed project may adversely affect Essential Fish Habitat (EFH). The National Marine Fisheries Service will make maps and/or other information on the locations of EFH available as well as provide information on ways to promote conservation of EFH, in order to facilitate this assessment.

2. ECONOMIC POLICY AUTHORITIES:

- a. ADMINISTRATION OF THE CLEAN AIR ACT AND THE WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS OR LOANS, EXECUTIVE ORDER 11738

This Executive Order prohibits assistance to facilities that are not in compliance with either the Clean Water Act or the Clean Air Act unless the purpose of the assistance is to remedy the cause of the violation.

- b. DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT ACT OF 1966, PUB. L. 89-754, AS AMENDED BY 42 USC 3331

DWSRF assistance recipients should submit information describing a proposed project's effect on local development plans to the DWSRF agency.

- c. PROCUREMENT PROHIBITIONS, EXECUTIVE ORDER 11738, SECTION 306 OF THE CLEAN AIR ACT

The recipient of Federal assistance must certify that it will not procure goods, services or materials from suppliers who are on the EPA's list of Clean Air Act violators.

- d. PROCUREMENT PROHIBITIONS, SECTION 508 OF THE CLEAN WATER ACT

The recipient of Federal assistance must certify that it will not procure goods, services or materials from suppliers who are on the EPA's list of Clean Water Act violators.

3. SOCIAL POLICY AUTHORITIES:

a. AGE DISCRIMINATION ACT OF 1975, 42 USC 6102

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

b. CIVIL RIGHTS ACT OF 1964, TITLE VI, 42 USC 2000d

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

c. EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED

This Executive Order requires all recipients of Federal contracts to include certain non-discrimination and "affirmative action" provisions in all contracts. The provisions commit the contractor or subcontractor to maintain a policy of non-discrimination in the treatment of employees, to make this policy known to employees, and to recruit, hire and train employees without regard to race, color, sex, religion and national origin.

d. MINORITY BUSINESS ENTERPRISE DEVELOPMENT, EXECUTIVE ORDER 12432

This executive order sets forth in more detail the responsibilities of Federal agencies for the monitoring, maintaining of data and reporting on the use of minority enterprises.

e. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE, EXECUTIVE ORDER 11625

This Executive Order directs Federal agencies to promote and encourage the use of minority business enterprises in projects utilizing federal funds.

f. NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE, EXECUTIVE ORDER 12138

This Executive Order directs each department or agency empowered to extend Federal financial assistance to any program or activity to issue regulations requiring the recipient of such assistance to take appropriate

affirmative action in support of women's business enterprises and to prohibit actions or policies which discriminate against women's business enterprises on the grounds of sex.

g. REHABILITATION ACT OF 1973, 29 USC 794

No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

h. SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENT ACT OF 1998, PUB. L. 100-590, SECTION 129

This Amendment directs Federal agencies to promote and encourage the use of small business enterprises in projects utilizing federal funds.

i. DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND AGENCIES APPROPRIATIONS ACT, 1993, PUB. L. 102-389

The Administrator of the Environmental Protection Agency shall, hereafter to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and for leaking underground storage tanks, be made available to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women...

j. DISADVANTAGED BUSINESS ENTERPRISE RULE, 2008,
40 CFR Part 33

This Rule sets forth in detail the responsibilities of entities receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, for the monitoring, maintaining of data and reporting of the use of disadvantaged business enterprises (DBEs). The Applicant shall fully comply with 40 CFR Part 33, entitled "Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements" and ensure that all contracts funded by a DWSRF loan include a term or condition requiring compliance with 40 CFR Part 33.

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

k. DAVIS BACON ACT, TITLE 29, PART 5, CODE OF FEDERAL REGULATIONS

The recipient of Federal assistance shall comply with all labor standards covered under this act including but not limited to:

- (1) Inclusion of the applicable Wage Determination General Decision No. and Modification No. in the executed contract;
- (2) Payment of the prevailing wage rate;
- (3) Posting of prevailing wage rates and Davis-Bacon poster at the work site where it can be easily seen by the workers;
- (4) Maintaining weekly certified payroll records for a period of three years; and
- (5) Performing labor standards interviews during the course of construction in accordance with Standard Form 1445.

4. MISCELLANEOUS AUTHORITIES:

a. DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12549

Prior to the award of a consultant or construction contract, the Applicant (County) shall fully comply with Subpart C of 40 CFR Part 32, entitled

"Responsibilities of Participants Regarding Transactions" and ensure that any lower tier covered transaction and subsequent lower tier transaction, includes a term or condition requiring compliance with Subpart C. The Applicant shall certify that the General Contractor, Consultant, sub-consultants, subcontractors and suppliers are not on the Excluded Parties List. The Applicant acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of payment, or pursuance of legal remedies, including suspension and debarment. The Applicant may access the Excluded Parties List System at <http://epls.arnet.gov>.

- b. UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT, PUB. L. 91-646 (1971), AS AMENDED BY 42 USC 4601-4655

The Act establishes a policy for fair and equitable treatment of persons who are displaced from their homes, farms or businesses to make way for a federally-assisted project.

- c. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTOR'S LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS, EXECUTIVE ORDER 13202 (2001), AS AMENDED BY EXECUTIVE ORDER 13208 (2001)

DWSRF assistance recipients must ensure that bid specifications, project agreements, and other controlling documents for construction contracts awarded after February 17, 2001 do not require or prohibit agreements with labor organizations. Further, DWSRF assistance recipients and any construction manager acting upon their behalf must not otherwise discriminate against bidders, offerors, contractors, or subcontractors for entering into, or refusing to enter into, agreements with labor organizations.

B. REQUIRED FEDERAL FORMS AND INFORMATION:

1. The following EPA forms with original pen and ink signature are required to be submitted by the loan recipient to the Department of Health Wastewater Branch for each DWSRF project:
 - a. EPA Form 5700-52A (MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance)
 - b. EPA Form 6100-4 (Disadvantaged Business Enterprise Program - DBE Subcontractor Utilization Form) to be completed by the Consultant or Contractor and submitted with bid or proposal package.
 - c. EPA Form 6100-3 (Disadvantaged Business Enterprise Program - DBE Subcontractor Performance Form) to be completed by all DBE subconsultants or subcontractors and submitted with bid or proposal package.
2. The following information must be included in the loan recipient's contract specifications:

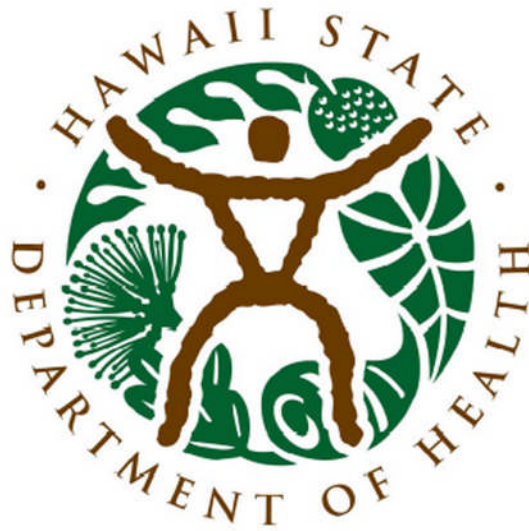
The current and appropriate Wage Decision and Modification number must be obtained from the United States Department of Labor (DOL), and included in the contract specifications. The Wage Decision and Modification Number must be that which was in effect on the date up to 10 days before bid opening and no later than 90 days after bid opening. The appropriate Wage Decision may be obtained at: <http://www.access.gpo.gov/davisbacon/index.html>

"DWSRF BOILERPLATE"

FEDERAL REQUIREMENTS

FOR

CONSULTANTS AND CONTRACTORS



SEPTEMBER 2010

"DWSRF BOILERPLATE"

FEDERAL REQUIREMENTS

FOR

CONSULTANTS AND CONTRACTORS

To the Consultant, Contractor or Sub-contractor of a DWSRF loan funded project:

All DWSRF projects must comply with all the federal regulations listed herein which have been determined as applying to the SRF loan program.

A. CROSS-CUTTER REGULATIONS

1. ENVIRONMENTAL AUTHORITIES:

a. ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974, 16 USC 469a-1

Should the contractor discover potential archaeological or historical resources during construction, all work in the area of the find shall stop and the construction management consultant shall be called in to evaluate the situation and make recommendations to the State Historic Preservation Officer, Department of Land and Natural Resources, State of Hawaii. The Historic Preservation Officer will determine what will be necessary for construction to proceed.

2. SOCIAL POLICY AUTHORITIES:

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No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

b. CIVIL RIGHTS ACT OF 1964, TITLE VI, 42 USC 2000d

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- c. EQUAL EMPLOYMENT OPPORTUNITY, EXECUTIVE ORDER 11246, AS AMENDED

The contractor, subcontractor, or consultant for any SRF project shall maintain a policy of non-discrimination in the treatment of employees, shall make this policy known to employees, and shall recruit, hire and train employees without regard to race, color, sex, religion and national origin.

- d. REHABILITATION ACT OF 1973, 29 USC 794

No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- e. MINORITY BUSINESS ENTERPRISE DEVELOPMENT, EXECUTIVE ORDER 12432

This executive order sets forth in more detail the responsibilities of Federal agencies for the monitoring, maintaining of data and reporting on the use of minority enterprises.

- f. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE, EXECUTIVE ORDER 11625

This Executive Order directs Federal agencies to promote and encourage the use of minority business enterprises in projects utilizing federal funds.

- g. NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE, EXECUTIVE ORDER 12138

This Executive Order directs each department or agency empowered to extend Federal financial assistance to any program or activity to issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprises and to prohibit actions or policies which

discriminate against women's business enterprises on the grounds of sex.

- h. SMALL BUSINESS ADMINISTRATION REAUTHORIZATION AND AMENDMENT ACT OF 1998, PUB. L. 100-590, SECTION 129

This Amendment directs Federal agencies to promote and encourage the use of small business enterprises in projects utilizing federal funds.

- i. DEPARTMENT OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND AGENCIES APPROPRIATIONS ACT, 1993, PUB. L. 102-389

The Administrator of the Environmental Protection Agency shall, hereafter to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and for leaking underground storage tanks, be made available to businesses or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women...

- j. DISADVANTAGED BUSINESS ENTERPRISE RULE, 2008, 40 CFR Part 33

Prior to the award of a consultant or construction contract, the Contractor or Consultant shall fully comply with 40 CFR Part 33, entitled "Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA Financial Assistance Agreements)". The Consultant or Contractor shall notify the County prior to termination of a Disadvantaged Business Enterprise (DBE) subconsultant or subcontractor for convenience by the Contractor. In addition, the Consultant or Contractor shall employ the six good faith efforts listed in 40 CFR 33.301 when soliciting a replacement subconsultant or subcontractor.

The Consultant or Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant or Contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Consultant or Contractor to

carry out these requirements is a material breach of this contract, which may result in the termination of this contract or other legally available remedies.

k. DAVIS BACON ACT, TITLE 29, PART 5, CODE OF FEDERAL REGULATIONS

The consultant or construction contractor shall comply with the labor standards provided under this act, including but not limited to:

- (1) Payment of the prevailing wage rate;
- (2) Posting of prevailing wage rates and Davis-Bacon poster at the work site where it can be easily seen by the workers;
- (3) The following Wage Determination General Decision and Modification numbers apply to this contract:

Wage Determination General Decision No.: (loan recipient to fill in)

Modification No.: (loan recipient to fill in)

3. MISCELLANEOUS AUTHORITIES:

a. DEBARMENT AND SUSPENSION, EXECUTIVE ORDER 12549

Prior to the award of a construction or consultant contract, the Contractor or Consultant shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions" and ensure that any lower tier covered transaction and subsequent lower tier transaction, includes a term or condition requiring compliance with Subpart C. The Contractor shall certify that his subcontractors and suppliers are not on the Excluded Parties List when the bid proposals are submitted. The Consultant shall certify that his sub-consultants are not on the Excluded Parties List. The Contractor or Consultant acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of payment, or pursuance of legal remedies, including suspension and debarment. The Contractor or Consultant may access the Excluded Parties List System at <http://epls.arnet.gov>.

B. REQUIRED FEDERAL FORMS:

The following EPA forms with original pen and ink signature are required to be submitted by the Consultant or Contractor to the recipient (County) for each DWSRF project:

- a. EPA Form 5700-52A (MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance)
- b. EPA Form 6100-4 (Disadvantaged Business Enterprise Program - DBE Subcontractor Utilization Form) to be completed by the Consultant or Contractor and submitted with bid or proposal package.
- c. EPA Form 6100-3 (Disadvantaged Business Enterprise Program - DBE Subcontractor Performance Form) to be completed by all DBE subconsultants or subcontractors and submitted with bid or proposal package.

In addition, the following EPA form shall be provided by the Consultant or Contractor to each Disadvantaged Business Enterprise subcontractor for each DWSRF project:

- a. EPA Form 6100-2 (Disadvantaged Business Enterprise Program - DBE Subcontractor Participation Form), which may be completed by each DBE subconsultant or subcontractor and submitted to:

Mr. Joe Ochab, Region IX MBE/WBE Coordinator
U.S. Environmental Protection Agency
Region IX (WTR-6)
75 Hawthorne Street
San Francisco, CA 94105