

Guide to Bidding and Award of Construction Contracts – Equivalency



S.C. Department of Environmental Services

❑ **Please Note:** Prior to bidding a project, sponsors shall submit to S.C. Department of Environmental Services (SCDES) a *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (DES 3590).

This guide provides information to assist project sponsors in bidding projects and receiving SCDES approval to award contracts that meet the equivalency requirements for SRF funding. Complying with the following guidelines will help to ensure procurement integrity is maintained and will aid in SCDES contract approval.

To prevent confusion about the State Revolving Fund (SRF) eligibility of any portion of project work, it is recommended that project sponsors receive SCDES approval of the project's plans and specifications before advertising for bids and prior to executing a construction contract. If Project Sponsors elect to execute a construction contract without approval, they do so "at their own risk."

BIDDING

Project Sponsors are required to competitively bid their projects. The Project Sponsor shall:

❑ Advertise the project, for a minimum of thirty (30) days in advance of bid opening, using at least one of the following methods: (a) local newspapers of general circulation, (b) publications targeting minority or women owned businesses, (c) statewide or regional newspapers of general circulation, and/or (d), the *South Carolina Business Opportunities* (SCBO). The ad should include the following information:

- ◆ A complete statement of the work to be performed;
- ◆ Place, date and time of the bid opening;
- ◆ Location of the bid documents along with instructions and cost to purchase a bid set;
- ◆ A statement that the project is being funded by a loan from the State Revolving Fund and that bidders must comply with all applicable state and federal requirements identified in the bid documents – including Davis-Bacon and “Build America, Buy America” (BABA) or “American Iron and Steel” (AIS)[#], provisions;*

[#] *BABA applies to the project unless a BABA waiver has been granted. AIS applies if a BABA waiver has been granted.*

- ◆ A statement that prospective bidders must implement procedures that ensure that DBE firms are given opportunities for meaningful participation if subcontracts are awarded*; and
 - ◆ A statement that bidders must provide at least a 5% bid bond.
- * *If SCBO is used, it is preferred that Davis-Bacon, BABA or AIS (depending on if a BABA waiver has been granted), DBE, and SRF funding language is included in the SCBO ad. At a minimum, however, the SCBO ad must contain a link to the full bid advertisement with all of the required SRF language.*
- ❑ Modify bid documents only by written addenda, which requires prior SCDES approval.
 - ❑ Hold a public bid opening.
 - ❑ Use a competitive sealed construction bidding.
 - ❑ Require at least a five percent (5%) bid bond or certified check. It is the responsibility of the Project Sponsor's attorney to review the bid bond for accuracy and completeness.
 - ❑ Require a one hundred percent (100%) payment bond and performance bond. It is the responsibility of the Project Sponsor's attorney to review the payment and performance bonds for accuracy and completeness.
 - ❑ Require the contractor to provide fire, extended coverage, vandalism and malicious mischief insurance equal to the actual value of the insured property during construction. It is the responsibility of the Project Sponsor's attorney to review the insurance documents for accuracy and completeness.
 - ❑ Follow Davis-Bacon and Related Acts labor provisions, which require all laborers and mechanics employed by contractors and subcontractors be paid wages at rates not less than those listed on the prevailing wage rate contained in the contract documents and that all applicable provisions of the Davis-Bacon and Related Acts be met. Require the prime contractor to follow the "Davis-Bacon" provisions.
 - ❑ If a BABA waiver has not been granted, follow the provisions in the Build America, Buy America Act (Section 70901), which requires that all iron, steel, manufactured products, and construction materials used in the project are produced in the United States. Require the prime contractor to follow the "Build America, Buy America" provisions.
 - ❑ If a BABA waiver has been granted, follow the "American Iron and Steel" provisions of the Consolidated Appropriations Act, 2014 (Section 426), which requires that all iron and steel products used in the project are produced in the United States. Require the prime contractor to follow the "American Iron and Steel" provisions.

- ❑ Follow the "Good Faith Efforts" strategies outlined in the "Disadvantaged Business Enterprise (DBE) Compliance" section of the *Guide to Federal Requirements—Equivalency* to aid in successfully meeting the DBE requirements. If subcontracts are awarded, require the prime contractor to follow the "Good Faith Efforts" strategies outlined in the bid documents and provide required documentation.
- ❑ As part of the mandatory DBE requirements, create and maintain a Bidders List of all firms that bid or quote on prime contracts and/or subcontracts including both DBEs and non-DBEs. The Bidders List must be kept until the project period has ended. The following information must be obtained from all contractors:
 - ◆ Contractor's name with point of contact;
 - ◆ Contractor's mailing address, telephone number and e-mail address;
 - ◆ The procurement (scope of work) on which the contractor bid or quoted and when; and
 - ◆ The contractor's status as a DBE, or non-DBE.
- ❑ If other funding sources are used which have stricter bidding requirements or if applicable federal, state, or local laws or ordinances have stricter requirements, these stricter requirements govern.

AFTER BID OPENING

SCDES must concur in the Project Sponsor's construction contract award. It is recommended that Project Sponsors receive SCDES approval prior to executing a construction contract to prevent any confusion about SRF eligibility. The Project Sponsor shall provide SCDES with a bid package consisting of the following items:

- ❑ *Project Construction Summary — Equivalency* (DES 3589) signed by the project sponsor's representative.
- ❑ *Certification Regarding Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URLAP)* (DES 3594) signed by the project sponsor's representative.
- ❑ A certified copy of the advertisement with date of publication.
- ❑ A copy of the Project Sponsor's Bidders List.
- ❑ A copy of the detailed bid tabulation certified by the Project Sponsor's engineer.
- ❑ Proposal of the successful bidder(s).

- ❑ A copy of the Bid Bond and associated Power of Attorney.
- ❑ A copy of the Davis-Bacon wage decision(s) used in bidding the project.
- ❑ A copy of the engineer's award recommendation of low bidder(s) to the Project Sponsor listing the proposed contract amount. If award is recommended to other than low bidder(s), provide justification for this decision.
- ❑ A certified copy of the project sponsor's tentative award resolution listing the proposed contractor(s) and contract amount(s), not to include contingency. The resolution may be board meeting minutes, a certified board resolution, or a letter from a Project Sponsor employee authorized to make financial commitments for the Project Sponsor. A "Notice of Award" form, if used, must be accompanied by Board Minutes or letter identifying the Project Sponsor's representative executing the Notice.
- ❑ If a BABA waiver has not been granted, a copy of the proposed prime contractor's *Bidder's Build America, Buy America Certification* (DES 4360).[^]
 - ^ If a BABA waiver has been granted, the Sponsor must provide a list of significant manufactured products or construction materials likely subject to the waiver within the scope of the project. AIS Provisions will apply.
- ❑ If a BABA waiver has been granted, a copy of the proposed prime contractor's *Bidder's American Iron and Steel Certification* (DES 2556).
- ❑ A copy of the *Prime Contractor's Subagreement Certification* (DES 3591) from the proposed low bidder(s).
- ❑ Evidence that the low bidder(s) complied with the DBE requirements listed in the bid documents. **The bid package cannot be approved without prior or concurrent DBE approval.**
- ❑ A copy of the proposed prime contractor's Bidders List.
- ~~❑ A copy of the *DBE Subcontractor Utilization Form* (EPA 6100-4) from the proposed prime contractor(s).~~
- ~~❑ A copy of the *DBE Subcontractor Performance Form* (EPA 6100-5) from the proposed prime contractor(s).~~
- ❑ A copy of the *EEO Documentation Form* (DES 2323), with all required attachments (to include *Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity* [DES 3592]), from the proposed prime contractor(s).
- ❑ A copy of the *EEO Documentation Form* (DES 2323), with all required attachments (to include *Certification by Proposed Prime or Subcontractor Regarding Equal Employment*

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Opportunity (DES 3592)), from all subcontractors whose contract amount is expected to exceed \$10,000.

- ❑ A copy of the *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (DES 3590) from the proposed prime contractor(s).
- ❑ A copy of the *Certification Regarding Debarment, Suspension and Other Responsibility Matters* (DES 3590) from all subcontractors whose contract amount is expected to equal or exceed \$25,000.
- ❑ A signed copy of the *Project Inspection Designation Form* (DES 2324), with all required attachments, indicating the selected method of providing continuous inspection during construction.

EQUIPMENT/MATERIAL PROCUREMENT

Under Section 11-35-50 of the South Carolina Consolidated Procurement Code, Act 148 of 1981, all South Carolina political subdivisions are required to have and use a procurement ordinance or procedures that embody sound principles of appropriately competitive procurement. Equipment and/or materials purchased *directly* by the project sponsor should be done in accordance with the *Guide to Direct Purchase of Equipment and Materials — Equivalency*.

Prior to any disbursement of funds for equipment and/or materials, an equipment and/or materials line item must be established in the budget of the loan agreement.

More information? Contact your SCDES SRF Project Manager.



SC DEPARTMENT *of*
**ENVIRONMENTAL
SERVICES**

ATTACHMENT – LIST OF FORMS

FORMS Available at des.sc.gov/SRFforms

Form	Form Name
DES 3590	Certification Regarding Debarment, Suspension and Other Responsibility Matters
DES 3589	Project Construction Summary — Equivalency
DES 3594	Certification Regarding Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URLAP)
DES 4360	Bidder’s Build America, Buy America Certification (<i>applies to projects without an approved BABA waiver</i>)
DES 2556	Bidder’s American Iron and Steel Certification (<i>applies to projects with an approved BABA waiver</i>)
DES 3591	Prime Contractor’s Subagreement Certification
DES 2323	Equal Employment Opportunity (EEO) Documentation Form
DES 3592	Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity
DES 3590	Project Inspection Designation Form
EPA 6100-4	DBE Subcontractor Utilization Form
EPA 6100-3	DBE Subcontractor Performance Form

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