

Preconstruction Conference Report - BABA Requirements



S.C. Department of Environmental Services

PROJECT NAME: _____

SPONSOR: _____

DATE / TIME: _____

LOCATION: _____

CONTACT INFORMATION

SCDES SRF PROJECT MANAGER: _____

SCDES SRF TECHNICAL STAFF: _____

SCDES SRF FINANCE MANAGER: _____

SCDES REGIONAL REP: _____

CONSULTING ENGINEER: _____

RIA REPRESENTATIVE: _____

_____:

PURPOSE OF CONFERENCE

The purpose of this conference is to reach a mutual understanding of the contract requirements, to discuss the responsibilities of the Sponsor as required under the provisions and conditions of the loan agreement, and to define the roles of the Sponsor, S.C. Department of Environmental Services (SCDES), the Rural Infrastructure Authority (RIA), and the Consulting Engineer.



Authority and Responsibilities of Authorized Representative of Sponsor

Sponsor Authority:

The authorized representative of the sponsor has the authority to administer the loan agreement, to administer the construction contract(s), and to issue certain revisions to the contract(s). These revisions will be limited by the amount and scope specified in the loan agreement. Only the sponsor has the authority to make changes to the contracts after approval by SCDES.

Sponsor Responsibilities:

The sponsor bears the primary responsibility for complying with all terms and conditions of the loan agreement and for the administration and successful completion of the loan project, through all contracts made by the sponsor.

The sponsor is responsible for compliance by the contractor(s) with the following SRF requirements, as applicable:

- The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).
- Copeland Regulations of the Secretary of Labor (29 CFR Part 3).
- The Department of Labor Non-Discrimination Provisions and Equal Opportunity Contract Specifications (Executive Order (EO) 11246).
- Compliance of all contractors and subcontractors with non-exclusion from participation in procurement and non-procurement transactions, as cited in 2CFR Parts 180 & 1532 and evidenced through the U.S. General Services Administration's System for Award Management (SAM).
- Use of small, minority, and women-owned businesses.
- The Flood Disaster Protection Act of 1973 [40 CFR Part 30].
- Fire and Extended Coverage Insurance (Builder's Risk).
- Davis-Bacon and Related Acts.
- Build America, Buy America Act.
- Compliance with equal opportunity requirements (40 CFR, Part 8).
- All other special conditions and/or requirements outlined in the approved specifications documents or loan documents.

Authority and Responsibilities of SCDES Representatives

SCDES Authority:

The SCDES Project Manager and regional engineer/inspector have the authority, with respect to state law, to monitor, advise, and offer assistance to the sponsor to ensure that:

- The sponsor is complying with provisions of the loan agreement.
- The sponsor's performance will assure the technical integrity of the project.
- The sponsor is providing adequate construction supervision.

SCDES Responsibilities:

The SCDES staff indicated above, or other SCDES staff members acting on their behalf, are responsible for monitoring construction progress, and reviewing sponsor compliance with federal requirements. The applicable SCDES regional office or SCDES central office (surface water plants) will perform the final construction inspection.

The SCDES Project Manager will be responsible for reviewing and issuing approvals for project revisions, change orders, disbursements, and other related project activities in coordination with representatives of RIA.

The SRF Financial Officer and the SRF Project Manager will be responsible for reviewing and certifying draw requests for disbursement to the SCDES finance office and RIA for disbursement processing. More thorough reviews are performed on the first and last draw requests. The SRF project manager will be responsible for these reviews and any adjustments that may be required during the course of the project.

Authority and Responsibilities of the Rural Infrastructure Association

RIA Authority:

RIA has the authority to ensure compliance with all provisions of the loan agreement and associated loan documents. Questions relative to the loan agreement should be addressed to RIA.

RIA Responsibilities:

RIA is responsible for:

- Assuring fiscal integrity of the loan and assuring that the sponsor is carrying out required responsibilities specified in the loan agreement.
- Administrative functions related to the loan agreement and associated documents, loan disbursements, and loan amendments.

Environmental Requirements During Construction

The sponsor and contractor(s) are advised that it is necessary to comply with all environmental protection and pollution control programs established by SCDES and/or local ordinances.

Attention should be paid to the following items (as applicable) throughout the construction process:

- The SC Department of Archives and History should be notified if archaeological remains are discovered during construction.
- Protection of existing trees, shrubs, and grass.
- Dust control on haul roads, excavation work, and borrow areas.
- Siltation, soil erosion, and other non-point source pollution must be minimized during construction.
- Use of chemicals should be in accordance with applicable EPA, OSHA, or other standards.
- The contractor(s) and subcontractor(s) should be aware that the sponsor retains complete responsibility for meeting any applicable NPDES/ND permit limits or drinking water standards.
- Disposal of all residual sludge and/or solids from a treatment facility must be in accordance with a SCDES-issued permit or approval letter.
- Wastewater only: Bypassing of a wastewater treatment facility is not permitted.

Construction Requirements

- Continuous Inspection: In accordance with the Loan Agreement, Article 8 (Item 7 in an All Principal Forgiveness LAA), the sponsor has agreed to provide competent and adequate engineering supervision and continuous construction inspection.
- Monthly Construction Inspection Report: After the issuance of the Notice to Proceed by the sponsor, a Monthly Construction Inspection Report must be prepared and submitted to the SCDES SRF project manager. The individual that is directly responsible for construction inspection should complete the *Monthly Construction Inspection Report — for Projects with BABA Requirements* (DES 4366). Submit the form(s) with the disbursement request. A separate form for each month during construction is required.
- Approved Plans Onsite: The contractor's and sponsor's inspectors must maintain a complete set of approved plans and specifications on the job site at all times during construction.
- Maintain Water/Wastewater Treatment: During construction, water/wastewater treatment must be provided and shall not be less than before construction.

Comply with Davis Bacon: The sponsor and contractor are responsible for Davis-Bacon compliance, including: proper signage, weekly collection of certified payrolls, and monitoring of payrolls for classifications, pay rates and overtime compensation. Payroll records must be retained (by sponsor, prime, and any subcontractors) for a period of three years from the completion of the contract. The sponsor will certify compliance with Davis-Bacon requirements for each period covered by a draw request using the *Project Sponsor's Davis-Bacon Certification* (DES 2557).

Comply with Build America, Buy America (BABA): BABA requirements must be complied with during construction. The *Project Sponsor's 'Build America, Buy America' Certification* (DES 4359) will be used to certify compliance with BABA and must accompany each draw request. For items that are difficult to certify as BABA compliant, a de minimis log must be kept for products used in and incorporated into a project that cumulatively comprise no more than five percent of the total project cost. This waiver is not additive with the existing American Iron and Steel national de minimis waiver. BABA waivers can be found at: epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers.

Signage: Projects funded through a Base capitalization grant with equivalency requirements and all construction projects funded through a Bipartisan Infrastructure Law capitalization grant require signage for the project. Details on the complying with the signage requirement can be found in the appropriate signage guide at des.sc.gov/SRFguidance.

ANY EXCEPTION TO THESE REQUIREMENTS MUST BE APPROVED BY SCDES. The reasonable cost of complying with these requirements is eligible for loan participation.

Substantial Project Changes and Loan Amendments

Prior written approval by SCDES is required for project changes which may substantially alter the:

Design or scope of the project
Type of treatment
Location, size, capacity, or quality of any major item of equipment

The sponsor must promptly notify RIA and the SCDES Project Manager of events or proposed changes which require a **loan amendment**. If the sponsor intends to request loan participation in any proposed change order which affects the scope of work or budget by major category as identified in the executed Loan Agreement (Appendix A), the sponsor must obtain prior written approval of the change(s) by RIA. Prior written approval by RIA will also be necessary if the change affects or alters the Loan Agreement.

Change Orders

A change in the project work that is consistent with the objective of the project and within the scope of the loan agreement requires the execution and SCDES approval of a change order. SCDES will determine the reasonableness of cost for all change orders; however; in no instance will change orders be approved for loan participation in an amount in excess of the funds available in the loan agreement

The sponsor should notify SCDES of proposed changes to the contract or to the project in advance, except for minor or in emergency situations.

Time extensions for the contract shall be made using a change order. Contract time extensions do not affect the schedules established in the Loan Agreement.

A disbursement will not be made for work performed under a change order until it has been approved by SCDES. Change order approvals do not affect the loan amounts established in the Loan Agreement.

The change order format shall comply with the form included in the approved contract specifications.

One electronic copy of the change order must be submitted to the SCDES Project Manager. The following information should be provided with all change orders:

- Need for the change
- Clear description of the change
- Cost and pricing data
- Memo of negotiations
- For claims, information showing the claim did not result from mismanagement

Disbursement

The State Revolving Fund disbursements are reimbursements for expenditures by the sponsor. The SRF “Disbursement Package” provides detailed procedures for submission of draw (reimbursement) requests.

Before the first draw request will be processed:

The sponsor must designate a “Sponsor Representative” who will be responsible for submitting draw (disbursement) requests, making payments on the loan and representing the sponsor in other matters pertaining to administration of the loan agreement. This individual must be an official or employee of the sponsor.

The sponsor must designate two individuals authorized to *sign* draw requests. These two individuals should be the designated Sponsor Representative and the project engineer. The *SRF Official Designation and Signature Form* (DES 3586), identifying these individuals, must be on file 30 days prior to the first draw request. Two original forms must be executed. Submit one original to SCDES and the other original to RIA.

A copy of the Notice to Proceed and one copy of the bound executed contract documents must be submitted to and approved by SCDES.

Final Payment to Sponsor

Prior to releasing the final draw request for processing by SCDES Finance and RIA, a final review of Davis Bacon and “Build America, Buy America” compliance must be carried out by a SCDES representative and the following must be received by the SRF Project Manager:

- Final close-out change order(s), if needed
- Final Approval to Place into Operation (APO) or Letter of Approval, when required
- Consulting Engineer’s Certification that the project was constructed in accordance with approved plans and specifications.
- Sponsor’s acceptance of the project
- As-Built/Record drawings (PDFs preferred)
- Final *MBE/WBE Utilization Under Federal Grants and Cooperative Agreements* (EPA Form 5700-52A), if there are DBE requirements for the project
- CW Projects only – *Fiscal Sustainability Plan Certification* (DES 3586) for a developed and implemented Fiscal Sustainability Plan

SCDES and RIA reserve the right to refuse final payment if there is a delay in submitting the final draw request to SCDES of longer than 180 days after the final APO was issued.

SRF Draw Request Checklist

SRF requirements are subject to change. When in doubt about a requested/required item, contact the SCDES Project Manager or Financial Manager handling the project. All forms are available electronically on the SRF Document and Forms web page, des.sc.gov/SRFforms.

To Be Submitted before the First Draw Request:

	Sponsor Compliance Forms - To include: Sponsor's Debarment Certification Form (3590); URLAP Form (3594) - if required
	All required Bid Package Items (see SRF Bidding Guidance)
	Project Inspection Designation Form (2324)
	Official Designation and Signature Form (3586) - 1 to SCDES, 1 to RIA
	Executed Contract, including Notice to Proceed

To Be Submitted with the First Draw Request:

	Any remaining items from above, <i>"To Be Submitted before the First Draw Request"</i>
	If debt service reserve fund required, submit current balance to RIA
	ALL eligible engineering planning & design costs, land costs, and/or legal costs
	Land Acquisition Form, if applicable (Clean Water - 2553 or Drinking Water - 2554)
	Documentation that BIL or Base Equivalency Signage Requirement has been met - if applicable
	ALL items listed below under the title <i>"Required with Interim Draw Requests"</i>

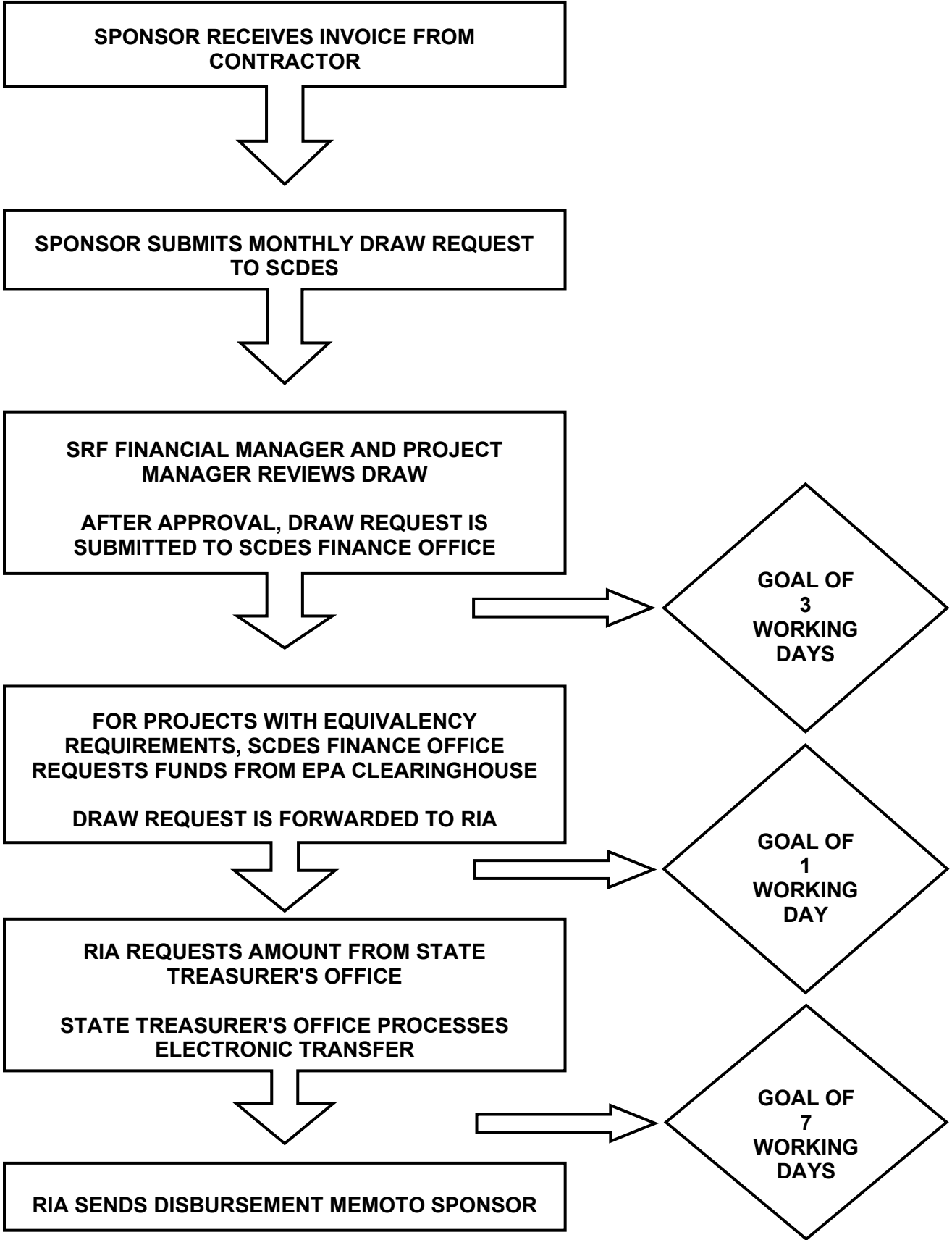
Required with Interim Draw Requests:

	Draw Request Form (Loan - 3585 or Principal Forgiveness - 2560)
	Supporting Documentation - invoices, contractor's pay application(s), etc.
	Monthly Construction Inspection Report — for Projects with BABA Requirements (4366) - one for each month covered by the draw request
	Project Sponsor's Davis Bacon Certification (2557) - one for the entire draw request period
	Project Sponsor's BABA Certification (4359) - One for the entire draw request period

Required with the Final Draw Request:

	All items listed under the title <i>"Required with Interim Draw Requests"</i>
	Any remaining/final change order(s) - must be approved before draw can be processed
	Copy of the Final Approval(s) To Place into Operation (APO) - final draw request must be within 180 days of APO
	Copy of the Engineer's Certification of Completion
	Copy of Sponsor's Acceptance of Project
	A complete set of as-built/record drawings (PDF copy preferred)
	MBE/WBE Utilization Under Federal Grants and Cooperative Agreements (EPA 5700-52A), if required
	<i>Clean Water projects</i> : FSP Certification (3236) - if not previously submitted

TIMELINE GOALS FOR SRF DRAW REQUEST DISBURSEMENTS



Forms

All forms referenced in this document are available electronically on the SRF Document and Forms web page, des.sc.gov/SRFforms. To access the main SRF web page use des.sc.gov/SRF.

Build America, Buy America (BABA) Requirements

Projects with equivalency requirements must comply with section 70914 of the Build America, Buy America Act including by the incorporation of a Buy America preference in the terms and conditions of each award with an infrastructure project. The Act requires the following Buy America preference:

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

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

The BABA Act finds that “construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material.

- (1) The listed items are:
 - a) Non-ferrous metals;
 - b) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - c) Glass (including optic glass);
 - d) Fiber optic cable (including drop cable);
 - e) Optical fiber;
 - f) Lumber;
 - g) Engineered wood; and
 - h) Drywall.

- (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

For questions regarding the Buy America, Build America (BABA) Act, email BABA-OW@epa.gov. See EPA’s website on BABA at epa.gov/cwsrf/build-america-buy-america-baba.

BABA Component Requirements

In order to ensure compliance with BABA requirements, specific BABA contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the BABA requirements and assistance recipients can verify that products comply with the BABA requirements. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail, which documents the location of the manufacturing process involved with materials covered under BABA. A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer’s responsible party. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the articles, materials, or supplies to the worksite, vendor, or contractor, may provide a certification asserting that all items were manufactured or produced in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

BABA Iron or Steel covered products as presented in EPA guidance (11-2-2022)*:

Products likely made “primarily” of iron and steel to be classified as <u>Iron and Steel</u> under BABA		
Lined and Unlined Pipe	Lined and Unlined Fittings	Tanks
Flanges	Pipe Clamps and Restraints	Structural Steel
Valves	Hydrants	Pre-Cast, Iron/Steel Reinforced Concrete (of all types, regardless of

		iron/steel content percentage)
Manhole Covers and other Municipal Castings	Access Hatches	Ballast Screens
Iron or Steel Benches	Bollards	Cast Bases
Cast Iron Hinged Hatches	Cast Iron Riser Rings	Catch Basin Inlets
Cleanout/Monument Boxes	Construction Covers and Frames	Curb and Corner Guards
Curb Boxes	Curb Openings	Curb Stops
Detectable Warning Plates	Downspout Shoes	Drainage Grates
Drainage Grate Frames and Curb Inlets	Inlets	Junction Boxes
Lampposts	Manhole Rings and Frames	Manhole Risers
Meter Boxes	Service Boxes	Steel Hinged Hatches
Steel Riser Rings	Trash Receptacles	Tree Grates
Tree Guards	Trench Grates	Valve Boxes
Valve Box Covers and Risers	Access Ramps	Aeration Pipes and Fittings (separate from aeration/blowers)
Angles	Backflow Preventers/Double Check Valves	Baffle Curtains
Iron or Steel Bar	Bathroom Stalls	Beam Clamps
Cable Hanging Systems	Clarifier Tanks	Coiled Steel
Column Piping	Concrete Reinforcing Bar, Wire, and Fibers	Condensate Sediment Traps
Corrugated Pipe	Couplings	Decking
Digester Covers	Dome Structures	Door Hardware
Doors	Ductwork	Expansion Joints
Expansion Tanks (diaphragm, surge, and hydropneumatics)	Fasteners	Fencing and Fence Tubing
Fire Escapes	Flanged Pipe	Flap Gates
Framing	Gate Valves	Generic Hanging Brackets
Grating	Ground Testing Boxes	Ground Test Wells
Guardrails	HVAC Registers, Diffusers, and Grilles	Joists
Knife Gates	Ladders	Lifting Hooks, J-bar, Connectors within, and Anchors for Concrete
Lockers	Man Baskets and Material Platforms	Manhole Steps

Mud Valves	Municipal Casting Junctions	Non-mechanical (aka stationary) Louvers and Dampers
Overhead Rolling Doors/ Uplifting Doors (manual open, no motor)	Pipe Connectors	Pipe Hangers
Pipe Pilings (any type of steel piling)	Pipe Spool (pipe, flanges, connectors, etc.)	Pipe Supports
Pitless Adaptors	Pre-fab Steel Buildings/Sheds (simple structure, unfurnished)	Pre-stressed Concrete Cylinder Pipe (PCCP)
Railings	Reduced Pressure Zone (RPZ) Valves	Roofing
Service Saddles	Sheet Piling	Sinks (not part of eyewash systems)
Solenoid Valves	Stairs	Static Mixers
Stationary Screens	Surface Drains	Tapping Sleeves
Telescoping Valves	Tipping Buckets	Trusses
Tubing	Valve Stem Extensions	Valve Stems (excluding handwheels and actuators)
Wall Panels	Wall Sleeves/Floor Sleeves	Welding Rods
Well Casing	Well Screens	Wire
Wire Cloth	Wire Rod	Wire Rope and Cables

For a listed product to be considered subject to the BABA requirements, it must be made of greater than 50% iron or steel, measured by cost.

BABA Construction Materials covered products as presented in OMB guidance (10-25-23)*

The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

- (1) **Non-Ferrous Metals** – All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- (2) **Plastic and Polymer-based products** – all manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- (3) **Glass** – all manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- (4) **Fiber Optic Cable (including drop cable)** – all manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic or polymer-based products, or any others.
- (5) **Optical Fiber** – all manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- (6) **Lumber** – all manufacturing processes, from the initial debarking through treatment and planing, occurred in the United States.
- (7) **Drywall** - all manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- (8) **Engineered Wood** – all manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

**See also, [Memorandum: Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#), October 25, 2023.*

EPA suggests that "step-certifications" be collected for all covered items - this is where the manufacturer at each step of the process indicates that their product is American-made.

For items that are difficult to certify as BABA compliant, a de minimis log must be kept for products used in and incorporated into a project that cumulatively comprise no more than five percent of the total project cost. This waiver is not additive with the existing American Iron and Steel national de minimis waiver. BABA waivers can be found at: epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers.

BABA Manufactured Products as presented in EPA guidance (11-2-2022)*

- (1) Articles, materials, or supplies that have been:
 - a. Processed into a specific form and shape; or
 - b. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- (2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

Products likely made "primarily" of iron and steel to be classified as <u>Manufactured Products</u> under BABA		
Actuator Superstructures/ Support Structures	Aeration Nozzles and Injectors	Aerators
Analytical Instrumentation	Analyzers (e.g., ozone, oxygen)	Automated Water Fill Stations
Blowers/Aeration Equipment	Boilers, Boiler Systems	Chemical Feed Systems (e.g., polymer, coagulant, treatment chemicals)
Chemical Injection Quills	Chemical Injectors	Clarifier Mechanisms/Arms
Compressors	Controls and Switches	Conveyors
Cranes	Desiccant Air Dryer Tanks	Dewatering Equipment
Dewatering Roll-offs	Disinfection Systems	Drives (e.g., variable frequency drives)
Electric/Pneumatic/Manual Accessories Used to Operate Valves (such as electric valve actuators)	Electrical Cabinetry and Housings (such as electrical boxes/enclosures)	Electrical Conduit
Electrical Junction Boxes	Electronic Door Locks	Elevator Systems (hydraulic, etc.,)
Emergency Life Systems (including eyewash stations, emergency safety showers, fire extinguishers, fire suppression systems including sprinklers/piping/valves, first aid, etc.)	Exhaust Fans	Fall Protection Anchor Points
Fiberglass Tank w/Appurtenances	Filters (and appurtenances, including underdrains, backwash systems)	Flocculators

Fluidized Bed Incinerators	Galvanized Anodes/Cathodic Protection	Gear Reducers
Generators	Geothermal Systems	Grinders
Heat Exchangers	HVAC (excluding ductwork)	HVAC Dampers (if appurtenances to aerators/blowers)
HVAC Louvers (mechanical)	Intake and Exhaust Grates (if appurtenances to aerators/blowers)	Instrumentation
Laboratory Equipment	Ladder Fall Prevention Systems	Ladder Safety Posts
Lighting Fixtures	Lightning and Grounding Rods	Mechanical or Actuated Louvers/Dampers
Membrane Bioreactor Systems	Membrane Filtration Systems	Metal Office Furniture (fixed)
Meters (including flow, wholesale, water, and service connection)	Motorized Doors (unit)	Motorized Mixers
Motorized Screens (such as traveling screens)	Motors	Pelton Wheels
Pipeline Flash Reactors (similar to injectors)	Plate Settlers	Precast Concrete without Iron/Steel Reinforcement
Furnished Pre-fab Buildings (such as furnished with pumps, mechanics inside)	Presses (including belt presses)	Pressure Gauges
Pump Cans/Barrels and Strainers	Pumps	Mechanical Rakes
Safety Climb Cable	Sampling Stations (unless also act as hydrant)	Scrubbers
Sensors	Sequencing Batch Reactors (SBR)	Steel Shelving (fixed)
Slide and Sluice Gates	Spray Header Units	Steel Cabinets (fixed interior/furniture)
Supervisory Control and Data Acquisition (SCADA) Systems	Tracer Wire	Valve Manual Gears, Actuators, Handles
Voltage Transformer	Water Electrostatic Precipitators (WESP)	Water Heaters
Weir Gates		

*See also, [EPA Office of Water Build America, Buy America Act Implementation Procedures](#), November 3, 2022.

For a listed manufactured product to be compliant with the BABA requirements, it must be manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this

standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. The cost should be based on the material costs.

EPA suggests that "step-certifications" be collected for all covered items - this is where the manufacturer at each step of the process indicates that their iron and/or steel is American-made.

For items that are difficult to certify as BABA compliant, a de minimis log must be kept for products used in and incorporated into a project that cumulatively comprise no more than five percent of the total project cost. This waiver is not additive with the existing American Iron and Steel national de minimis waiver. BABA waivers can be found at: epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers.



Build America, Buy America

Manufacturer's Certification Letter

Requirements

- On manufacturer's letterhead
- Reference the specific SRF project and sponsor/owner
- Reference the specific product delivered to the project site
- State the location of the manufacturing facility (city and state)
- Reference "Build America, Buy America" as mandated by the EPA
- Include the signature of a company representative

SC Iron & Steel, Inc.

Letterhead

2700 Bull Street
Columbia, SC 29100
(803) 777-8888

MATERIAL CERTIFICATION

April 5, 2023

Job Name: Anytown WWTP, Pleasantville, SC – 2022 State Revolving Fund Project
SRF Project Number 555-01

Specific SRF project name and number

I certify that the processes for manufacturing or fabricating the following products and/or materials provided for the project noted above took place at the following US locations:

Specific items for project, process, and facility location

Quantity	Description and Identifier	Manufacturing Process	Location of Manufacturing Facility
30	Reinforced concrete manhole XYZ1234-56	Melted, rolled, fabricated	Columbia, SC
30	Manhole Cover ABC123456	Melted, cast, finished	Charleston, SC
1000 linear feet	4" Ductile Iron Water Pipe 12345AB	Melted, rolled, finished	Greenville, SC

Reference to BABA

I further certify that the products and/or materials are in full compliance with the Build America, Buy America requirements as mandated in the Environmental Protection Agency's State Revolving Fund Programs. If any of the compliance statements change while providing material to this project, we will immediately notify the supplier, prime contractor, consulting engineer, or project owner.

Jane Smith
Product Quality Manager

Signature of representative

Davis-Bacon and Related Acts for SRF Projects

- Davis-Bacon and Related Acts (DBRA or often just DB) must be complied with by federally-assisted construction projects and can be confusing to contractors and compliance monitors alike.
- Any recurrent issues that result in underpayment of workers that cannot be resolved could lead to debarment from working on federal or federally-assisted contracts for three years, so it is best to stay on top of DB requirements.
- What DB requires:
 - Laborers and mechanics (workers) **are properly classified** for the work they do
 - Covered workers **are paid weekly at the required wage + any required fringe for all hours worked upon the “site of work”**
 - Employees **do not have any unauthorized deductions**
 - Certified Payrolls **are submitted weekly**, and
 - Employees **must receive overtime compensation** for working any hours over 40 hours. (Contract Work Hours and Safety Standards Act –CWHSSA)
- DB requirements **apply to all** contractors/subcontractors where the prime contract is valued greater than \$2,000. DB contract terms must appear in all subcontracts – at any tier.
- The Prime Contractor is responsible for the compliance of payrolls for themselves and ALL subcontractors. It is in the prime’s best interest to understand DB compliance principles and relay those to the subcontractors.
- The Sponsor is responsible for making the correct determination(s) for the project and including the determination(s) in the contract. (No change prior to 10 days before bid opening, contracts signed within 90 days)
- The Sponsor has to monitor DB compliance and certify DB compliance to SCDES with each draw request. DB contract provisions allow a Sponsor to withhold funds to cover suspected underpayments. When the underpayment involves a subcontractor, the prime is responsible to see that proper wages are paid. The prime may withhold funds from a subcontractor that won’t pay required wages to workers to cover suspected underpayments.
 - If requested, provide name and contact information for the individual(s) handling payrolls and interviews for the Sponsor.
- Any position that does not fit into a classification listed on the published wage determination MUST BE CONFORMED:
 - This requires a form (SF-1444) be submitted to DOL through SCDES. The position being requested must not already be able to be performed by a classification listed on the determination and must be a position used in the local area for construction. Also, the proposed wage must bear a reasonable relationship to existing wage rates and typically, must not be less than the lowest rate for any worker in the given labor group (e.g. laborers, operators, skilled craftsmen) (A helper will not be conformed unless duties are substantially unique from the main position.)
 - Wages must be paid at the rate requested, but if the approved rate comes back higher, the difference must be paid to any affected workers **RETROACTIVELY**.

- The hourly compensation for a given class of worker must equal or exceed the indicated rate plus any fringe amount as shown on the correct wage determination. The fringe benefit portion of the wage compensation may be met by paying cash in lieu of fringe. If fringes are paid to approved plans, or indicated in writing, the hourly equivalent value when added to the wage paid in cash, must be enough to satisfy the required hourly compensation (base rate + fringe).
- When more than one wage determination applies to a contract, it must be spelled out in the contract when each applies. A "Summary Wage Sheet" may be used to spell out which wages apply to the various positions and in which circumstances.
- If an employee performs work in more than one classification, they must be paid at the highest applicable rate, or time must be tracked and wages due calculated separately for each position worked.
- Any salaried employees or piecework employees must receive enough compensation that they receive the wages due based on the published minimum wage rate (to include wages due for any overtime worked).
- Supervisory or office personnel do not need to be listed on a certified payroll. However, a working supervisor who spends more than 20% of their time working at one or more listed classification must be paid hourly at least equal to the minimum rate for the work being performed).
- If there are bona fide apprentices or trainees, they may be paid at a lower rate, but there must be documentation of their registration in a certified training program, and adherence to the proper apprentice to journeyman ratio must be kept.
- The WH-347 is an *optional* form for "reporting" a certified payroll. Any payroll report that supplies the same information is acceptable as long as the compliance statement from the WH-347 is part of the payroll report. The compliance statement is intended to be signed by an officer/owner of the company unless another entity has been authorized in writing to sign.
- Payrolls need to be numbered sequentially from start of work under a contract/subcontract including any "no work" weeks. A long period of no work may be indicated in writing from the contractor, with numbering to resume upon resuming work.
- Wage determinations, conformance replies and the poster, "Employee Rights under Davis Bacon", WH-1321 must be displayed at the site of work from construction start to completion.
- Employee Interviews using SF-1445 are a great compliance tool and are suggested to take place at least once during project construction or when a compliance problem is uncovered. (Employees need to know their work classification and pay rate.)
- Certified payrolls are to be kept by the Sponsor, contractor and subcontractors for three years after contract completion.
- Required DB Postings (mentioned above)
 - SF 1321 "Employee Rights Under Davis Bacon" in English and Spanish as needed
 - Wage decision(s) from contract or Project Wage sheet
 - Any conformance replies
 - Location of required posting: All required posting shall be placed in a location where all covered employees will see the posting during the normal course of their duties.

See the Department of Labor's Frequently Asked Questions: Protections for Workers in Construction under the Bipartisan Infrastructure Law at dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction/frequently-asked-questions.

Questions on Davis-Bacon and Related Acts: Contact Sedona Edgar, Sedona.Edgar@des.sc.gov, 803-898-4305 or Gracie Leatherman, Gracie.Leaherman@des.sc.gov, 803-898-4151.

