

Guide to Federal Requirements – General



S.C. Department of Environmental Services

Federal capitalization grants established and continue to seed the State Revolving Fund (SRF) program; therefore, any money provided to Project Sponsors through the SRF is subject to federal requirements. The EPA, as the funding agency for the SRF capitalization grants can also impose requirements on SRF loan recipients. Some requirements apply to all SRF projects with an additional few that apply to projects with equivalency requirements as well as some that apply to Clean Water Projects.

This guide discusses the general requirements of the federal authorities that apply to all SRF projects and explains the actions required of the Project Sponsor in order to obtain funding from the SRF. Forms referred to in the text below are listed in Attachment A and may be found on the SRF forms page, des.sc.gov/SRFforms.

Requirements that apply to all SRF projects include:

- ❖ Civil Rights/Non-Discrimination
- ❖ Parties Excluded from Federal Procurement and Nonprocurement Programs
- ❖ Procurement Prohibitions
- ❖ Environmental Review
- ❖ Utility Sustainability Assessment
- ❖ “American Iron and Steel” Provisions
- ❖ Davis-Bacon and Related Acts

In addition to the above, **Clean Water projects** must also comply with the following:

- ❖ Cost and Effectiveness Analysis
- ❖ Fiscal Sustainability Plan

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CIVIL RIGHTS/NONDISCRIMINATION IN THE SRF PROGRAM

- ❖ Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- ❖ Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (Clean Water Act)
- ❖ Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- ❖ The Age Discrimination Act of 1975, Pub. L. 94-135

The SRF program is bound by the civil rights laws above, which prohibit discrimination in providing services or benefits on the basis of race, color, national origin, sex, handicap or age.

Title VI, the Rehabilitation Act, and the Age Discrimination Act were amended in 1988 to clarify that their anti-discrimination powers are intended to apply to the entire operations of a project sponsor, not just the specific program, project, or activity that involves federal assistance. Recipients of federal financial assistance from the US EPA must comply with the above laws.

Direct EPA grantees, such as S.C. Department of Environmental Services' (SCDES) SRF Program, are required to complete and submit to EPA Form 4700-4, *Preaward Compliance Review Report for all Applicants and Recipients Requesting Federal Financial Assistance*. SRF assistance recipients do not have to submit EPA form 4700-4 to EPA or SCDES, but instead are asked to review the form to self-assess how well the entity addresses nondiscrimination in its programs. An SRF Project Sponsor needs to be compliant with nondiscrimination practices. Keeping a copy of the form with any relevant documentation in the project's documentation file would be a best practice.

PARTIES EXCLUDED FROM FEDERAL PROCUREMENT AND NONPROCUREMENT PROGRAMS

- ❖ Debarment and Suspension, Executive Order 12549
- ❖ Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,

Under the federal authorities listed above, funds provided by the federally-assisted SRF loan program may not go to individuals or entities that are prohibited from doing business with the federal government. Debarment status can be checked on the System for Award Management (SAM) Website, sam.gov.

Sponsors, prime contractors, **and** subcontractors whose contract amount is expected to equal or exceed \$25,000 must submit a *Certification Regarding Debarment, Suspension, and Other Responsibility Matters* (DES 3590) certifying that they are not presently debarred,

suspended, proposed for debarment, declared ineligible or voluntarily excluded from participating in a contract using federal funds.

ENVIRONMENTAL REVIEW

- ❖ Federal Water Pollution Control Act (FWPCA), Pub. L. 80-845 as amended by Water Resources Reform and Development Act (WRRDA), Pub. L. 113-121
- ❖ 40 CFR § 35.3140 and § 35.3580

The Federal Water Pollution Control Act, as amended by WRRDA, 40 CFR § 35.3140, and 40 CFR § 35.3580 requires all CWSRF treatment work projects and all DWSRF projects to undergo an environmental review. The project sponsor will submit an environmental evaluation as part of the Preliminary Engineering Report (PER). The evaluation must include sufficient information to enable SCDES to complete an environmental review to determine if the project will significantly impact the environment.

In general, the project sponsor should avoid alternatives which significantly affect, directly or indirectly, sensitive areas such as:

- ▶ Endangered species
- ▶ Flood plains
- ▶ Historical/archaeological sites
- ▶ Important farmlands
- ▶ National natural landmarks
- ▶ Special coastal resources
- ▶ Wetlands
- ▶ Wild and scenic rivers

UTILITY SUSTAINABILITY ASSESSMENT

- ❖ Safe Drinking Water Act, as amended, Section 1420(a) and 1452(a)

The Technical, Managerial, and Financial (TMF) capacity of a utility must be deemed sustainable prior to a permit being issued by SCDES's SRF Division for one or more prospective SRF-funded Clean Water and Drinking Water projects. A system that cannot meet the sustainability criteria and may not proceed to closing an SRF loan unless 1) the system chooses to improve its score by making improvements and submitting a revised assessment or 2) the proposed SRF project will make the system sustainable. The Project Sponsor submits information for the assessment on, *Utility Sustainability Assessment* (DES 0574).

“AMERICAN IRON AND STEEL” PROVISIONS

- ❖ Clean Water Act, Section 608
- ❖ Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), Pub. L. 117-58

The American Iron and Steel (AIS) provision requires Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States. This requirement applies to projects for the construction, alteration, maintenance, or repair of a public water system or treatment works. Project Sponsors are required to follow “American Iron and Steel”

provisions and certify that all iron and steel products used in the project are produced in the United States, unless an AIS waiver is approved by the U. S. Environmental Protection Agency.

“Iron and steel” products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete and construction materials. Additional information may be found in Guidance posted to the EPA Website, www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement.

Project Sponsors must require the prime contractor to follow the American Iron and Steel provisions and certify compliance using, *Bidder’s American Iron and Steel Certification* (DES 2556), which must be submitted as part of the bid package.

To certify a Sponsor’s compliance with American Iron and Steel during construction, the *Project Sponsor’s American Iron and Steel Compliance Form* (DES 0962), must accompany all draw requests.

DAVIS-BACON AND RELATED ACTS

- ❖ Davis-Bacon Act, Pub. L. 107-217, and Related Acts – the many laws that authorize federal assistance for construction that include provisions requiring Davis-Bacon labor standards apply to most federally-assisted construction
- ❖ Clean Water Act, Section 513
- ❖ Safe Drinking Water Act, Section 1450(e)

Wage Rate Requirements - All contracts and subcontracts for construction carried out in whole or in part with assistance made available by SC SRF shall insert in full in any contract in excess of \$2,000 the required contract clauses, which can be found in *Appendix A – Mandatory Supplemental Conditions for the South Carolina State Revolving Program*.

Project Sponsors **must require the prime contractor(s)** to: follow the Davis-Bacon provisions; include a copy of the “wage rate requirements” and the proper Davis-Bacon wage determination(s) in all subcontracts over \$2,000; and maintain and provide all required documentation. To certify a Sponsor’s compliance with Davis-Bacon and Related Acts, the *Project Sponsor’s Davis-Bacon Certification* (DES 2557) must accompany all draw requests.

COST AND EFFECTIVENESS

Clean Water Only

- ❖ Clean Water Act, Section 602(b)(13)

All Clean Water SRF loan recipients must certify that they have conducted a “cost and effectiveness analysis” of the project being funded. The cost of such analysis is an eligible

SRF project cost. The cost and effective analysis should be part of the Preliminary Engineering Report.

At a minimum, the cost and effectiveness analysis must involve:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—
 - the cost of constructing the project or activity;
 - the cost of operating and maintaining the project or activity over the life of the project or activity; and
 - the cost of replacing the project or activity.

See *Guide to CWSRF Cost and Effectiveness Analysis* posted at des.sc.gov/SRFguidance and consult with your SCDES's SRF Project Manager to learn what to include in the PER document regarding cost and effectiveness. The Sponsor will complete the *Cost and Effectiveness Certification* (DES 3152).

FISCAL SUSTAINABILITY PLAN

Clean Water Only

- ❖ Clean Water Act as amended 2014, Section 603(d)(1)(E)

For Clean Water SRF projects that involve the repair, replacement, or expansion of a treatment works, the loan recipient must develop and implement, for that part of the treatment works at minimum, a fiscal sustainability plan (FSP) or certify that one has been developed and implemented. Development of an FSP is a CWSRF eligible expense.

FSPs must include, at a minimum:

- an inventory of critical assets that are part of the treatment works;
- an evaluation of the condition and performance of inventoried assets or asset groupings;
- a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

Project Sponsors must certify on DES 3236, *Fiscal Sustainability Plan Certification*, that there is an FSP meeting the above requirements or the FSP requirement is not applicable. DES 3236 must be received before SCDES approves the final disbursement of funds to the Project Sponsor. SCDES will not collect the FSP but may review the FSP during an on-site project evaluation.

The term “treatment works” [per 2014 amendment to Federal Water Pollution Control Act (FWPCA) section 212(2)(A)] means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this Act [FWPCA], or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

Consult with your SCDES’s SRF Project Manager to request guidance on the FSP process and learn of any upcoming Asset Management/FSP trainings.



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ATTACHMENT A – LIST OF FORMS

FORMS Available at des.sc.gov/SRFforms

Form	Form Name
DES 0574	Utility Sustainability Assessment
DES 0962	Project Sponsor’s American Iron and Steel Certification
DES 2556	Bidder’s American Iron and Steel Certification
DES 2557	Project Sponsor’s Davis-Bacon Certification
DES 3236	Fiscal Sustainability Plan Certification
EPA 4700-4	Preaward Compliance Review Report for all Applicants and Recipients Requesting Federal Financial Assistance