

Guidance for preparing
Plans and Specifications
for
State Revolving Fund Projects

The State Revolving Fund (SRF) program is a state program that is receiving Federal assistance only during the "start-up" phase. Federal procurement regulations do not apply to SRF projects; however, State Revolving Fund projects will have to meet the following Federal requirements:

1. Presidential Executive Orders 11625, 12138, and 12432, Women's and Minority Business Enterprise.
2. Presidential Executive Order 12549, Debarment and Suspension.
3. Presidential Executive Order 11246, Equal Employment Opportunity.

Items 1 and 2 above will apply to all projects receiving loan assistance from funds provided by the Environmental Protection Agency in the capitalization grants awarded to the State. Once all funds provided in the capitalization grants have been used, these requirements will not longer apply. Item 3 above will apply to the SRF program permanently.

A requirement to comply with these Presidential Executive Orders has been included with the required clauses discussed below.

The following forms are necessary for conformance with the above requirements and should be included in the bid documents. Copies of these forms are enclosed for your use.

RF-211	Prospective Prime Contractor's (Bidder) Statement About Equal Opportunity Clause
RF-212	Prospective Prime Contractor's (Bidder) Certification of Nonsegregated Facilities
RF-245	Utilization of Women/minority Contractor Information Sheet
RF-248	Letter of Intent
RF-373	MBE/WBE Certification
5700-49	(EPA Form) Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The above forms must be completed and signed by the successful bidder except for form RF-373 which must be signed by the authorized representative of the loan recipient. It is a good idea to include these forms in the special/supplementary conditions with instructions clarifying that the successful bidder will be required to complete and sign all forms except RF-373.

It is a Federal requirement that all procurement made with Federal funds utilize six (6) affirmative action steps to utilize small business enterprises (SBE's), minority business enterprises (MBE's), women's business enterprises (WBE's), and small businesses in rural areas (SBRA's) in the areas of construction, services, equipment, and supplies. In order to advise prospective bidders of these requirements, the attached EXPLANATION OF AFFIRMATIVE ACTION STEPS must be included verbatim in the information/instruction for bidders section of the contract documents. The documentation requested from the successful bidder should be included with the bid document package submitted to DEQ.

It is a requirement of the SRF Loan Program that surety companies providing bonding to contractors be included in the most current version of the U.S. Treasury Department's listing of approved sureties, Circular 570. The latest version of this circular can be found on the Internet at www.fms.treas.gov/index.html under "Publications." Surety companies that are utilized also must be currently licensed to do business in the state of Louisiana. These requirements should be noted in the section of the contract documents that discusses bonding requirements.

There are a number of "cross cutting" Federal laws that apply to the SRF Program. The attached REQUIRED CLAUSES FOR CONTRACT DOCUMENTS must be included verbatim in the contract documents (special/supplementary conditions) to satisfy these laws.

Some portions of the project that do not meet Federal eligibility requirements may not be funded through the SRF. If any portions of the project are not eligible, these should be listed separately and identified as ineligible in the bid proposal.

The DEQ Project Engineer will review the plans and specifications to ensure the following:

1. That the SRF Program requirements discussed above have been met.
2. That adequate information is given to bid and construct the project.
3. That the design is in accordance with the approved Facility Plan.
4. That the facilities are properly designed according to accepted design criteria and will be capable of handling the expected hydraulic and organic loadings and (for treatment works) of meeting the expected effluent limits.

The design engineer must take into account the need for reliability in the operation of any treatment works that he or she designs. An important aspect of reliability is the need for multiple units and back up units for the major unit operations in a treatment work. Please refer to our *Guidance on Component Reliability Criteria for State Revolving Fund Loan Projects*.

In order to enable the DEQ Project Engineer to adequately review the design of treatment works and collection/transportation systems, it is requested that the consulting engineer submit a design summary with the plans and specifications. The design summary should contain the relevant data, design criteria, assumptions, methods, and sample calculations used to design the major components of treatment and/or collection/transportation facilities. Normally, a design summary is not required for a sewer rehabilitation project.

Federal procurement regulations for EPA funded projects (40 CFR Part 31) will not apply to SRF projects. Since the Federal procurement regulations do not apply, SRF projects must be bid and contracts awarded in accordance with any applicable State laws and regulations, and any parish or local ordinances. Plans and specifications for SRF projects will be reviewed to see that the State, instead of Federal, requirements have been used for the bidding and award process; however, our staff are not legal experts and approval of plans and specifications does not guarantee that the project is in compliance with all State and local requirements.

The Municipal Facilities Division does review bid documents and will issue a letter to the recipient authorizing a contract award, so bidding schedules should be planned to allow time for this activity. We do not plan to take an active role in the resolution of any bid protests, except insofar as any Federal requirements of the SRF program may be involved.

The SRF program does allow loans to include reimbursement for work already performed. It is allowable for the recipient to receive bids and to award construction contracts before the loan agreement is signed, however, no payments can be made until after the loan agreement is signed and there may be some limitations on making large payments immediately after the loan agreement is signed. Recipients may also proceed to construction prior to approval of facilities plans, plans and specifications, addenda, and bid documents; however; the recipient must accept the risk of loss of financial assistance for any elements of the project that are not approvable.

Reimbursements for construction contracts already bid cannot be made unless the provisions specified in this guidance were included in the contract documents that were bid.

While we strongly discourage recipients from taking any action based on documents that have not been approved, we recognize that some recipients may have compliance schedules that do not allow time for the normal review and approval process. We will attempt to assist these recipients as much as possible but we cannot guarantee that financial assistance will be available until all program requirements have been met.

REQUIRED CLAUSES FOR CONTRACT DOCUMENTS

I. EQUAL OPPORTUNITY CLAUSE: 40 CFR PART 8.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this equal opportunity clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract, or understanding, a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the equal opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

II. HISTORICAL PRESERVATION CLAUSE: 36 CFR PART 800.

The contractor agrees that, should evidence of historical or archeological sites be discovered during construction, all work in the area will cease immediately and the owner will be informed of the discovery. The owner will, in turn, promptly notify the Municipal Facilities Division of the Louisiana Department of Environmental Quality (DEQ).

After consulting with the appropriate State and Federal agencies, the DEQ will advise the owner of any protective measures that may be required.

III. ENDANGERED SPECIES CLAUSE: ENDANGERED SPECIES ACT OF 1973, AS AMENDED

The contractor agrees that, should plants or animals belonging to either endangered or threatened species be discovered in the area of construction or adjacent areas, all work in that area will cease immediately, and the owner will be informed of the discovery. The owner will, in turn, promptly notify the Municipal Division of the Louisiana Department of Environmental Quality (DEQ).

After consulting with the appropriate State and Federal agencies, the DEQ will advise the owner of any protective measures that may be required.

IV. PRESIDENTIAL EXECUTIVE ORDERS

The contractor is required to comply with the following Presidential Executive Orders:

- (1) 11625, 12138, and 12434 - Women's and Minority Business Enterprise;
- (2) 12549 - Debarment and Suspension
- (3) 11246 - Equal Employment Opportunity.

EXPLANATION OF AFFIRMATIVE ACTION STEPS

It is a Federal requirement that all procurement made with Federal funds utilize six (6) affirmative action steps to utilize small business enterprises (SBE's), minority business enterprises (MBE's), women's business enterprises (WBE's), and small businesses in rural areas (SBRA's) in the areas of construction, services, equipment, and supplies. These six steps are as follows:

1. Include MBE's, WBE's, SBE's, and SBRA's on solicitation lists;
2. Assure that MBE's, WBE's, SBE's, and SBRA's, once they are identified, are solicited whenever they are potential sources;
3. When economically feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE's, WBE's, SBE's, and SBRA's;
4. Where feasible, establish delivery schedules which encourage participation by MBE's, WBE's, SBE's, and SBRA's;
5. Using the services and assistance of the U.S Department of Commerce's Minority Business Development Agency (MBDA) and the Small Business Administration (SBA); and
6. Requiring the prime contractor to take the affirmative steps outlined here. If the successful bidder does not plan to award subcontracts, these steps should still be taken in procuring equipment and supplies.

Step number five (5) is not mandatory if other sources to identify MBE's, WBE's, SBE's, and SBRA's are utilized. However, the use of these resources is encouraged. There are several online databases that list qualifying firms, some of which may be identified as disadvantaged business enterprises (DBE) rather than MBE, WBE, SBE, or SBRA firms.

One of these databases is the PRO-Net database which can be accessed by typing www.sba.gov to reach the SBA WebPage. The PRO-Net database allows you to conduct a search for firms based on a number of criteria such as locality, SIC codes, bonding capability, etc. This database also allows you to locate firms that have been certified through the 8(a) program which certifies that the company has at least 2 years experience, has adequate financing and bonding to perform, and has references from previous jobs. If you do not have Internet access you can contact the New Orleans office of the SBA at (504) 589-2847

The MBDA also maintains a database which can be accessed by typing www.mbda.gov to reach their opportunity database. Information you submit to this database about the job you have for MBE/WBE participation will be compared with information in the Phoenix database of minority companies. When a match is made, the eligible minority companies will receive a copy of your opportunity by email and/or fax and you will receive (via email or fax) a list of the minority companies to which your opportunity has been referred. The phone number for the MBDA is (214) 767-8001.

The Louisiana Department of Transportation and Development (DOTD) also has an online list of DBE firms that have been certified by DOTD. Typing www.dotd.state.la.us/cgi-bin/construction.cgi will

take you to the site where you can select the most current list of DBE firms. The phone number for DOTD is (225) 379-1382.

The successful bidder must provide documentation to demonstrate that the affirmative action steps were pursued. In addition to the use of forms RF-245 and RF 248, documentation might include records of telephone calls, records of utilization of the MBDA and SBA Web sites, and relevant correspondence. Where MBE's, WBE's, SBE's, and/or SBRA's are contacted but not utilized, an explanation as to why each one contacted was not utilized should be provided.