# WASHINGTON STATE DEPARTMENT OF ECOLOGY
# CLEAN WATER STATE REVOLVING FUND
# EQUIVALENCY

## SPECIFICATIONS & CONSTRUCTION CONTRACT DOCUMENT INSERT

Revised 08/05/2026

This document shall be inserted in its entirety into construction contract documents issued for projects receiving financial assistance from the Washington State Department of Ecology (ECOLOGY) Water Pollution Control Revolving Fund Program, commonly referred to as the Clean Water State Revolving Fund (CWSRF). In the event of conflict within the contract, these clauses shall take precedence.

## Compliance with State and Local Laws

The Contractor shall assure compliance with all applicable federal, state, and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project.

## Third Party Beneficiary

All parties agree that the State of Washington shall be, and is hereby, named as an express third-party beneficiary of this contract, with full rights as such.

## Cost Basis of Contract

No contract may be written for "cost-plus-a-percentage-of-cost" or "percentage of construction cost." The cost basis for this contract must be cost-reimbursement, unit price, fixed-price, time and materials, or any combination of these four methods.

## Access to the Construction Site and Records

The Contractor shall provide for safe access to the construction site and to the contractor's records by ECOLOGY and Environmental Protection Agency (EPA) personnel.

The Contractor shall maintain accurate records and accounts to facilitate the Owner’s audit requirements and shall ensure that all subcontractors maintain auditable records.

These Project records shall be separate and distinct from the Contractor’s other records and accounts.

All such records shall be available to the Owner and to ECOLOGY and EPA personnel for examination. All records pertinent to this project shall be retained by the Contractor for a period of three (3) years after the final audit.

## Protection of the Environment

No construction related activity shall contribute to the degradation of the environment, allow material to enter surface or ground waters, or allow particulate emissions to the atmosphere, which exceed state or federal standards. Any actions that potentially allow a discharge to state waters must have prior approval of ECOLOGY.

## Funding Recognition

The contractor must inform the public about any ECOLOGY or EPA funding participation in this project through project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Site-specific project signs must be appropriately sized and weather resistant.

## Inadvertent Discovery of Archeological Resources

The Contractor shall obtain a copy of the Inadvertent Discovery Plan from the Owner. The Contractor shall keep the Inadvertent Discovery Plan on the work site at all times. The Contractor shall immediately stop all work if human remains, cultural, or archeological resources are discovered in the course of construction. The Contractor shall follow the Inadvertent Discovery Plan in dealing with the human remains, cultural, or archeological resources.

## Use of American Iron and Steel

All of the iron and steel products used in the project shall be produced in the United States including iron and steel products provided by the Contactor pursuant to this Agreement. “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.

The Contractor hereby represents and warrants to and for the benefit of the Owner and ECOLOGY that:

(a) the Contractor has reviewed and understands the American Iron and Steel Requirements,
(b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirements, unless a waiver of the requirements is approved, and
(c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirements, as may be requested by the Owner or ECOLOGY.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney’s fees) incurred by the Owner or State resulting from any such failure (including without limitation any impairment

or loss of funding, whether in whole or in part, from ECOLOGY or any damages owed to ECOLOGY by the Owner). While the Contractor has no direct contractual privity with ECOLOGY, as a lender to the Owner for the funding of its project, the Owner and the Contractor agree that ECOLOGY is a third-party beneficiary and neither this paragraph (nor any other provision of the Agreement necessary to give this paragraph force or effect shall be amended or waived without the prior written consent of ECOLOGY.

## Build America, Buy America Provisions

All of the iron, steel, manufactured products, and construction materials used in the project shall be produced in the United States including iron, steel, manufactured products, and construction materials provided by the Contactor pursuant to this Agreement.

The Contractor hereby represents and warrants to and for the benefit of the Owner and ECOLOGY

(a) the Contractor has reviewed and understands the Build America, Buy America Requirements,
(b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and
(c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or ECOLOGY

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or ECOLOGY to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or ECOLOGY resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from ECOLOGY or any damages owed to ECOLOGY by the Owner). While the Contractor has no direct contractual privity with ECOLOGY, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that ECOLOGY is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of ECOLOGY.

## Disadvantaged Business Enterprises

General Compliance (40 CFR Part 33).

The Contractor shall comply with the requirements of the EPA's Program for Participation By Disadvantaged Business Enterprises (DBE) 40 CFR Part 33.

Non-discrimination Provision (40CFR Appendix A to Part 33).
The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The 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 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.

The Contractor shall comply with all federal and state nondiscrimination laws, including, but not limited to Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

Good Faith Efforts (40 CFR Part 33 Subpart C).
The Contractor agrees to make the following good faith efforts whenever procuring subcontracts, equipment, services and supplies. The contractor shall retain records documenting compliance with the following six good faith efforts.

Contracts that are for the benefit of Native Americans, the Contractor must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts (40 CFR 33.304). If recruiting efforts are unsuccessful, the Contractor must follow the six good faith efforts.

1. Ensuring Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Governments, this will include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
2. Making information on forthcoming opportunities available to Disadvantaged Business Enterprises and arranging time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
3. Considering in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and local Governments, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
4. Encouraging contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
5. Using services and assistance of the Small Business Administration and the Minority

Business Development Agency of the Department of Commerce.

6. If the prime contractor awards subcontracts, requiring the subcontractors to take the six good faith efforts in paragraphs 1 through 5 above.

Contract Administration Provisions (40 CFR part 33.302).

The contractor shall comply with the contract administration provisions of 40 CFR, Part33.302.

1. The Contractor shall pay its subcontractor for satisfactory performance no more than 30 days from the contractor's receipt of payment.
2. The Contractor shall notify the Owner in writing prior to any termination of a DBE subcontractor.
3. If a DBE subcontractor fails to complete work under the subcontract for any reason, the contractor shall employ the six good faith efforts when soliciting a replacement subcontractor.
4. The Contractor shall employ the six good faith efforts even if the Contractor has achieved its fair share objectives.

## Certification Regarding Suspension, Debarment, Ineligibility or Voluntary Exclusion

1. The Contractor, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the Contractor is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The Contractor shall provide immediate written notice to the Owner and ECOLOGY if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the EPA or ECOLOGY for assistance in obtaining a copy of those regulations.
4. The Contractor agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The Contractor further agrees by signing this agreement, that it will include this clause titled “Certification Regarding Suspension, Debarment, Ineligibility or Voluntary Exclusion” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

7. The Contractor acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. The Contractor agrees to keep proof in its agreement file, that it, and all lower tier subcontractors, are not suspended or debarred, and will make this proof available to the EPA and ECOLOGY upon request. The Contractor must run a search in https://sam.gov/ and print a copy of completed searches to document proof of compliance.

## Davis Bacon and State Prevailing Wage Requirements

The work performed under this contract is subject to the wage requirements of the Davis-Bacon Act. The Contractor shall conform to the wage requirements prescribed by the federal Davis-Bacon and Relate Acts which requires that all laborers and mechanics employed by contractors and subcontractors performing on contracts funded in whole or in part by CWSRF appropriations in excess of $2000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits, and determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area. Attachment 1 to this specification insert and an up-to-date wage determination shall be included in full into this contract and in any subcontract in excess of $2,000. Wage determinations can be found at https://sam.gov.

The Contractor agrees that the Contractor is legally and financially responsible for compliance with the Davis-Bacon Act wage rules. All laborers and mechanics employed by contractors and subcontractors employed as part of this contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

State Prevailing Wages on Public Works, Chapter 39.12 RCW applies to “public work” projects. When conflicts arise between State prevailing wage rates and Davis-Bacon Act prevailing wage requirements, the higher of the two rates should be used. Washington State prevailing wage rates can be found at https://www.lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/.

## Attachments:

1. Wage Rate Requirements for Subrecipients
2. Current Wage Rate Determination (to be provided by Owner)

## ATTACHMENT 1 - WAGE RATE REQUIREMENTS FOR SUBRECIPIENTS. (To be included in full in any contract in excess of $2,000)

The following terms and conditions specify how Owners & Contractors will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State Recipients and subrecipients that are governmental entities. If the Owner or Contractor has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact ECOLOGY. If the Owner or Contractor needs additional guidance, they may contact EPA, Region 10 Office for guidance. Additional guidance can be obtained from the Department of Labor's (DOL) web site at https://www.dol.gov/agencies/whd

1. **Applicability of the Davis- Bacon (DB) prevailing wage requirements**.

Under the FY 2013 Appropriations Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a Contractor encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Contractor must discuss the situation with the Owner and ECOLOGY before authorizing work on that site.

2. **Obtaining Wage Determinations**.

(a) Owners shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into bid documents and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, Owner shall monitor https://sam.gov/wage-determinations weekly to ensure that the wage determination contained in the solicitation remains current. The Owner shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Owner may request a finding from the ECOLOGY that there is not a reasonable time to notify interested contractors of the modification of the wage determination. ECOLOGY will provide a report of its findings to the Owner.

(ii) If the Owner does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the ECOLOGY, at the request of the Owner, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Owner shall monitor https://sam.gov/wage-determinations on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the Owner carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Owner shall insert the appropriate DOL wage determination from https://sam.gov/wage-determinations into the ordering instrument.

(c) Owners shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Owner's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Owner has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Owner shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Owner's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

**3. Contract and Subcontract provisions.**

(a) The Owner shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2012 Appropriations Act , the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time

actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Owners may obtain wage determinations from https://sam.gov/wage-determinations.

(ii)(A) The Owner, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subcontractor (s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the Owner to ECOLOGY award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise ECOLOGY award official or will notify ECOLOGY award official within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subcontractor (s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of ECOLOGY award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in

the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Owner, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, their correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of

the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Owner, that is, the entity that receives the sub-grant or loan from ECOLOGY. Such documentation shall be available on request of ECOLOGY or EPA. As to each payroll copy received, the Owner shall provide written confirmation in a form satisfactory to ECOLOGY indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/agencies/whd/forms/wh347 or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Owner for transmission to ECOLOGY or EPA if requested by EPA, ECOLOGY, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Contractor to require a subcontractor to provide addresses and social security numbers to the prime Contractor for its own records, without weekly submission to the Owner.

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or their agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of ECOLOGY, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in their first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State

Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he, she, or they) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. **Contract Provision for Contracts in Excess of $100,000.**

(a) Contract Work Hours and Safety Standards Act. The Owner shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he, she, or they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Owner**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Owner shall insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Owner shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. **Compliance Verification**

(a) The Owner shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that Contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Owner must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The Owner shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or subcontractors and the duration of the contract or subcontract. Owners must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the Contractor or subcontractor is not complying with DB. Owners shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The Owner shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that Contractors or subcontractors are paying the appropriate wage rates. The Owner shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by Contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the Owner should spot check payroll data within two weeks of each Contractor

or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Owners must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the Contractor or subcontractor is not complying with DB. In addition, during the examinations the Owner shall verify evidence of fringe benefit plans and payments thereunder by Contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The Owner shall periodically review Contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that Contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Owners must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at https://www.dol.gov/agencies/whd/contact/local-offices.

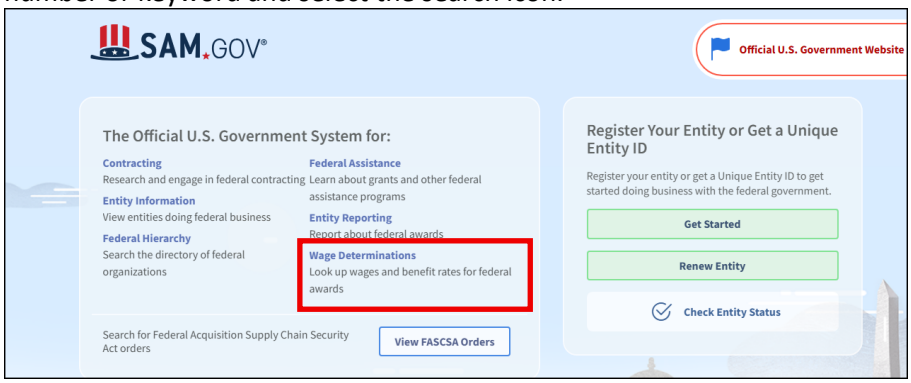
## ATTACHMENT 2 DAVIS-BACON WAGE RATE DETERMINATION

[Owner is to insert a copy of the applicable wage determinations after this attachment. Below is a summary explaining how a wage determination can be obtained from https://sam.gov/wage-determinations.]

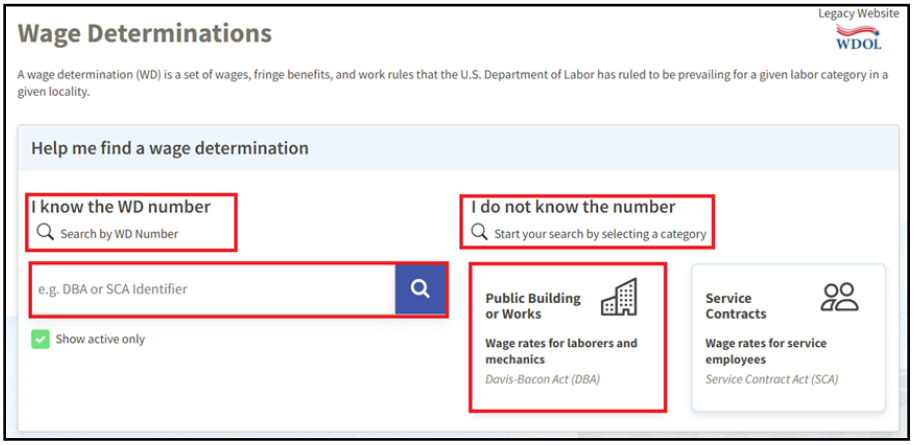
How to obtain a Wage Determination:

**To search for Davis-Bacon Act (DBA) wage determinations (WDs) in SAM.gov:**

1. Select the **Wage Determinations** link on the homepage, then use the search bar to enter a WD number or keyword and select the search icon.

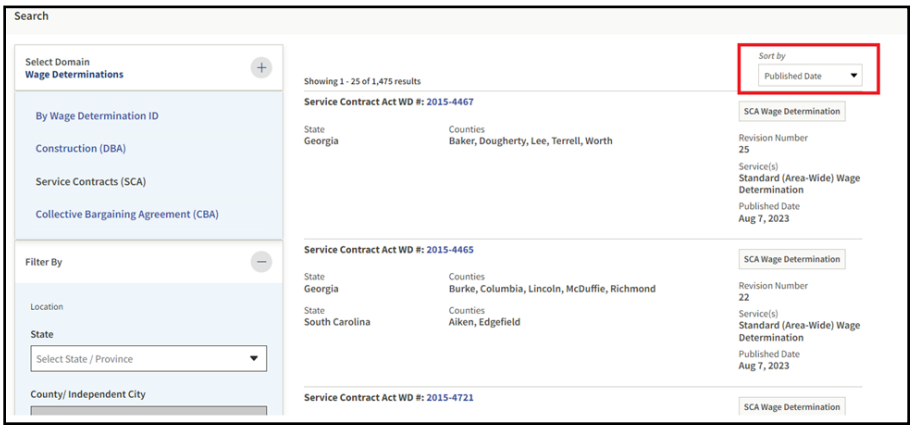



2. On the Wage Determination landing page, if you do not know the WD number, search by the category **Public Building or Works.**




3. Filter the search results using the menus on the left side of the page. You can narrow your search for DBAs by location, DBA construction type, status and published date. To search determinations for multiple locations, each location should be searched separately as wage determinations are categorized by the place of performance.

4. You can sort your results by title, published date or relevance.




5. Select the ID number in the search results to view a wage determination.

When to update the wage determination:

1. If DOL updates the Wage Determination, you must update the Wage Determination through an addendum to the bid specifications.
2. If the update occurs less than 10 days prior to the date of bid opening, you are not required to update the Wage Determination.