



Exhibit 12 - STIMULUS

Instructions for Compliance with SRF Cross-Cutters Bidding and Procurement Process – May 1, 2009

This packet includes the special requirements that apply only to projects funded with federal economic stimulus dollars. Please use this information and Exhibit 12A – STIMULUS if instructed by SRF staff.

Several cross-cutters are included in the bidding and procurement process. The process is explained in depth in Steps 42-49 in this manual. The process is summarized below:

- Owner/Consultant includes SRF front-end documents in construction specifications. Exhibit 12A: Required SRF Front-End Specifications is designed as a packet to be placed directly into construction documents.
- Owner/Consultant submits construction specifications to DNR Project Manager with construction permit application.
- DNR Project Manager reviews and approves construction application and specifications and issues construction permit.
- Owner bids project using approved construction specifications and following State of Iowa requirements. Owner also follows the DBE Good Faith Efforts (discussed below).
- Bidders submit bid materials to Owner.
- Owner accepts bid proposal.
- Consultant prepares bid document packet (using checklist in Exhibit 13) and submits it to SRF for concurrence in bid award.

Cross-cutting federal authorities are requirements of federal laws and executive orders that apply in federal financial assistance programs. They're called cross-cutters because they cut across programs due to the federal funding source. Because the Iowa SRF is capitalized by federal grants, federal cross-cutters apply to wastewater and drinking water projects.

Many of the cross-cutters relate to the environmental review process, which is discussed elsewhere in this manual. Two other forms are included with the Intended Use Plan application (Exhibit 8 in this manual).

The award concurrence letter must be completed before SRF loan funds can be disbursed, along with the items listed below:

- DNR construction permit
- CX or FNSI
- SRF loan application
- Signed loan agreement

On the following pages, a table provides a brief explanation of each of the cross-cutters addressed in the bidding and procurement process. SRF borrowers comply with these cross-cutters by:

1. Following the DBE Good Faith Efforts in procuring prime contractors; and

2. Including Exhibit 12A in construction front-end specifications. Several attachments in Exhibit 12A are forms that must be signed by bidders and returned to SRF with the bid document packet.

Cross-Cutter	Purpose	How to Comply	Source
Prevailing wages	To comply with labor standards in the Davis-Bacon Act	<ul style="list-style-type: none"> • Owner uses Exhibit 12A: Required SRF Front-End Specifications - STIMULUS 	<ul style="list-style-type: none"> • American Recovery and Reinvestment Act of 2009
American iron, steel, and manufactured goods	To use materials produced in the United States	<ul style="list-style-type: none"> • Owner uses Exhibit 12A: Required SRF Front-End Specifications – STIMULUS • Owner must include require bidders to sign and submit Attachment 10: Buy American Certification • Owner must include Attachment 9 contract language. 	<ul style="list-style-type: none"> • American Recovery and Reinvestment Act of 2009
Civil rights	To prohibit segregation in work facilities	<ul style="list-style-type: none"> • Owner uses Exhibit 12A: Required SRF Front-End Specifications - STIMULUS • Owner must require bidders to sign and submit Attachment 1: Certification of Non-Segregated Facilities • Owner/Consultant includes signed Attachment 1 in bid document packet sent to SRF 	<ul style="list-style-type: none"> • 33 Federal Register 7808
Debarment and suspension	To curb fraud and abuse in federal government programs	<ul style="list-style-type: none"> • Owner uses Exhibit 12A: Required SRF Front-End Specifications - STIMULUS • Owner must require bidders to sign and submit Attachment 2: Certification Regarding Debarment, Suspension • Bidders using subcontractors must also require them to sign and submit Attachment 2 • Owner/Consultant includes signed Attachment 2 in bid document packet sent to SRF 	<ul style="list-style-type: none"> • Executive Order 12549
Non-discrimination	To commit assistance recipients, contractors and	<ul style="list-style-type: none"> • Owner must follow DBE Good Faith Efforts (discussed below) in 	<ul style="list-style-type: none"> • Executive Orders 11625, 11246, 12138,

in employment and disadvantaged business enterprises	subcontractors to refrain from discrimination in its treatment of employees and to increase the participation of disadvantaged business enterprises, such as those owned by women and minorities, as well as small businesses in rural areas, in contracts awarded by state and local recipients of federal assistance	<p>procuring prime contractors</p> <ul style="list-style-type: none"> • Owner must require bidders to document their good faith efforts to use disadvantaged business enterprises on Attachment 3: DBE Solicitation • Bidders and their subcontractors complete forms on Attachments 4 and 5 providing information about their business arrangements • Owner/Consultant includes completed and signed Attachments 4 and 5 in bid document packet sent to DNR 	and 12432 <ul style="list-style-type: none"> • 40 CFR Part 31.36 (e) • 41 CRF Part 60-4 • Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988 (P.L. 100-5909) • Public Law 102-389 (42 U.S.C. 4370d) • Public Law 101-549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note)
Neutrality in contracts	To preserve open competition and government neutrality regarding labor relations in contracting	<ul style="list-style-type: none"> • Owner uses Exhibit 12A: Required SRF Front-End Specifications - STIMULUS • Owner checks bid specifications, project agreements, and other documents for construction contracts to ensure that they do not require or prohibit agreements with labor organizations 	<ul style="list-style-type: none"> • Executive Order 13202 as amended by Executive Order 13208
Historical and archeological	To ensure that contractors stop work if historical or archeological materials are found	<ul style="list-style-type: none"> • Owner uses Exhibit 12A: Required SRF Front-End Specifications - STIMULUS 	<ul style="list-style-type: none"> • National Historic Preservation Act • 36 CFR Part 800.11
Prohibitions on procurement from Clean Air or Clean Water Act violators	To prohibit federal assistance or contracts going to facilities or suppliers that are listed as Excluded Parties	<ul style="list-style-type: none"> • Owner uses Exhibit 12A: Required SRF Front-End Specifications - STIMULUS • Owner checks to make sure that winning bidders are not on Excluded Parties list. Web site: http://epls.arnet.gov/. 	<ul style="list-style-type: none"> • Section 306 of the Clean Air Act • Section 508 of the Clean Water Act • Executive Order 11738

Prevailing Wages

Please contact Lori Beary at the Iowa Finance Authority (lori.beary@iowa.gov or 515-725-4965) to obtain wage determinations for your project.

The Davis-Bacon and Related Acts, apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department

of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

Under the Davis-Bacon and Related Acts (DBRA), covered contractors must maintain payrolls and basic records and submit certified weekly payrolls. Although use of [Form WH-347](#) is optional, the form will satisfy the requirements of Regulations, Parts 3 and 5 (29 CFR, Subtitle A), as to payrolls submitted in connection with contracts subject to the DBRA. Records to be maintained include:

- Name, address, and social security number of each employee;
- Each employee's work classification(s);
- Hourly rate(s) of pay (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof);
- Daily and weekly numbers of hours worked;
- Deductions made; and
- Actual wages paid.

American Iron, Steel, and Manufactured Goods

Section 1605 of the American Recovery and Reinvestment Act requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States. The U.S. Environmental Protection Agency's expectation is that assistance recipients will use U.S.-made products throughout their ARRA-funded projects. However, there are certain circumstances under which a federal agency may determine to waive Buy American requirements.

Please refer to the EPA Final Buy American Guidance dated April 28, 2009, for information on the waiver process.

SRF Exhibit 7A provides suggested contract language and a certification form. The contractor must either certify that everything is U.S.-made, or provide the documentation the applicant needs to request a waiver from the U.S. EPA.

Disadvantaged Business Enterprise Good Faith Efforts

The Good Faith Efforts are methods employed by all EPA financial assistance recipients to ensure that disadvantaged business enterprises (DBEs) have the opportunity to compete for procurements funded by EPA financial assistance funds (including SRF loans).

DBEs must be certified through the Iowa Department of Transportation (IDOT). Information on certification requirements and a list of certified DBEs is on the IDOT website at http://www.iowadot.gov/contracts/contracts_eoaa.htm.

SRF loan recipients must:

1. Ensure that DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce. Both SBA and MBDA provide various means to help identify WBE and MBE firms to include in any promotion of contracting opportunities. SBA has a local office in Des Moines and contact info can be found at www.sba.gov. MBDA has a regional office in Chicago covering Iowa, and various resources available online at www.mbda.gov.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs 1-5 above.
7. Require the prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.
8. Require prime contractor to notify recipient in writing prior to termination of a DBE subcontractor for convenience.
9. Require the prime contractor to employ the six Good Faith Efforts to solicit a replacement subcontractor if a DBE subcontractor fails to complete work under a subcontract for any reason.
10. Include the following language in each procurement contract funded through an SRF loan:

"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."

State of Iowa Bidding Requirements

Projects receiving assistance through the State Revolving Fund must follow State of Iowa law on bidding. Effective January 1, 2007, a new Iowa Code Chapter 26 covers public construction bidding. This chapter includes:

- Definitions of projects and governmental entities;
- Exemptions to competitive bidding;
- Prohibited contracts;
- Notice to bidder requirements;
- Bid security;
- Award of contract;
- Bid-opening;
- Public hearing requirements; and
- Dollar thresholds for when competitive bidding is required.

Public borrowers are responsible for ensuring that they have complied with all applicable State of Iowa requirements. The Iowa League of Cities has information and resources on their web site at: <http://www.iowaleague.org>.