



**Minnesota Public Facilities Authority
Clean Water Revolving Fund and Drinking Water Revolving Fund
Supplemental Information**

September 2011

This packet contains additional information on some of the compliance areas that apply to PFA Clean Water Revolving Fund and Drinking Water Revolving Fund loan projects and are referenced in the Loan Application Forms. **Review this packet prior to bid letting.** Contact your [PFA loan officer](#) with any questions about information contained in this document.

1. **Real Property Declaration** – Example (pages 3-5) As part of the loan agreement process, PFA will provide the borrower with a real property declaration form. The borrower must file a real property declaration at the County Recorder’s office that identifies the project as “state bond financed property”, unless a waiver to the filing requirements has been granted by Minnesota Management and Budget (MMB) (see #2, below). A copy of the filled and executed declaration is to be provided to the PFA prior to disbursement of money for construction costs.

2. **Waiver from Filing Requirements of the Real Property Declaration** – (pages 7-9) For some projects (located in rights-of-way or utility corridors), a real property declaration cannot be filed because obtaining a legal description is “unduly onerous or impracticable”. In these situations, the Borrower can formally request a waiver from the Real Property Declaration Filing Requirements from MMB. Details are included in this section. An executed waiver form is to be provided to PFA prior to disbursement of money for construction costs.

3. **DBE Supplemental Information** (pages 11-13)
 - Primary Federal Statutory Authorities
 - Definitions
 - Certified M/WBE Firms

- Other Resources
 - Rural-Urban Continuum Codes For Metro & Non-Metro Counties For Small Business in Rural Areas (SBRA)
4. **Bond Counsel List** (pages 15-16) The borrower is required to use the services of a “nationally recognized bond counsel” to prepare the authorizing resolution and related bond documents for the transaction. The listing includes “nationally recognized bond counsels”.
5. **Davis Bacon (Federal Prevailing Wages) and Minnesota Prevailing Wages and Forms** (pages 17-28) Basic information and links to resources on Federal and State prevailing wages are provided here. Also includes the following forms:
- ***Labor Standards Notice of Contract Award*** – to be provided to PFA when information is known
 - ***Compliance Certification for Submitted Payrolls*** – to be provided to PFA when if requested
 - ***Final Federal Labor Standards Report*** – to be provided to PFA upon project completion

Minnesota Public Facilities Authority
First National Bank Building, Suite E200
St. Paul, MN 55101-1351
www.positivelyminnesota.com/pfa

1. EXAMPLE OF REAL PROPERTY DECLARATION

(from MMB revised Order 8/26/10)

FOR USE BY FILING OFFICER ONLY

**Minnesota Public Facilities Authority
REAL PROPERTY DECLARATION**

The undersigned has the following interest in the real property located in the County of _____, State of Minnesota, that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively, the "Restricted Property"):

(Check the appropriate box.)

a fee simple title

a lease

an easement

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is made subject to the following restrictions and encumbrances:

A. The Restricted Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, which approval must be evidenced by a written statement signed by the said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and

B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain Bond Purchase and Project Loan Agreement between the Minnesota Public Facilities Authority and _____ for Loan No. _____, and dated _____;

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Chair of the Minnesota Public Facilities Authority and the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

Exhibit A
LEGAL DESCRIPTION

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**2. Minnesota Public Facilities Authority
CWRP and DWRP Application
Real Property Declaration Filing Requirement Waiver Request**

Per the Minnesota Management and Budget's (MMB) [Third Order Amending Order of Commissioner of Finance](#), waiver requests may be submitted to the real property declaration filing requirement for projects that "acquire or better real property within roads, highway or utility or transit corridors, easements or rights of way" where the recording of the "declaration otherwise required would be unduly onerous or impracticable".

Provide the following information for MMB's evaluation:

1. A formal request to the Commissioner of MMB and justification by the City for waiver of Real Property Declaration requirement in accordance with Section 7.02 (b) of the Order.
2. Identify the PFA program (Clean Water Revolving Fund, Drinking Water Revolving Fund, etc.) that is expected to finance the project.
3. A project description as determined within the loan application and certified by either MPCA or MDH
4. A map reflecting actual location of property to be improved

The request may be submitted electronically to Gay Greiter, State Program Administrative Coordinator, Capital Projects gay.greiter@state.mn.us (651-201-8049) at MMB for review and response.

MMB's mailing address is:

Mr. Jim Schowalter, Commissioner of Minnesota Management and Budget
c/o Ms. Gay Greiter
Minnesota Management and Budget
State Program Administrative Coordinator, Capital Projects
400 Centennial Office Building
658 Cedar Street
Saint Paul, MN 55155

Please also copy your PFA loan officer on the waiver request.

Important: If MMB approves the waiver request, approval will be granted conditionally until MMB's receipt of a signed certification. PFA will mail the certification form to the borrower after loan approval. An example certification form is on page 38. The executed waiver form and certification is to be provided to PFA prior to disbursement of money for construction activities.

Some projects may include components that will require both a real property declaration and a waiver request.

Contact your [PFA loan officer](#) with any questions.

Minnesota Management and Budget

EXAMPLE CERTIFICATION

**State of Minnesota
General Obligation Bond Financed Property**

The undersigned has a fee simple, leasehold and/or easement interest in the real property located in the County(ies) of _____, State of Minnesota that is generally described or illustrated graphically in **Exhibit A** attached and all facilities situated thereon (the "Restricted Property") and acknowledges that the Restricted Property is or may become State bond-financed property. To the extent that the Restricted Property is or becomes State bond-financed property, the undersigned acknowledges that:

- A. The Restricted Property is state bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget;
- B. The Restricted Property is subject to the provisions of the _____ *[title of grant or loan agreement]* between _____ *[State agency providing the grant or loan]* and _____ *[name of undersigned grantee or borrower]*, dated _____, 20____; and
- C. The Restricted Property shall continue to be deemed state bond financed property for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

Date: _____, 20____

_____, a
_____ *[name and description of the grantee or borrower]*

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A
GENERAL DESCRIPTION OF RESTRICTED PROPERTY

[Insert a narrative or graphic description of the Restricted Property. It need not be a legal description.]

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3. DBE SUPPLEMENTAL INFORMATION

PRIMARY FEDERAL STATUTORY AUTHORITIES – DISADVANTAGED BUSINESS ENTERPRISES (DBES)

- 40 C.F.R. Part 33, Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements
- Public Law 102-389 (42 U.S.C. 437d), a 1993 appropriations act (“EPA’s 8% statute”)
- Public Law 101-549, Title X of the Clean Air Acts Amendments of 1990 (42 U.S.C. 7601 note) (“EPA’s 10% statute”)
- Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988
- Executive Order 12138, related to Women’s Business Enterprise Policy, issued October 13, 1971
- Executive Order 12432, “Minority Business Enterprise Development,” issued July 14, 1983

DEFINITIONS

Disadvantaged Business Enterprise (DBE) – an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized business (HUB) Zone Small Business Concern, or a concern under a successor program.

Fair Share Objective – an objective expressing the percentage of MBE or WBE utilization expected absent the effects of discrimination.

HUBZone – a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian Reservation.

HUBZone Small Business – a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Labor Surplus Area Firm (LSAF) – a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of approximate services in labor surplus areas exceed 50 percent of the contract price.

Minority Business Enterprise (MBE) – a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women’s business Enterprise (WBE). See section on Certified M/WBE Firms, below.

Procurement – the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

Small Business in a Rural Area (SBRA) – a small business operating in an area identified as a rural county with a code 6 to 9 in the Rural-Urban Continuum Classification Code developed by the United States Department of Agriculture in 1980.

Small Business, Small Business Concern or Small Business Enterprise (SBE) a concern, including its affiliates, that is independently owned and operated, not dominate in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Women's Business Enterprise (WBE) – a business concern which is at least 51% owned or controlled by women for purposes of EPA's 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA's 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50% interest in her share. Similarly, a business concern which is more that 50% owned by a married man will not become a qualified WBE by virtue of his wife's 50% interest in his share. See section on Certified M/WBE Firms, below.

CERTIFIED M/WBE FIRMS

Only M/WBE firms certified by MNDOT, the Small Business Administration (SBA) or the federal Department of the Environmental Protection Agency (EPA) can be counted towards the fair share goals for M/WBE reporting to the PFA.

To see whether a firm is a certified firm eligible to be counted as a M/WBE firm, check the *MNDOT Unified Certification Program Directory* or the *SBA Dynamic Small Business Search Directory*. Links are listed below.

Minnesota Department of Transportation, Office of Equal Employment Opportunity Contract Management - **UCP (Unified Certification Program)** includes a free search engine that lists DBE and non-DBE contractors. <http://www.dot.state.mn.us/civilrights/>

Small Business Administration **Dynamic Small Business Search** – search engine that lists businesses with 8(a) Certifications; Small Disadvantaged Business Certifications; HUBZone Certifications and DBE Certifications. Check contractor detail to see what current certifications are in place. http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm

OTHER RESOURCES ON MINORITY/WOMEN BUSINESS ENTERPRISES

- Minnesota Department of Administration (at this time the MN Dept. of Administration listings are not certified and can not be counted as M/WBE vendors by the EPA). www.mmd.admin.state.mn.us
- Minority Business Development Agency (U. S. Department of Commerce) <http://www.mbda.gov/>
- Metropolitan Economic Development Association <http://www.meda.net/>
- Diversity Information Resources, Inc. www.diversityinforesources.com
- Association of Women Contractors <http://www.awcmn.org/>

RURAL-URBAN CONTINUUM CODES FOR METRO & NON-METRO COUNTIES The following is a list of Minnesota Counties that have been coded by the U. S. Department of Agriculture as a rural or urban (which also can be a rural county adjacent to a metropolitan area). For the purposes of the U. S. Environmental Protection Agency's condition regarding Small Businesses in Rural Areas (SBRA), those counties coded 6 through 9 meet the definition of rural. Data are from the 2000 census. Codes are defined as follows:

Metro Counties:

- 1 Counties in metro areas of 1 million population or more
- 2 Counties in metro areas of 250,000 to 1 million population
- 3 Counties in metro areas of fewer than 250,000 population

Nonmetro Counties

- 4 Urban population of 20,000 or more, adjacent to a metro area
- 5 Urban population of 20,000 or more, not adjacent to a metro area
- 6 Urban population of 2,500 to 19,000, not adjacent to a metro area
- 7 Urban population of 2,500 to 19,999, not adjacent to a metro area
- 8 Completely rural or less than 2,500 urban population, adjacent to a metro area
- 9 Completely rural or less than 2,500 urban population, not adjacent to a metro area

METROPOLITAN COUNTIES (Urban)

Anoka	1	Dodge	3	St. Louis	2
Benton	3	Hennepin	1	Scott	1
Carlton	2	Houston	3	Sherburne	1
Carver	1	Isanti	1	Stearns	3
Chisago	1	Olmstead	3	Wabasha	3
Clay	3	Polk	3	Washington	1
Dakota	1	Ramsey	1	Wright	1

NONMETROPOLITAN COUNTIES (Rural)

Aitkin	8	Kandiyohi	4	Pennington	6
Becker	6	Kittson	9	Pine	6
Beltrami	7	Koochiching	7	Pipestone	6
Big Stone	9	Lac qui Parle	9	Pope	8
Blue Earth	5	Lake	6	Red Lake	8
Brown	7	Lake of the Woods	9	Redwood	7
Cass	9	LeSueur	6	Renville	9
Chippewa	7	Lincoln	9	Rice	4
Clearwater	8	Lyon	7	Rock	6
Cook	9	McLeod	6	Roseau	7
Cottonwood	7	Mahnomen	8	Sibley	8
Crow Wing	5	Marshall	8	Steele	5
Douglas	7	Martin	7	Stevens	7
Faribault	7	Meeker	6	Swift	7
Filmore	8	Mille Lacs	6	Todd	6
Freeborn	7	Morrison	6	Traverse	9
Goodhue	4	Mower	4	Wadena	7
Grant	9	Murray	9	Waseca	7
Hubbard	7	Nicollet	5	Watonwan	7
Itasca	6	Nobels	7	Wilkin	6
Jackson	7	Norman	8	Winona	4
Kanabec	6	Otter Tail	6	Yellow Medicine	9

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4. Municipal Bond Attorneys in the State of Minnesota and North Dakota
(Listed in *The Bond Buyer's Municipal Marketplace Directory*, Fall 2011)

ARNTSON & STEWART WEGNER, P.C.

51 Broadway, Suite 603
Fargo, ND 58102
Tel: 701-280-0195
Fax: 701-280-1403
jstewart@aspclaw.com

BARNES & THORNBURG, LLP

225 South 6th Street, Suite 2800
Minneapolis, MN 55402
Tel: 612-333-2111
Fax: 612-333-6798
www.btlaw.com

BEST & FLANAGAN, LLP

225 S. Sixth Street, Suite 4000
Minneapolis, MN 55402-4690
Tel: 612-339-7121
Fax: 612-339-5897
library@bestlaw.com
www.bestlaw.com

BRADLEY & DEIKE, P.A.

4018 West 65th Street, Suite 100
Edina, MN 55435
Tel: 952-926-5337
Fax: 952-926-5743
[Email: rjd@bradleydeike.com](mailto:rjd@bradleydeike.com)

BRIGGS AND MORGAN, P.A. - Minneapolis

2200 IDS Center
80 S. Eighth St.
Minneapolis, MN 55402
Tel: 612-977-8400
Fax: 612-977-8650
briggs@briggs.com
www.briggs.com

BRIGGS AND MORGAN, P. A. - Saint Paul

2200 First National Bank Bldg.
332 Minnesota St.
St. Paul, MN 55101
Tel: 651-808-6600
Fax: 651-808-6450

DORSEY & WHITNEY LLP

50 South Sixth St., Suite 1500
Minneapolis, MN 55402
Tel: 612-340-2600
Fax: 612-340-2868
www.dorsey.com

FAEGRE & BENSON, LLP

2200 Wells Fargo Center
90 S. Seventh St.
Minneapolis, MN 55402
Tel: 612-766-7000
Fax: 612-766-1600
www.faegre.com

FREDRICKSON & BYRON, P.A.

200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Tel: 612-492-7000
Fax: 612-492-7077
www.fredlaw.com

FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

700 Lonsdale Bldg.
302 W. Superior St.
Duluth, MN 55802
Tel: 218-722-0861
Fax: 218-725-6800
www.fryberger.com

KENNEDY & GRAVEN, CHARTERED

470 U. S. Bank Plaza
200 S. Sixth St.
Minneapolis, MN 55402
Tel: 612-337-9300
Fax: 612-337-9310
attys@kennedy-graven.com
www.kennedy-graven.com

KNUTSON, FLYNN & DEANS P.A.

1155 Centre Pointe Drive, Suite 10
Mendota Heights, MN 55120
Tel: 651-222-2811
Fax: 651-225-0600
www.kfdmn.com

LEONARD, STREET AND DEINARD, P.A.

150 S. Fifth Street, Suite 2300
Minneapolis, MN 55402
Tel: 612-335-1500
Fax: 612-335-1657
www.leonard.com

LINDQUIST & VENNUM P.L.L.P.

4200 IDS Ctr.
80 S. Eighth St.
Minneapolis, MN 55402
Tel: 612-371-3211
Fax: 612-371-3207
www.lindquist.com

MCGRANN SHEA ANDERSON CARNIVAL STRAUGHN & LAMB, CHARTERED

800 Nicollet Mall, Suite 2600
Minneapolis, MN 55402-7035
Tel: 612-338-2525
Fax: 612-339-2386
plc@mcgrannshea.com

OHNSTAD TWICHELL, P.C.

P. O. Box 458
901 13th Ave East, 2nd Floor
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Toll free: 1/800/568-2407
www.ohnstadlaw.com

5. FEDERAL DAVIS BACON ACT, STATE PREVAILING WAGES AND REQUIREMENTS

Both Federal (Davis Bacon) prevailing wages and State prevailing wages apply to Clean Water Revolving Fund and Drinking Water Revolving Fund projects. Payment of the wage and fringe benefits most beneficial to the employees are required. Overtime is governed by Minnesota Prevailing Wage statutes at M.S. 174.42 which requires overtime when an employee works more than 8 hours/day OR 40 hours/week. MN Department of Labor and Industry interprets that overtime applies to both 8 hours/day and 40 hours/week. Thus any employee working more than 8 hours in one day is entitled to overtime at the most beneficial wage (i.e. 4 days x 10 hours/day = overtime for 2 hours each day).

This section outlines PFA borrower's responsibilities with respect to prevailing wages for the following project stages:

1. Preconstruction Stage – Selecting the proper wage decision
2. Bid and Contract Award Stage
3. After Bid Award
4. During Construction
5. Project Completion

This section also includes:

- “Basic Principles” of the prevailing wages
- Links to Federal and State prevailing wage information and resources
- PFA Forms
 - Labor Standards Notice of Contract Award
 - Compliance Certification for Submitted Payrolls
 - Final Federal Labor Standards Report

Contact your [PFA Loan Officer](#) with questions.

1. PRE CONSTRUCTION STAGE - SELECT THE PROPER WAGE DECISION

The type/nature of the construction project governs which federal wage determination(s) and which state wage certification(s) apply. Some projects may trigger more than one Federal determination and/or state certification. To avoid problems and potential liability PFA strongly recommends the following steps be taken prior to final approval of plans and specifications and prior to advertising for bids:

- Refer to Minnesota Department of Labor and Industry (DOLI) web site www.dli.mn.gov for information about State Prevailing Wages. DOLI's phone number (651) 284-5091
- Review U. S. Department of Labor (DOL) Memorandums #130 and 131, DOL guidance on federal wage determinations and selecting the proper wage determination(s) for the project:
<http://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf>
<http://www.dol.gov/whd/programs/dbra/faqs/page19.htm>
<http://www.dol.gov/whd/recovery/pwrb/Tab13DBWageDetermin.pdf>
- Provide a brief summary of how federal and state wage determinations were selected for the project to MDH (water projects), or PCA (wastewater and storm water projects) and to PFA.

Federal Wage Determinations on line: <http://www.wdol.gov/>
State Prevailing Wage Certifications on line: (<http://www.dli.mn.gov/LS/PrevWage.asp>)

2. BID AND CONTRACT AWARD STAGE

PHYSICALLY include the contract conditions and applicable Federal and State wage determinations in the bidding documents and final contracts. Provide and apply updates to the prevailing wages as required to prospective bidders. It is the prime contractor's responsibility to include the prevailing rates and conditions into all subcontracts. Subcontractors are to include the prevailing rates and contract conditions in any lower tier subcontracts.

PHYSICALLY incorporate the following in all prime contracts and contractors to include in all subcontracts:

- The standard Davis Bacon contract clauses found in 29 CFR 5.5(a) (located in the PFA Contract Packet)
- Minnesota Labor and Industry prevailing wage contracting clause (located in the PFA Contract Packet)
- Applicable Federal and State wage determinations

BEFORE CONTRACT IS AWARDED, verify that prime contractor(s) is not debarred. Prime contractors are responsible to check that subcontractors are not debarred. Go to WWW.EPLS.GOV. Place EPLS printout on file.

Note: Different events (i.e. advertising date, bid opening, etc.) establish which version of the state and federal wage decision apply to competitively bid projects. The event triggers are different for state and federal. Federal wage decisions are “modified” and the “modifications” may be applicable to the project depending upon when issued. Monitor the U. S. Department of Labor web site for changes to

Federal wage decisions. Please note that the State of Minnesota wage rates typically list two “effective dates” with different wage rates for the identified work classification. The second rate is a built-in increase that is to be paid to affected employees as of the effective date of the increase.

Federal Davis-Bacon Prevailing Wage Rate Trigger - Modifications issued **10 or more days before bid opening** must be applied to the project. If there are **more than 90 days between bid opening and contract award**, current modifications may apply to the contract. Consult with your PFA loan officer.

State of Minnesota Prevailing Wages Trigger- The **bid advertising date** establishes which Minnesota State Prevailing Wage Certification applies to the project. The Minnesota State Prevailing Wages include increases to certain classifications that are to be paid to employees working on the project once the effective date of the increase has occurred. Contact the Minnesota Department of Labor and Industry for assistance.

3. AFTER BID AWARD

Submit **LABOR STANDARDS NOTICE OF CONTRACT AWARD** to the PFA once information is known.

Discuss labor standards requirements at the preconstruction conference. Review state and federal wage determinations to see if all worker classifications needed for the project are included. If a classification is missing from either the State or Federal wage determinations, use the State DOLI “Classification Clarification Form” or the Federal U. S. DOL Additional Classification and Rate SF1444 form to propose rates. Both forms are links on the Resource Page. Please note that the federal form must be sent in by the municipal applicant or U. S. DOL will not process it. For Federal Additional Classifications, send the completed Federal Form to:

Ms. Beverly Mitchell
U. S. Department of Labor – Washington
Wage and Hour Division
Mitchell.Beverly@dol.gov

And a copy to:
Ms. Sharon Green, U. S. Environmental Protection Agency
Grants Management Officer
Green.sharon@epa.gov

Review all subcontracts subject to Davis Bacon entered into by prime contractors to verify that the prime contractors have required its subcontractors to include the applicable wage determinations and contract conditions.

4. DURING CONSTRUCTION

OBTAIN WEEKLY PAYROLL AND STATEMENT OF COMPLIANCE.

Certified payrolls are to be submitted weekly by the prime contractor. The prime contractor is responsible to collect and submit the subcontractor payrolls and statement of compliance weekly to the City. PFA recommends using MNDOT payroll format (Payroll and Statement of Compliance). The MNDOT format provides information on fringe benefits that is helpful for determining whether the contractor/subcontractor is in compliance.

Prior to submitting a disbursement request to PFA for construction costs, the Borrower should: have all certified payrolls from the prime contractor (prime contractor responsible to provide subcontractor's payrolls) and conduct payroll verification and employee interviews as described in this section to ensure compliance with state and federal requirements.

LINK TO PAYROLL FORMS:

MNDOT Payroll Forms: <http://www.dot.state.mn.us/const/labor/certifiedpayroll.html>

U. S. Department of Labor Payroll Form WH347 and Instructions: <http://www.dol.gov/whd/forms/wh347.pdf> and <http://www.dol.gov/whd/forms/wh347instr.htm>

VERIFY JOB SITE POSTINGS ARE IN PLACE.

The prime contractor is responsible to post the following at the construction site:

- Applicable state and federal wage rates
- “Notice to All Employees” poster the required federal Poster (WH 1321): <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
- The required Minnesota Department of Labor and Industry posters <http://www.dli.mn.gov/LS/Posters.asp>

It is a good idea to take a photograph of the required postings and maintain it on file.

VERIFY COMPLIANCE WITH PREVAILING WAGE REQUIREMENTS.

PFA borrower or their representative to periodically review payrolls, verify fringe benefits, and conduct employee interviews to ensure that contractor/subcontractor is complying with requirements. Establish and follow a payroll review and employee interview schedule based on an assessment of the risks of noncompliance & length of contract. Conduct more frequent spot checks if risks are higher or of contractor/subcontractor not complying.

All employee interviews must be conducted in confidence. Use Form: [Form: SF1445](#) or equivalent document for the interviews.

At a minimum conduct payroll review and initial employee interviews of a representative sample within 2 weeks of the receipt of the initial weekly payroll **AND** two weeks prior to the estimated completion date of the contract or subcontract.

Conduct immediate interviews in response to an alleged violation of the prevailing wage requirements.

Verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

Periodically review contractors and subcontractors use of apprentices and trainees. Verify registration and certification of apprentices and trainees with respect to apprenticeship and training programs approved by US Dept. of Labor or a state program; that contractors and subcontractors are not using a disproportionate number of laborers, trainees and apprentices. Conduct these reviews in accordance with the payroll and employee interviews.

Maintain all LS records, including information on any restitutions (underpayments to laborers or mechanics), on file.

IMMEDIATELY REPORT VIOLATIONS TO PFA LOAN OFFICER AND TWO OFFICES BELOW:

Mpls. District Office US Dept. of Labor

ESA Wage & Hour Division
Tri-Tech Center, Suite 920
331 Second Avenue South
Minneapolis, MN 55401-132177
Phone: (612) 370-3371
1-866-4-USWAGE
(1-866-487-9243)

U. S. Environmental Protection Agency

Sharon Green
Grants Management Officer
U. S. EPA Region 5
West Jackson Boulevard
Mail Code: MC-10J
Chicago, IL, 60604-3507
312-353-5661
Green.sharon@epa.gov

SUBMIT A COMPLIANCE CERTIFICATION FORM TO PFA IF REQUESTED.

If requested by PFA, submit a **COMPLIANCE CERTIFICATION FOR SUBMITTED PAYROLLS FORM**. This form transmits payrolls and a certification on whether or not payrolls are in compliance with requirements.

5. PROJECT COMPLETION

Submit a **FINAL FEDERAL LABOR STANDARDS REPORT** to PFA at project completion.

Maintain labor standards records with the project files at the borrower's office.

BASIC PRINCIPLES FOR PREVAILING WAGES AND OVERTIME PAY

- **MOST BENEFICIAL WAGE AND OVERTIME REQUIREMENTS APPLY.** The most beneficial of the base hourly rate + fringe benefit (state base rate + state fringe rate **OR** federal base rate + federal fringe rate whichever is higher) is required to be paid to workers. **Overtime** is triggered when an employee works more than 8 hours/day **OR** 40/week (Minnesota DOLI interprets that overtime applies to both 8 hours a day and 40 hours a week.) Time and one-half must be paid for each hour of overtime worked.
- **FRINGE BENEFITS** must be paid for each hour worked, including any overtime hours. The ½ time premium is not paid for fringe benefits. Fringe benefits must be bona-fide, and, if not paid in cash, must be paid to a 3rd party plan.
- **EMPLOYEE INFORMATION ON PAYROLLS.** No employee home addresses or social security numbers are allowed on payrolls.
- **IDENTIFY STATE AND FEDERAL WORKER CLASSIFICATION.** Payrolls must clearly identify the work classification for each employee. Since the format/titles can differ between the State and Federal classifications (MN uses a numerical identifier, Feds typically uses titles), both are needed to calculate whether the proper rate is being paid to employees. If a classification is missing from the State or Federal wage determinations contact the appropriate agency to secure the classification required.
- **STATEMENT OF COMPLIANCE.** A Statement of Compliance is required with each weekly payroll submittal.
- **OWNER-SUPERVISORS & FOREMEN** who do not engage in work on the project are not subject to prevailing wage. If they do work, Owner operators are not exempt from the prevailing wage requirements.
- **TRACKING FORMS** can aid in efficient payroll review and compliance monitoring. It is suggested that the labor standards officer prepare a matrix which identifies all project job classifications which are expected to be utilized during construction and compares each classification under the Federal and State wage decisions referenced in the Notice of Contract Award. Such a matrix will help demonstrate that the highest wage rate was paid for the classification being reviewed. Maintain tracking sheets and matrixes in your labor standards compliance files. Contact PFA if you want to see examples of tracking forms.
- **LABOR STANDARDS RECORDS.** All prevailing wage records (certified payrolls, correspondence, employee interviews etc.) will need to be on file and maintained by the PFA borrower at project conclusion.

FEDERAL AND STATE PREVAILNG WAGE LINKS AND RESOURCES

PREVAILING WAGE RATES

- Federal Wage Determinations on line: <http://www.wdol.gov/>
- State Prevailing Wages from the Minnesota Department of Labor and Industry (DOLI) website: <http://www.dli.mn.gov/LS/PrevWage.asp>

FEDERAL DAVIS BACON RESOURCES

- U. S. DOL Library of Links and Related information, including implementing regulations at 29 CFR Part 1, 29 CFR Part 3 and 29 CFR Part 5: <http://www.dol.gov/whd/reg-library.htm>
- Guidance on selecting the proper federal wage determination:
 - <http://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf>
 - <http://www.dol.gov/whd/programs/dbra/faqs/page19.htm>
 - <http://www.dol.gov/whd/recovery/pwr/Tab13DBWageDetermin.pdf>
- Federal Register Notice Vol. 73, No 245, Friday December 19, 2008 Page 77511-77512 amending 29 CFR Part 3 and Part 5 (no social security numbers or home addresses on payroll forms)
- U. S. DOL – Wage & Hour Division Home Page: <http://www.dol.gov/whd/>
- U. S. DOL – Wage & Hour Division Davis Bacon & Related Acts this provides links to many <http://www.dol.gov/whd/contracts/dbra.htm>. This link provides access to many Davis Bacon compliance, guides and reference materials. Scroll down to
 - Link to Prevailing Wage Resource Book – October 2010 version
 - Link to Chapter 15 of the Field Operations Handbook (Section on Davis Bacon)
 - Links to U. S. DOL All Agency Memorandums
 - Links to U. S. DOL Payroll Form (WH-347) and instructions
 - Other helpful links in Compliance Assistance:
http://www.dol.gov/whd/regs/compliance/ca_main.htm
- U. S. DOL FAQ – Davis Bacon <http://www.dol.gov/whd/programs/dbra/faqs.htm>
- U. S. DOL FAQ – Davis Bacon – Is it possible for more than one wage determination to apply to a project? <http://www.dol.gov/whd/programs/dbra/faqs/page19.htm>
 - U. S DOL Memorandum #130 and 131
<http://www.dol.gov/whd/programs/dbra/docs/memo-131.pdf>
- FEDERAL CONTACT DEBARMENT CHECK: <http://epls.arnet.gov/> (Note: check contractor debarment before awarding contract)
- Minneapolis District Office, U. S. Department of Labor, Wage and Hour Division 612-370-3341 (Officer of the Day will respond to inquiries/questions about federal labor laws including Davis Bacon)

FEDERAL ADDITIONAL CLASSIFICATIONS

- U. S. DOL – Wage and Hour Division – Request for Additional Classification and Rate: <http://www.wdol.gov/docs/sf1444.pdf>

Send completed form to:

Ms. Beverly Mitchell
U. S. Department of Labor – Washington
Wage and Hour Division
Mitchell.Beverly@dol.gov

With a copy to:

PFA CWRF & DWRF
Supplemental Information

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September 2011
Update 1 Oct 27, 2011

Ms. Sharon Green, U.S. Environmental Protection Agency
Grants Management Officer, U. S. EPA Region 5
Green.sharon@epa.gov

FEDERAL DAVIS BACON POSTERS/FORMS

- Federal Poster (WH 1321): <http://www.dol.gov/whd/regs/compliance/posters/davis.htm>
- Federal employee interview [Form: SF1445](#)
- U. S. Department of Labor Payroll Form WH347 and instructions:
<http://www.dol.gov/whd/forms/wh347.pdf>,
<http://www.dol.gov/whd/forms/wh347instr.htm>

STATE POSTERS/FORMS

- Minnesota DOLI posters <http://www.dli.mn.gov/LS/Posters.asp>
- MNDOT Payroll Forms: <http://www.dot.state.mn.us/const/labor/certifiedpayroll.html>
- MN DOLI [Classification Clarification Form](#), for seeking clarification on questions.

STATE OF MINNESOTA DOLI CONTACTS

- Minnesota DOLI, Labor Standards Division (651/284-5091) or <http://www.dli.mn.gov/LS/PrevWage.asp> for rates and additional information.
- MN DOLI [Adopted Rule Amendments prevailing wage category descriptions for laborers and special crafts](#) (May 2011)
- For more information regarding prevailing wage and its application, contact:
Minnesota Department of Labor and Industry
Prevailing Wage unit
443 Lafayette Road North
St. Paul, MN 55155
Phone: (651) 284-5091
E-mail: dli.prevwage@state.mn.us
Web: www.dli.mn.gov

PREVAILING WAGE CHECKLIST

- Select the proper wage determination(s) for project
- Physically insert federal and state wage rates and contract conditions (PFA contract packet) into plans/specifications
- Provide updated federal wage rates to all bidders prior to bid opening; and provide updates if more than 90 days between bid opening and contract award.
 - If a modification is issued less than 10 days before the bid opening and there is not reasonable time still available to notify bidders of the modification, place a report of the finding to that effect into the contract file.
- Bid opening
- Verify prime contractor is not debarred (www.epls.gov). Keep copy of printout on file.
 - Prime contractor to verify that all subcontractors are not debarred
- Review Contract to ensure PFA conditions, prevailing wage rates are included
 - Prime contractor to ensure that contract conditions are included in all lower tier contracts
 - Review wage determinations to determine if additional classifications are needed
- Award Contract
- Submit “Labor Standards Notice of Contract Award” to PFA
- Conduct preconstruction conference
 - Review labor standards requirements/responsibilities with contractor/subs
 - Check to see if additional classifications are needed. Submit to DOLI and U. S. DOL, as appropriate.
- Construct project
- Compliance and Verification
 - Check that required postings are up; take digital photograph
 - Receive payrolls/statement of compliance on a weekly basis
 - Conduct employee interviews
 - Resolve any issues
 - IMMEDIATELY NOTIFY U.S. Dept of LABOR, U.S. Environmental Protection Agency and PFA of violations
- Submit “Final Labor Standards Compliance Report” at project conclusion
- Maintain files

Labor Standards Notice of Contract Award
Minnesota Public Facilities Authority

Borrowers please fill out one form for each contract awarded and provide to your [PFA loan officer](#). This information is required for compliance of Federal Davis Bacon prevailing wages on PFA-funded projects. Both federal Davis Bacon prevailing wages and State of Minnesota prevailing wages (Minnesota Statute, sections 177.41-177.43) apply to this project. Payment of the wage, overtime and fringe benefits that are most beneficial to the employees are required.

PFA Project Number: _____ (For PFA Use)

PFA Borrower Name: _____ County: _____
Project Description: _____

Advertising date: _____ Bid opening date: _____
Contract award date: _____ Construction start date: _____
Est. construction completion _____

Contract amount: _____
Contractor name: _____
Contractor address: _____

Contractor Debarment Check Date/Results: _____
(Check before contract award. Print debarment check and retain in labor standards file)

FEDERAL Wage decision number(s) & modification number used in contract: _____
Effective date of wage decision used in contract: _____

*(For contracts competitively bid, an exception provides that the wage determination updates (modifications) issued less than **10 days** before the bid opening shall be effective unless there is not a reasonable time still available to notify bidders of the modification, and a report of the finding to that effect is inserted into the contract file. If contracts are awarded **90 days** or more after bid opening, the modification issued closest to the award date must be used.)*

STATE Wage decision number(s) used in contract: _____
Effective date of wage decision used in contract: _____

*(The **bid advertising date** establishes which Minnesota State Prevailing Wage Certification applies to the project. The Minnesota State Prevailing Wages include increases to certain classifications that are to be paid to employees working on the project once the effective date of the increase has occurred).*

I certify the correct wage decision is being applied to the above noted project and that the contractor and subcontractors are not debarred or suspended from participating on federal contracts, verified by <http://epls.arnet.gov/>

Date: _____
Signature: _____
Name: _____ Title: _____
Organization: _____

**Compliance Certification for Submitted Payrolls
Minnesota Public Facilities Authority**

If requested by PFA, please complete and submit this form along with requested payrolls via:

- E-mail with the form attached as a PDF file to your PFA loan officer, **or**;
- Regular mail to:
Minnesota Public Facilities Authority
1st National Bank Building
332 Minnesota Street, Suite E-200
St. Paul, Minnesota 55101

Borrower Name: _____

Project Name: _____

The payrolls for the week ending _____ (dd/mm/yy) are attached from the following prime contractor and subcontractors:

Prime Contractor (identify): _____

Subcontractors (identify):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

I certify that for each payroll copy received, the above named Project (select):

IS IN COMPLIANCE with the requirements of 29 CFR 5.5(a)(1) based upon the most recent payroll copies for the week identified.

IS NOT IN COMPLIANCE with the requirements of 29 CFR 5.5(a)(1) based upon the most recent payroll copies for the week identified. (Provide explanation about non-compliance.)

Signature: _____

Date:

Title: _____

Note: Full text of 29 CFR 5.5(a)(1) available upon request. To summarize, 29CFR 5.5(a)(1) requires that employees be properly paid the full amount of required wages and fringes, that workers are compensated for the type of work performed according to the classification, and additional classifications, if needed, were sought and employees paid approved rate.

**Final Federal Labor Standards Compliance Report
Minnesota Public Facilities Authority Project**

Please complete and submit this form to the PFA when each construction contract is completed. Submit the completed form via:

- E-mail with the form attached as a PDF file to your PFA loan officer, **or**;
- Fax to 651-296-8833; **or**
- Regular mail to:
Minnesota Public Facilities Authority
1st National Bank Building
332 Minnesota Street, Suite E-200
St. Paul, Minnesota 55101

Borrower Name: _____

Project Name: _____

1. Completion Date (mm/dd/yy): _____
2. Number of construction (face to face) wage interviews completed: _____
3. Number of interview forms mailed and completed: _____
4. Number of trades reviewed through interviews, including mailed forms: _____

If no interviews were conducted face to face or by mail, provide explanation in comments section.

If the answer to any of the following questions is "NO" please explain in comments

- | | | | |
|--|------------------------------|-----------------------------|-----------------------------|
| Were the required postings (posters, decisions) observed on site? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | |
| Have all payrolls been received? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | |
| Are all payroll submissions complete and compliant? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | |
| Were wage interviews compared to payroll submissions? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | NA <input type="checkbox"/> |
| Have all known labor standards non-compliances been resolved? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | NA <input type="checkbox"/> |
| Have all known restitutions been received by employees? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | NA <input type="checkbox"/> |
| Were willful violations or complaints forwarded to DOL, EPA and PFA staff? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | NA <input type="checkbox"/> |

If not, provide explanation in comments section.

Final Report Comments (if any) attach comments if additional space is needed:

I certify to the best of my knowledge that all laborers and mechanics employed by this construction contract were paid in accordance with Federal labor provisions, except as noted. There are no outstanding or unresolved Federal labor standards underpayments, complaints or disputes.

Signature: _____

Date: _____

Title: _____ Organization: _____

(Individual signing the form should be the one responsible for payroll review and monitoring.)