

GEORGIA ENVIRONMENTAL FINANCE AUTHORITY

AMERICAN IRON AND STEEL

SPECIAL CONDITIONS AND INFORMATION

For

FEDERALLY ASSISTED

STATE REVOLVING LOAN FUND

CONSTRUCTION CONTRACTS

April 11, 2014

The following standard language must be incorporated into construction contract documents and in all solicitations for offers and bids for all construction contracts or subcontracts to be funded, in whole or in part, through the Federally-assisted State Revolving Fund in the State of Georgia for projects subject to the American Iron and Steel requirements.

These Special Conditions shall not relieve the participants in this project of responsibility to meet any requirements of other portions of this construction contract or of other agencies, whether these other requirements are more or less stringent. The requirements in these Special Conditions must be satisfied in order for work to be funded with the State Revolving Fund.

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GENERAL REQUIREMENTS

These Special Conditions are based on guidance provided by the United States Environmental Protection Agency (EPA). Public Law 113-76, the Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel" (AIS) requirement that requires State Revolving Loan Fund (SRF) assistance recipients to use iron and steel products that are produced in the United States for projects in this project. A copy of Section 436 of the Act is found in Appendix 3.

The products and materials subject to these requirements will be defined in Appendix 1 of these special conditions.

The Owner must maintain documentation of compliance with the AIS requirements. The documentation that the Owner maintains will be subject to review and audit by representatives of the state of Georgia, the EPA, the EPA Office of the Inspector General, and other federal authorities.

The Prime Contractor must provide certifications of compliance for all products subject to AIS requirements to the Owner prior to requesting payments for those products. The Owner or the Engineer may require certifications of compliance with submittals and shop drawings for these products as part of the submittal review process.

All manufacturing processes for a covered iron or steel product, as further defined in Appendix 1, must take place in the United States. If a covered product is taken out of the US for any part of the manufacturing process, it becomes foreign source material.

The EPA recommends the use of a step certification process to document the locations of the manufacturing processes involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the iron and steel products certifies that its step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification should include the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached in Appendix 2 is a sample step certification.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes for the product and for its iron and steel components occurred in the United States. The EPA states that additional documentation may be needed if the certification lacks important information and recommends step certification as the best practice. A sample final manufacturer certification is attached in Appendix 2.

The Prime Contractor may document that incidental and generally low cost components, as defined in Appendix 1, are compliant with AIS requirements under the De Minimis Waiver issued by the EPA. For these items, the Contractor must provide the Owner with documentation of costs for these items, including invoices, and a report of types and categories of materials to which the waiver is applied, the total cost of incidental components covered by the waiver for each category, and the calculations by which the total cost of materials incorporated into the project was determined. A sample De Minimis report is attached in Appendix 2.

Contractor, supplier, and manufacturer records are subject to review and audit by the EPA, its Inspector General, and other federal authorities.

Failure to comply with these requirements may delay, limit, or prevent the disbursement of SRF funds to the Owner. Violations of AIS requirements will require correction by the Contractor as determined by the Owner and Engineer, including replacement of deficient products with compliant products and compensation for costs and other damages that may result. Violations may also subject the Owner, the Contractor, and suppliers to other enforcement actions within the discretion of the EPA and other federal authorities.

The Act permits EPA to issue waivers for a case or category of cases in which EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent. The Contractor should notify the Owner and Engineer immediately if it finds that a waiver may be required.

By submitting a bid for this project and by executing this construction contract, the Contractor acknowledges to and for the benefit of the Owner and the state of Georgia that it understands that the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or the Drinking Water State Revolving Fund and that Federal law authorizing these Funds contains provisions commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the state of Georgia that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (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 Requirement, unless a waiver of the requirement 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 Requirement, as may be requested by the Owner or the state of Georgia. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or the state of Georgia to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or the state of Georgia resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the state of Georgia or any damages owed to the state of Georgia by the Owner). The Owner and the Contractor agree that the state of Georgia, as a lender to the Owner for the funding of its project, 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 the state of Georgia.

Appendix 1 – Definitions

For purposes of the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the project:

Lined or unlined pipes or fittings;
Manhole Covers;
Municipal Castings (defined in more detail below);
Hydrants;
Tanks;
Flanges;
Pipe clamps and restraints;
Valves;
Structural steel (defined in more detail below);
Reinforced precast concrete (defined in more detail below); and
Construction materials (defined in more detail below).

Product primarily of iron or steel: The product must be made of greater than 50% iron or steel, measured by cost. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required, except as required for reinforced precast concrete. If a product is composed of more than 50% iron or steel, but is not listed in Section 436 (a) (2) of the Act, it is not required to be produced in the US. Alternatively, the iron or steel in such a product can be sourced from outside the US.

Steel: An alloy that includes at least 50 percent iron and between 0.02 and 2 percent carbon and may include other elements. Other alloys of iron are not required to be produced in the US.

Produced in the United States: Production in the US of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

Municipal Castings: Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings include access hatches, ballast screen, benches, bollards, cast bases, cast iron hinged hatches, cast iron riser rings, catch basin inlets, cleanout/monument boxes, construction covers and frames, curb and corner guards, curb openings, detectable warning plates, downspout shoes, drainage grates, frames & curb inlets, inlets, junction boxes, lampposts, manhole covers, rings & frames, risers, meter boxes, steel hinged hatches, steel riser rings, trash receptacles, tree grates, tree guards, trench grates, and valve boxes.

Structural Steel: Structural steel is rolled flanged shapes, having at least one dimension of their cross-section 3 inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

Reinforced Precast Concrete: While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing rebar must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing rebar is considered to be a construction material and must be produced in the US.

Construction Materials subject to AIS: Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: welding rods, wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, gates, and screens.

Construction Materials not subject to AIS: Mechanical and/or electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples, including their appurtenances necessary for their intended use and operation, are NOT considered construction materials: pumps, motors, gear reducers, drives, variable frequency drives (VFDs), mixers, blowers/aeration equipment, compressors, meters, electric/pneumatic/manual accessories used to operate valves (such as valve actuators), gates, motorized screens (such as traveling screens), sensors, controls, switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, dewatering equipment, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, and analytical instrumentation.

Items temporarily used during construction, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel. For example, trench boxes or scaffolding are not considered construction materials subject to AIS requirements.

Incidental Components compliant with AIS under the De Minimis Waiver: This waiver permits the use of de minimis incidental components that may otherwise be prohibited under AIS. These de minimis items may cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into the project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into the project.

These items are miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are permanently incorporated into the project. For many of these incidental components, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business. For other incidental components, the country of manufacture may be known, but the miscellaneous character in conjunction with the low cost, individually and in total, as typically procured in bulk, mark them as properly incidental. Examples of incidental components include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube.

Examples of items that are not incidental and are not covered by the De Minimis Waiver include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures.

Items covered as compliant under this waiver must be documented in a report to the Owner to demonstrate that they are both incidental and that they fall within the cost allowances of this waiver. The costs of these items must be documented by invoices. The report must include a listing of types and categories of materials to which the waiver is applied, the total cost of incidental components covered by the Waiver for each category, and the calculations by which the total cost of materials incorporated into the project was determined.

Appendix 2 – Sample Certifications Step Certification

The following information is provided as a sample letter of step certification for American Iron and Steel compliance. Documentation must be provided on company letterhead. This is to be provided by each handler (supplier, fabricator, manufacturer, processor, etc.). Each time a step in the manufacturing process takes place, the handler delivers its work along with a certification of its origin.

Date

Company Name
Company Address
City, State Zip

Subject: American Iron and Steel Step Certification for Project (Insert project name and SRF number)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

List of items, products and/or materials:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Appendix 2 – Sample Certifications

Final manufacturer certification

The following information is provided as a sample letter of the final manufacturer to certify American Iron and Steel compliance for the entire manufacturing process. Documentation must be provided on company letterhead.

Date

Company Name
Company Address
City, State Zip

Subject: American Iron and Steel Certification for Project (Insert project name and SRF number)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement of P.L. 113-76 and as mandated in EPA's State Revolving Fund Programs.

List of items, products and/or materials:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Appendix 2 – Sample Certifications Contractor De Minimis Report

Owner: (Owner Name)

SRF Project No: (SRF Number)

Project Description: (Contract title or brief description)

Date: (Date of report)

Submitted by (name & title): (Contractor representative)
Company Name

**LIST OF MATERIALS
OR CATEGORIES OF MATERIALS
PERMANENTLY INCORPORATED
INTO THE PROJECT**

Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Total Permanent Materials	\$10,000.00

1 % of total material cost	\$100.00	Maximum cost for individual item waived
5 % of total material cost	\$500.00	Maximum cumulative cost for category waived

**LIST OF MATERIALS
OR CATEGORIES OF MATERIALS
COVERED BY
DE MINIMIS WAIVER**

	COST	COMPLIANT (Yes/No)
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
<u>Total De Minimis Items</u>	<u>\$500.00</u>	<u>Yes</u>

INVOICES ATTACHED FOR DE MINIMIS ITEMS.

Appendix 3 – P.L. 113-76, Consolidated Appropriations Act, 2014

The Act states:

Sec. 436 (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “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.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency’s capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.