



Navigating Federal Regulations SRF Technical Requirements

CWSRF Funding Process Virtual Workshop Series

**Syracuse University EFC
November 16, 2023**

“Every State is Different”
“It Depends”



- Assistance amount equal to the federal grant
- State may identify borrower, project, or group of projects to apply requirement
- Only those borrowers/projects will need to meet certain Federal requirements
- Project cannot be separated to avoid compliance



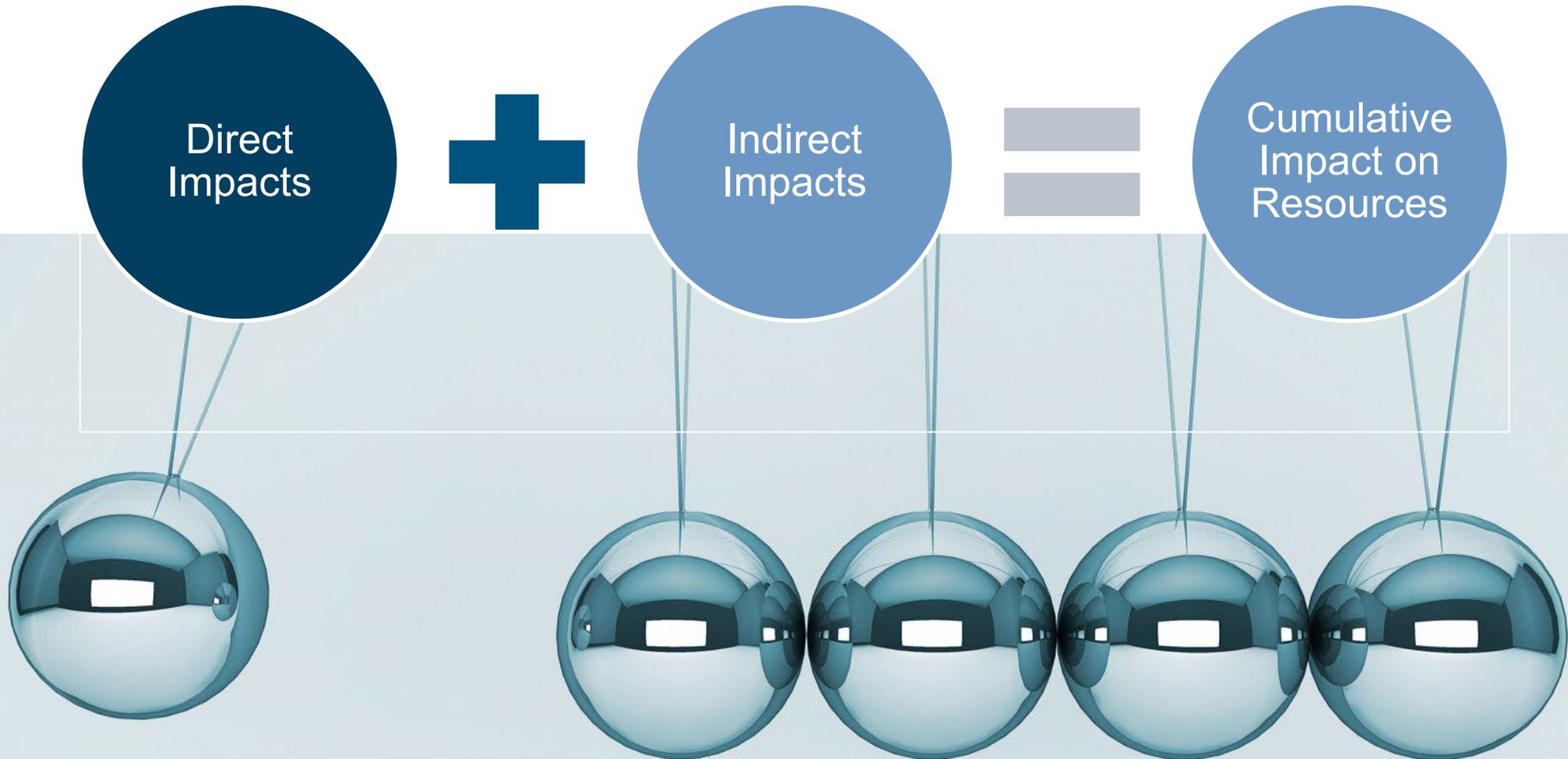
A/E aka QBS aka RFQ Procurement

Qualifications Based Selection...known by many names

- QBS....Request for Qualifications (RFQ)....and Architectural and Engineering (A/E) Procurement
- Usually, requirement is satisfied via certification form
- Sometimes requirement is met by long-standing state requirements (Oklahoma)
- Sometimes an applicant can pre-qualify engineering firms based on best fits for certain types of projects and the certification can cover multiple projects/years
 - Ex: One RFQ round can certify a firm for CSO, another for green stormwater, another for WWTF upgrade, etc.
 - This should be coordinated with state to be on safe side!!



Environmental Review



Natural Environment

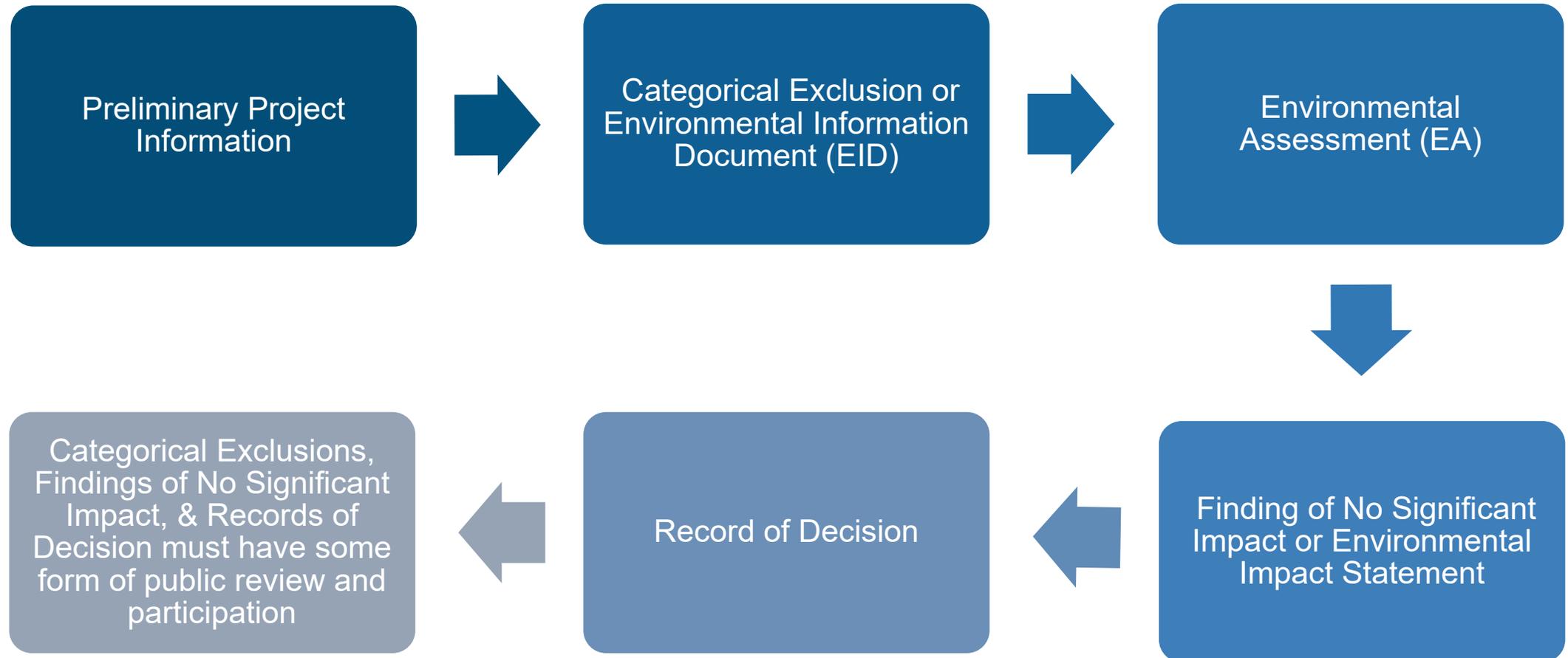
- Endangered Species Act
- Bald & Golden Eagle Protection Act
- Migratory Bird Treaty Act
- Fish & Wildlife Coordination Act
- Marine Mammal Protection Act
- Coastal Barrier Resources Act
- Coastal Zone Management Act
- Magnuson-Stevens Fishery Conservation & Management Act
- Clean Water Act
- Clean Air Act
- Protection of Rivers
- River & Harbors Act
- Wild and Scenic Rivers Act



Human Environment

- Archaeological & Historic Preservation Act
- Archaeological Resources Preservation Act
- National Historic Preservation Act
- Consultation & Coordination w/ Indian Tribal Governments
- Native American Graves Protection & Repatriation Act
 - Environmental Justice
- Farmlands Protection Policy
 - Floodplain Management
 - Safe Drinking Water Act

Environmental Review- Procedure



Definition:

A class of actions as determined by the review agency that **do not individually or cumulatively have a significant effect on the human environment** and for which, therefore, neither an environmental assessment nor an environmental impact statement is normally required.

Use of Categorical Exclusions can save time and reduce paperwork



EXAMPLE

Cured-in-place
lining of a sewer

Replacement of
a sewer/water
main within the
same trench

Replacement of
treatment
facility or pump
station
equipment with
no increase in
station capacity

Actions within
the footprint or
boundary of an
existing facility

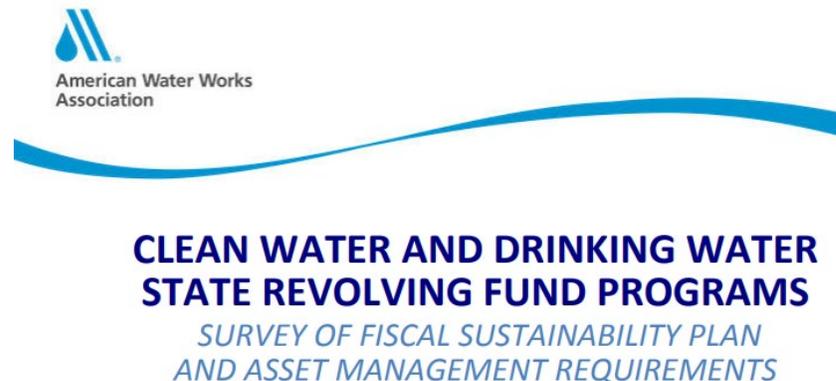
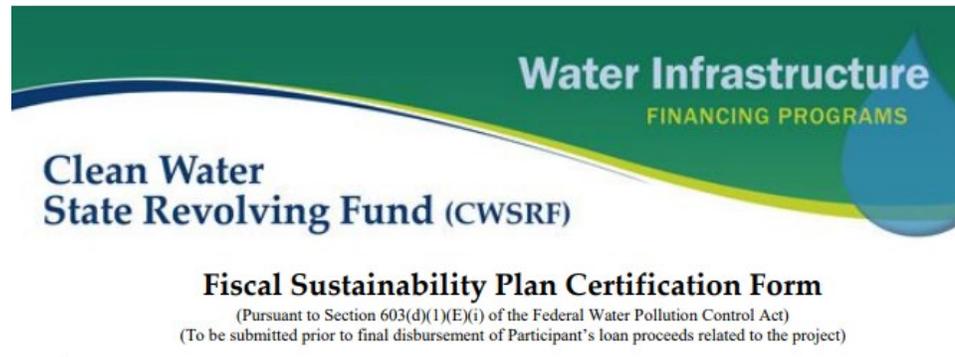
Fiscal Sustainability Plan (FSP)

Self-Certification	FSPs MUST Contain:
<ul style="list-style-type: none">• States may allow recipients to self-certify or to complete an FSP<ul style="list-style-type: none">• CWSRF program is NOT required to collect or review the FSP• If a community is self-certifying, this is due at loan closing• For systems completing an FSP as part of the loan process, EPA strongly recommends that the CWSRF's require FSPs be completed before final disbursement	<ul style="list-style-type: none">• An inventory of critical assets• An evaluation of the condition and performance of those assets• A certification that the assistance recipient has been evaluated and will be implementing water and energy conservation methods as part of the plan• A plan for maintaining, repairing, and replacing the treatment works and financing those activities• "Asset management-light"



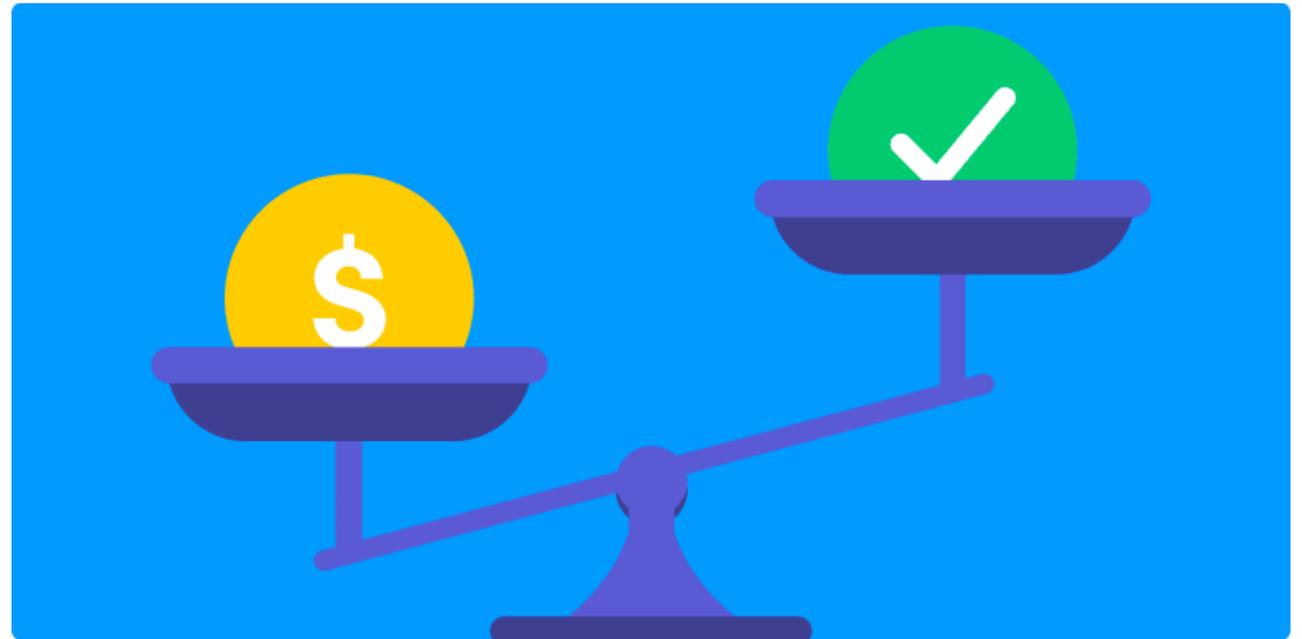
Only required for:
Loan Recipients + Treatment Works Projects

- Texas Water Development Board
- AWWA's FSP Requirements
- Vermont CWSRF



Cost and Effectiveness

- Almost every state has a self-certification form
- Must be signed by Professional Engineer
- Some states have a required methodology for the analysis
 - Ex: South Carolina
- Iowa SRF has a laundry list of resources for sustainability and energy/water conservation

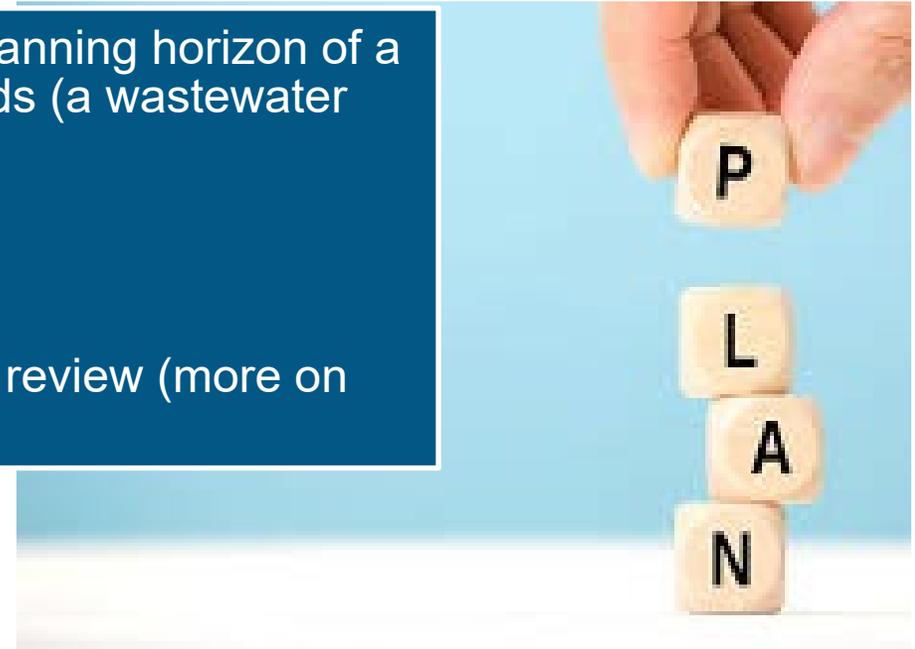


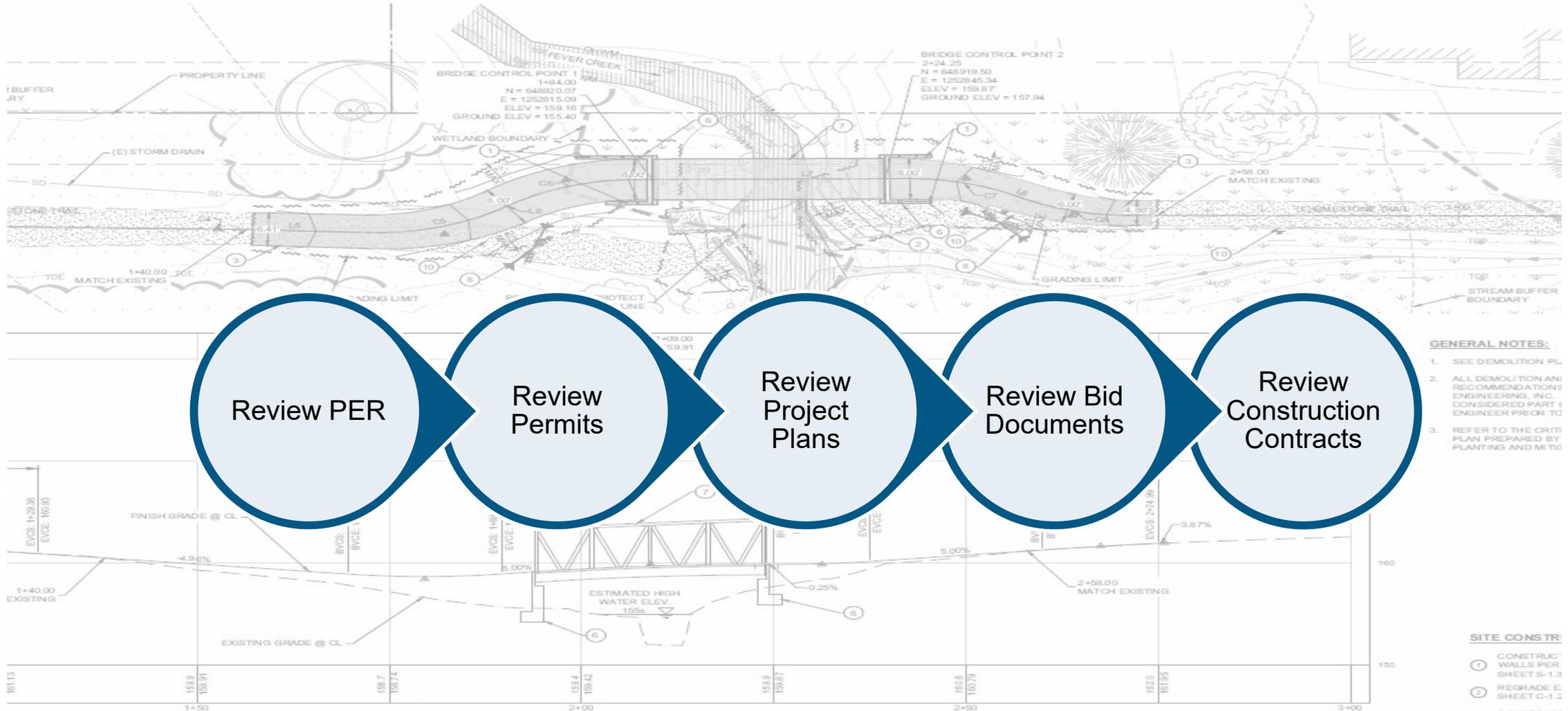
Preliminary Engineering Report

- Project specific document that incorporates need, alternatives, impacts, costs, schedules, and final recommendation
- Widely used procedure for infrastructure planning

Wastewater Facilities Plan

- Comprehensive (usually) 20-year planning horizon of a community's entire wastewater needs (a wastewater road map)
- Old school but still cool
- Includes elements of environmental review (more on that later)



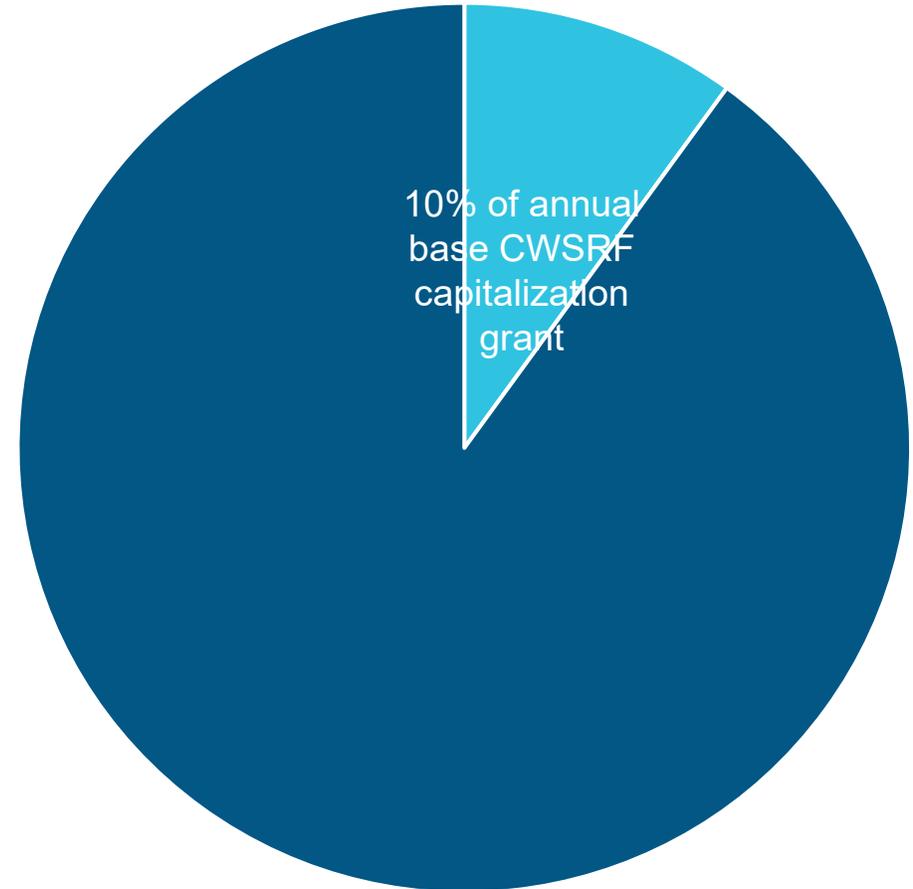


- GENERAL NOTES:**
1. SEE DEMOLITION PL.
 2. ALL DEMOLITION AND RECOMMENDATIONS ENGINEERING, INC. CONSIDERED PART 1 ENGINEER PRIOR TO
 3. REFER TO THE CRITICAL PLAN PREPARED BY PLANTING AND MITIG

- SITE CONSTR:**
- ① CONSTRUCT WALLS PER SHEET S-1.3
 - ② REGRADE E SHEET C-1.3
 - ③ CONSTRUCT AND DETAIL
 - ④ CONSTRUCT BELLINGHAM
 - ⑤ CONSTRUCT BELLINGHAM
 - ⑥ CONSTRUCT PLANS
 - ⑦ INSTALL NE

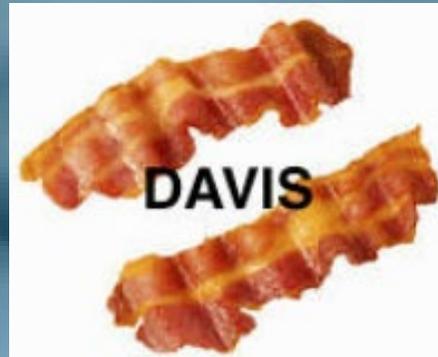
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1. **Green Infrastructure**
2. **Water Conservation**
3. **Energy Efficiency**
4. **Environmentally Innovative**



There is no requirement that GPR projects be subsidized

Davis Bacon



SRF Specific Requirements: Davis-Bacon



The Davis-Bacon Act of 1931 mandates that prevailing wages be paid by all contractors and sub-contractors on all federally funded and federally assisted public works projects in excess of \$2,000



The Davis-Bacon Employee Rights poster and a copy of the prevailing wage determination must be posted and protected from the weather at all job sites



Davis-Bacon records must be maintained for 3 years after the completion of the project



Davis-Bacon: Borrower Responsibility



Collect weekly payroll compliance reports (aka certified payrolls) as completed and submitted by contractor and sub-contractors



Submit Davis-Bacon certification(s) to SRF agency



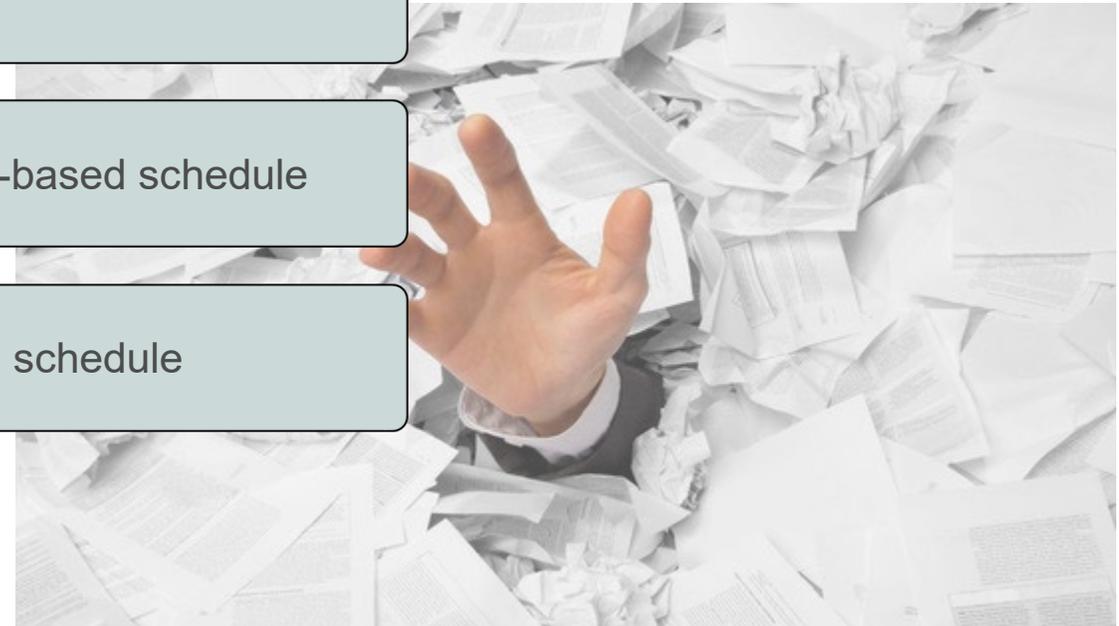
Spot check payroll compliance reports for each contractor and sub-contractors at least twice during the life of the project



Conduct employee interviews on a self-determined risk-based schedule



Review apprentice/trainee registrations on a risk-based schedule



Davis-Bacon: Contractor Responsibility



Produce weekly payroll reports and collect weekly payroll reports from subcontractors. Submit all weekly reports to borrower



Maintain records of fringe benefit plans



Allow confidential access to employees for interviews

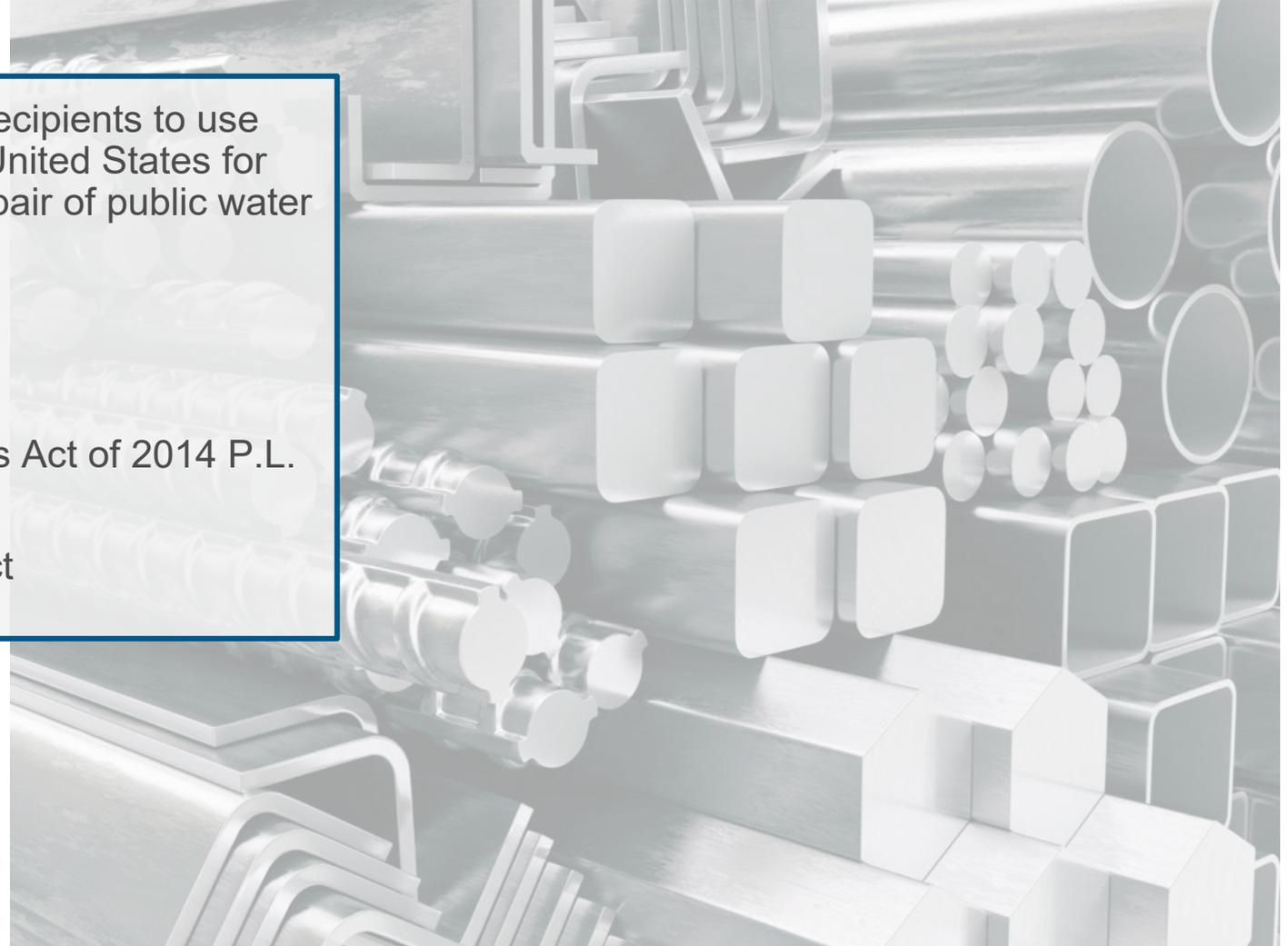


American Iron & Steel (AIS)



SRF Specific Requirements: American Iron & Steel

- Requires all DWSRF and CWSRF assistance recipients to use iron and steel products that are produced in the United States for the construction, alteration, maintenance, or repair of public water supply systems or treatment works.
- Applies to all products that:
 - Are made primarily of iron or steel
 - Listed in the Consolidated Appropriations Act of 2014 P.L. 113-76
 - Permanently incorporated into the project



SRF Specific Requirements: American Iron & Steel

What constitutes “primarily made of iron or steel”?

- A product that has more than 50% of its material cost made up of iron or steel.
- Manufacturers must certify as to whether their product meets American Iron & Steel (AIS) requirements.

What is a “listed” product?

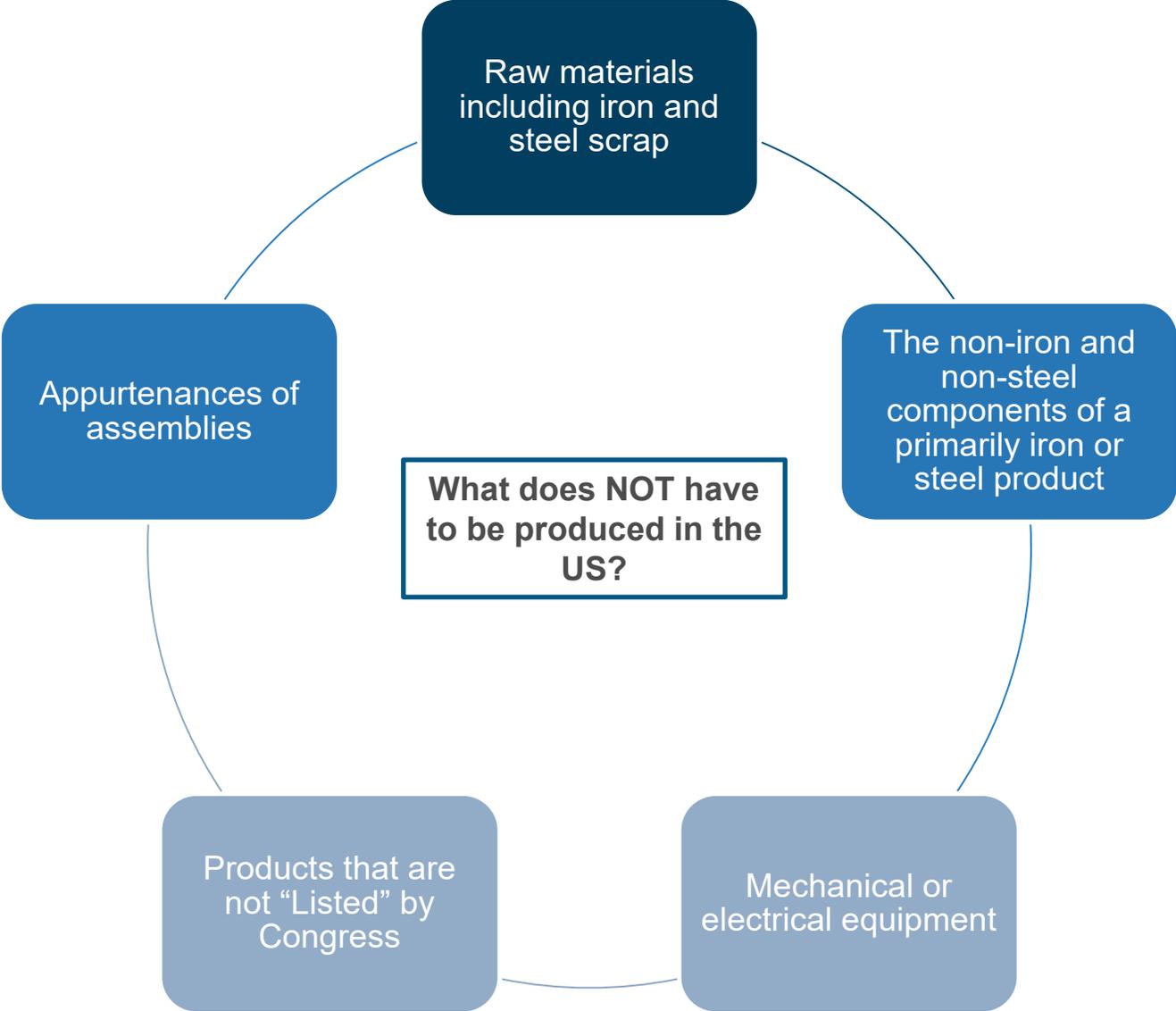
- Lined or unlined pipes or fittings; manhole covers; municipal castings; hydrants; tanks; flanges; pipe clamps and restraints; valves; structural steel; reinforced precast concrete; and construction materials

What does “permanently incorporated into the project” include?

- Any iron or steel product buried or left in place (e.g., sheeting or trench box).
- Spare or backup parts



SRF Specific Requirements: American Iron & Steel



Complying with AIS – Certification Letter

Must come from manufacturer and not the product supplier

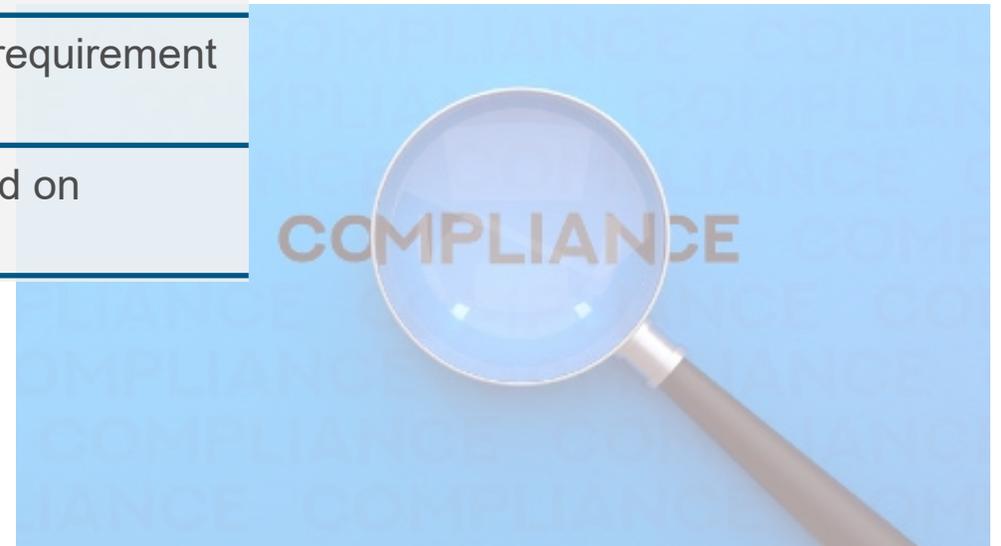
Must list the name and location of the project

Must describe the product being delivered to the project site

Must name where the product was manufactured

Must specifically reference the American Iron & Steel requirement

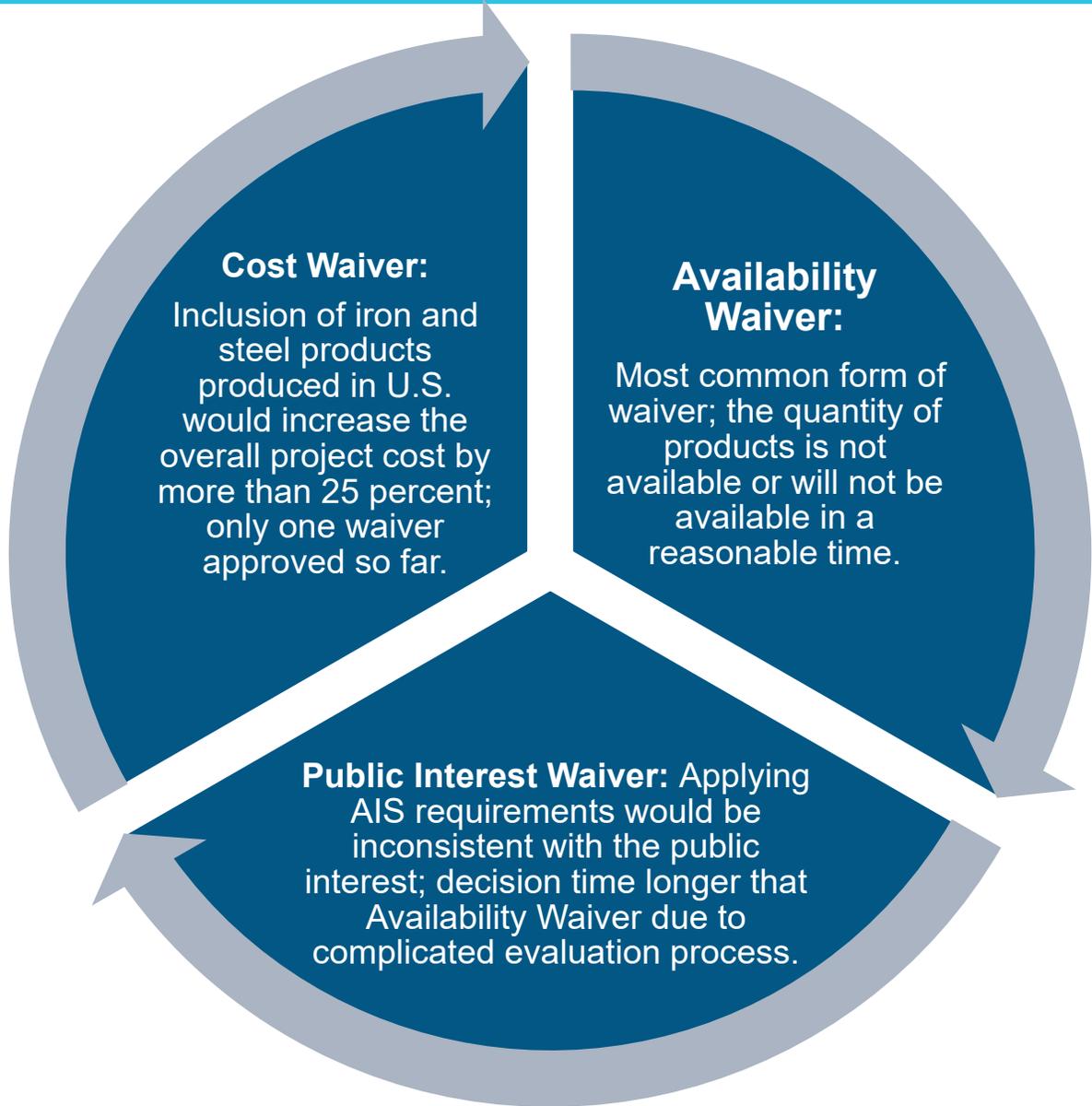
Must be signed by a company representative or printed on company letterhead



American Iron & Steel: Waivers!!



Remember:
All waivers require coordination between borrower, SRF program & EPA



De Minimis Waiver

DeMinimis Waiver: Allows **project** a small percentage of incidental products of unknown or non- domestic origin - 5% total material cost with a 1% max for any single item; project must maintain a materials budget to document DeMinimis compliance.

National Waiver

Minor Components Waiver: Allows the product **manufacturer** to include non-domestic, minor components in AIS-compliant products - up to 5% of material cost of the product.

Build America Buy America (BABA)

Included in the Infrastructure Investment and Jobs Act (IIJA)/Bipartisan Infrastructure Law (BIL)

Requires iron, steel, manufactured products, and construction materials used in the project are produced in the United States

Administered by the Made In America Office (MIAO) of the Office of Management and Budget (OMB), not the USEPA

Applies to all infrastructure projects that receive federal assistance not just CWSRF and DWSRF projects

BABA is an equivalency requirement. Applicable CWSRF and DWSRF projects must comply with both BABA and AIS

Applies to items consumed in, incorporated into or affixed to an infrastructure project.

BABA covered items should be classified as iron and steel, or manufactured products, or construction materials:

- Iron and Steel - Items that are predominantly iron or steel, unless another standard applies under law or regulation; all manufacturing processes, from the initial melting stage through the application of coatings, must occur in the U.S.



BABA Implementation Procedures:

<https://www.epa.gov/system/files/documents/2022-11/OW-BABA-Implementation-Procedures-Final-November-2022.pdf>

BABA Supplemental Q&A's:

<https://www.epa.gov/system/files/documents/2023-05/BABA-OW-Supp-FAQ-May-2023.pdf>

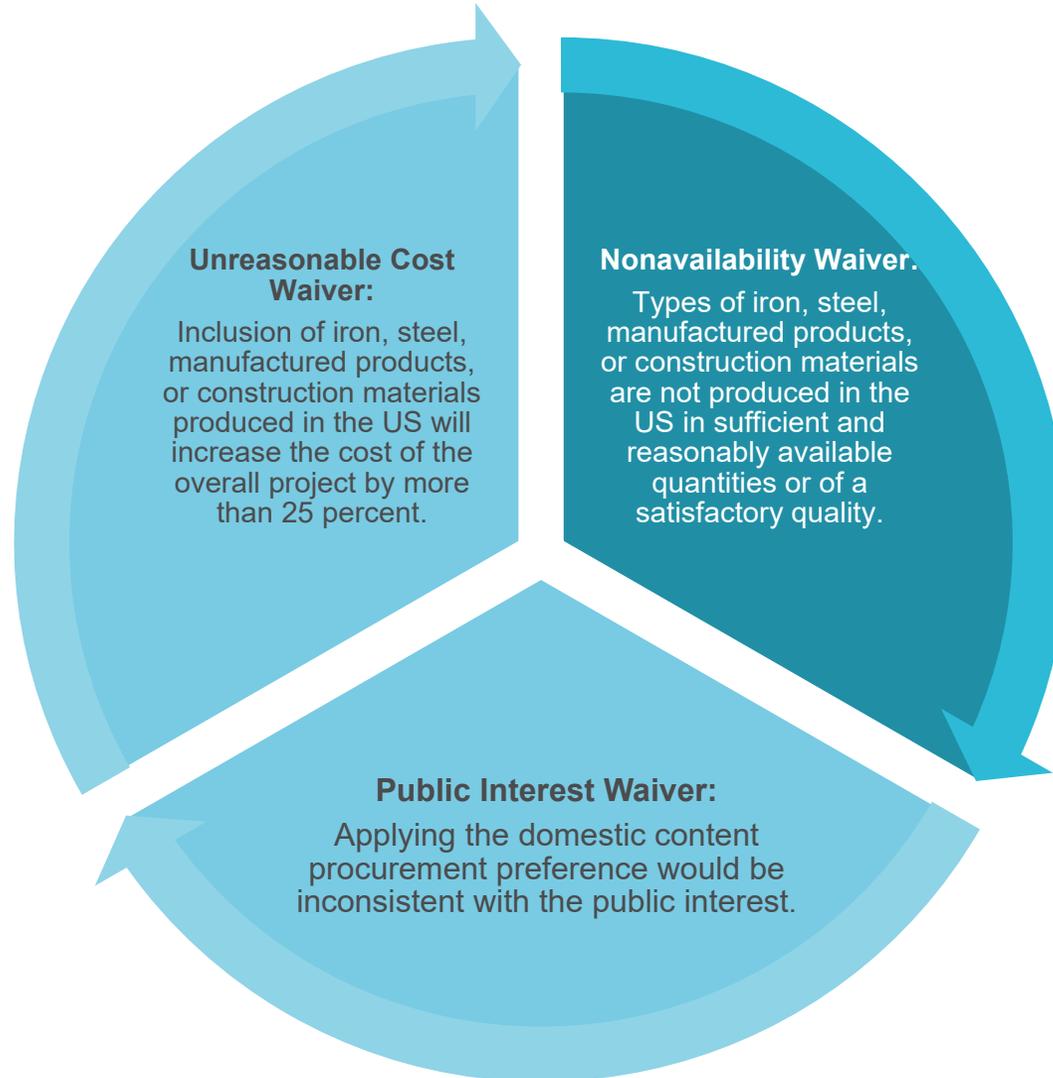
Manufactured Products

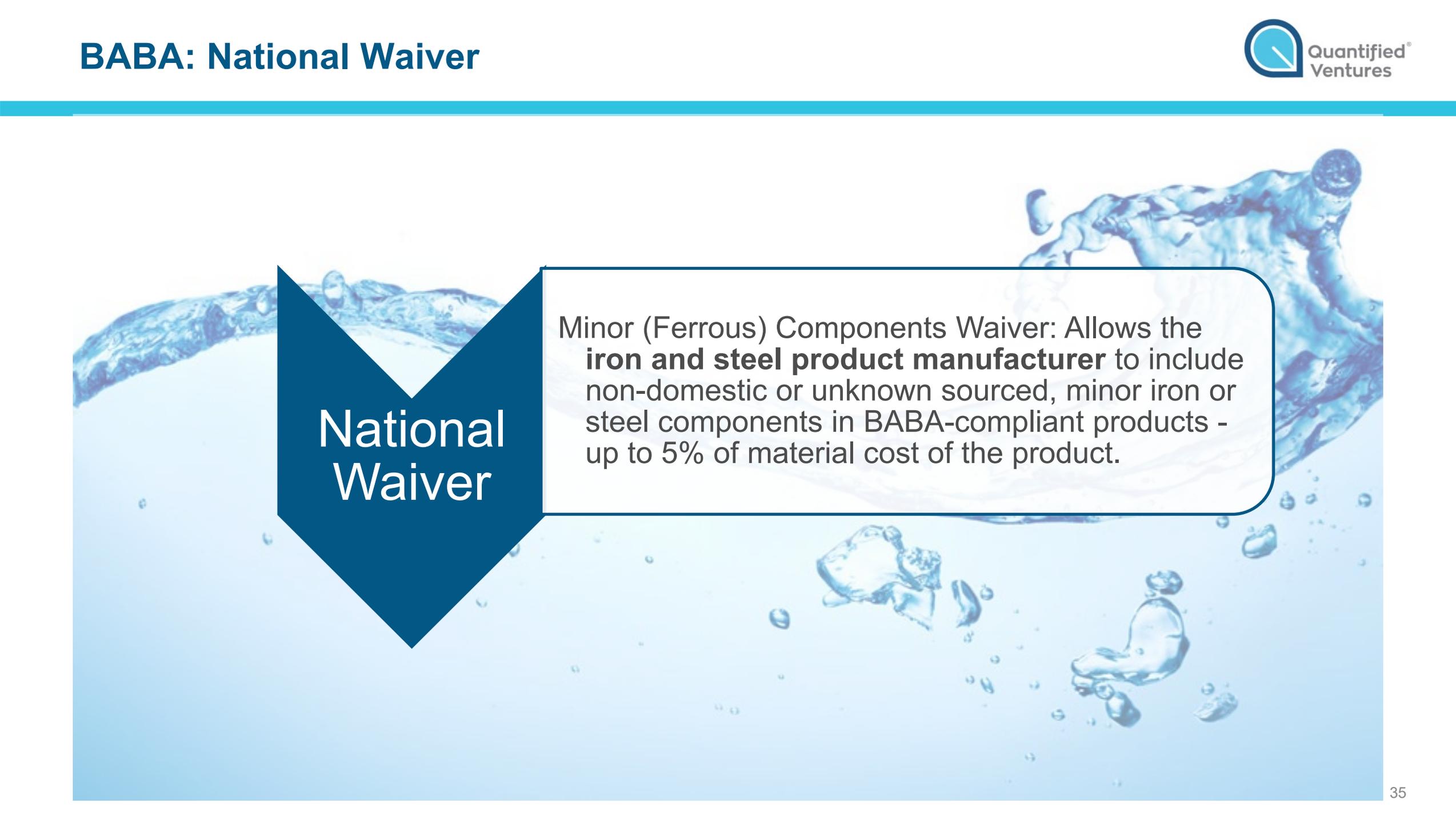
Manufactured in the U.S.; cost of components that are mined, produced, or manufactured in the U.S. is greater than 55% of the total cost of all components of the manufactured product unless another standard for determining the minimum amount of domestic content has been established under applicable law or regulation.

Construction Materials

Includes: non-ferrous metals, plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall. Excludes: cement and cementitious materials, aggregates such as stone, sand, or gravel, and aggregate binding agents/additives

BABA waiver categories are like AIS





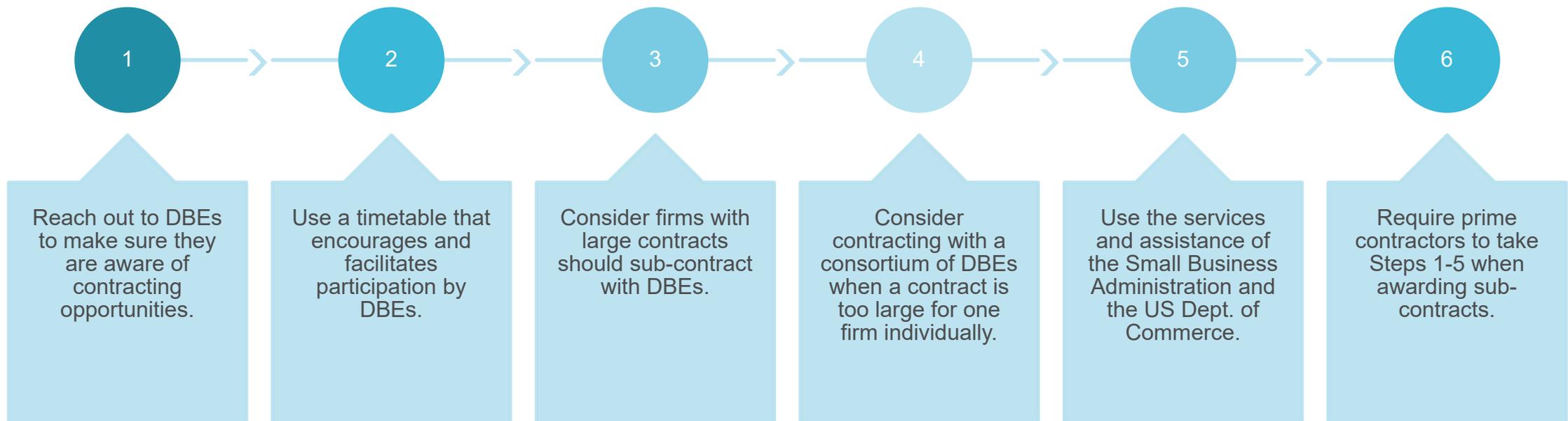
National Waiver

Minor (Ferrous) Components Waiver: Allows the **iron and steel product manufacturer** to include non-domestic or unknown sourced, minor iron or steel components in BABA-compliant products - up to 5% of material cost of the product.

Disadvantaged Business Enterprises
Women-owned Business Enterprises
Minority-owned Business Enterprises
(DBE/WBE/MBE)

The EPA's Disadvantaged Business Enterprises authority ensures recipients of EPA financial assistance and their prime contractors, seek out, and wherever possible, utilize MBE, WBE, and other DBE firms when procuring services, equipment, supplies, and construction on EPA funded projects.

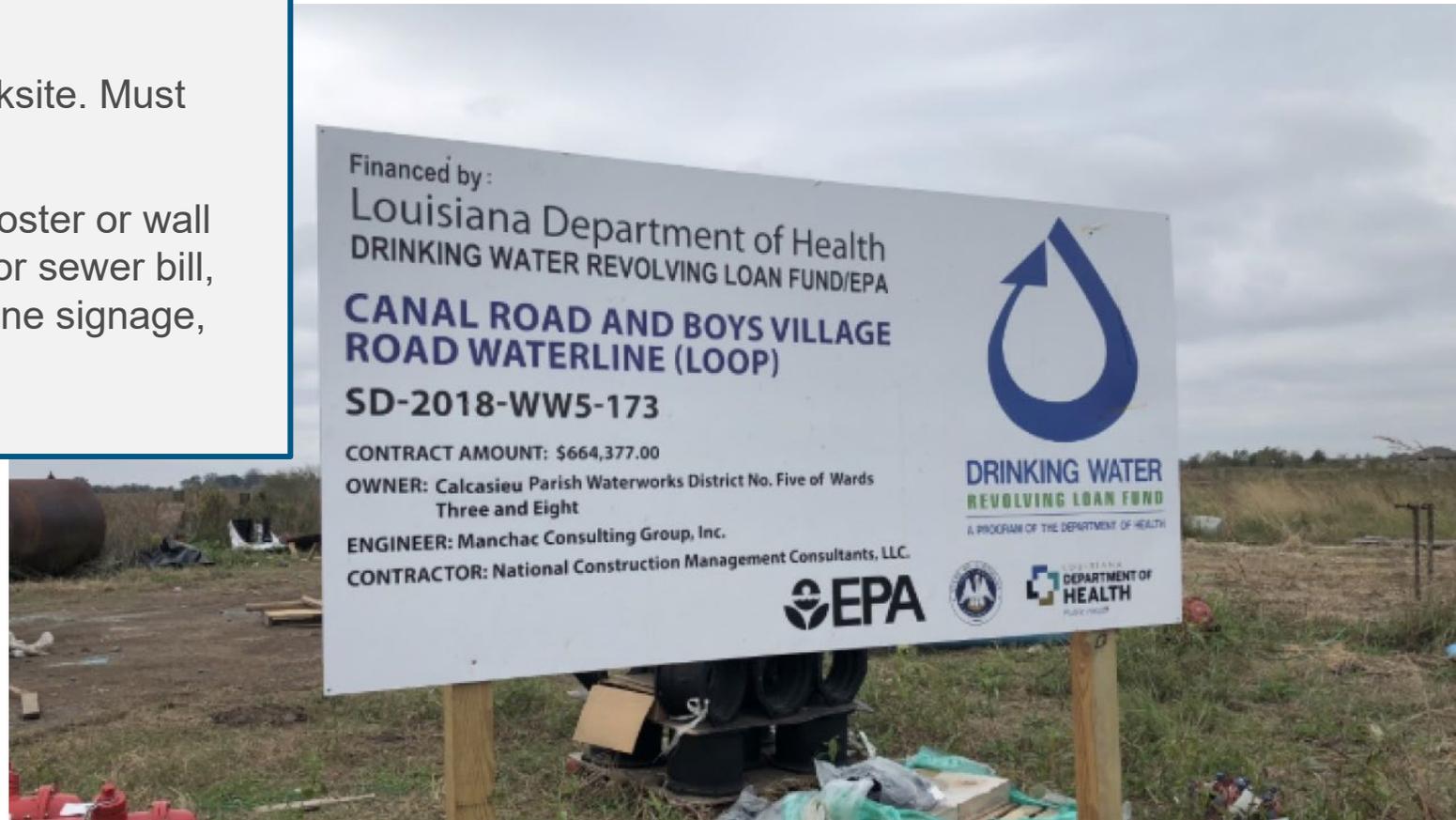
“The Six Good Faith Efforts”



Signage

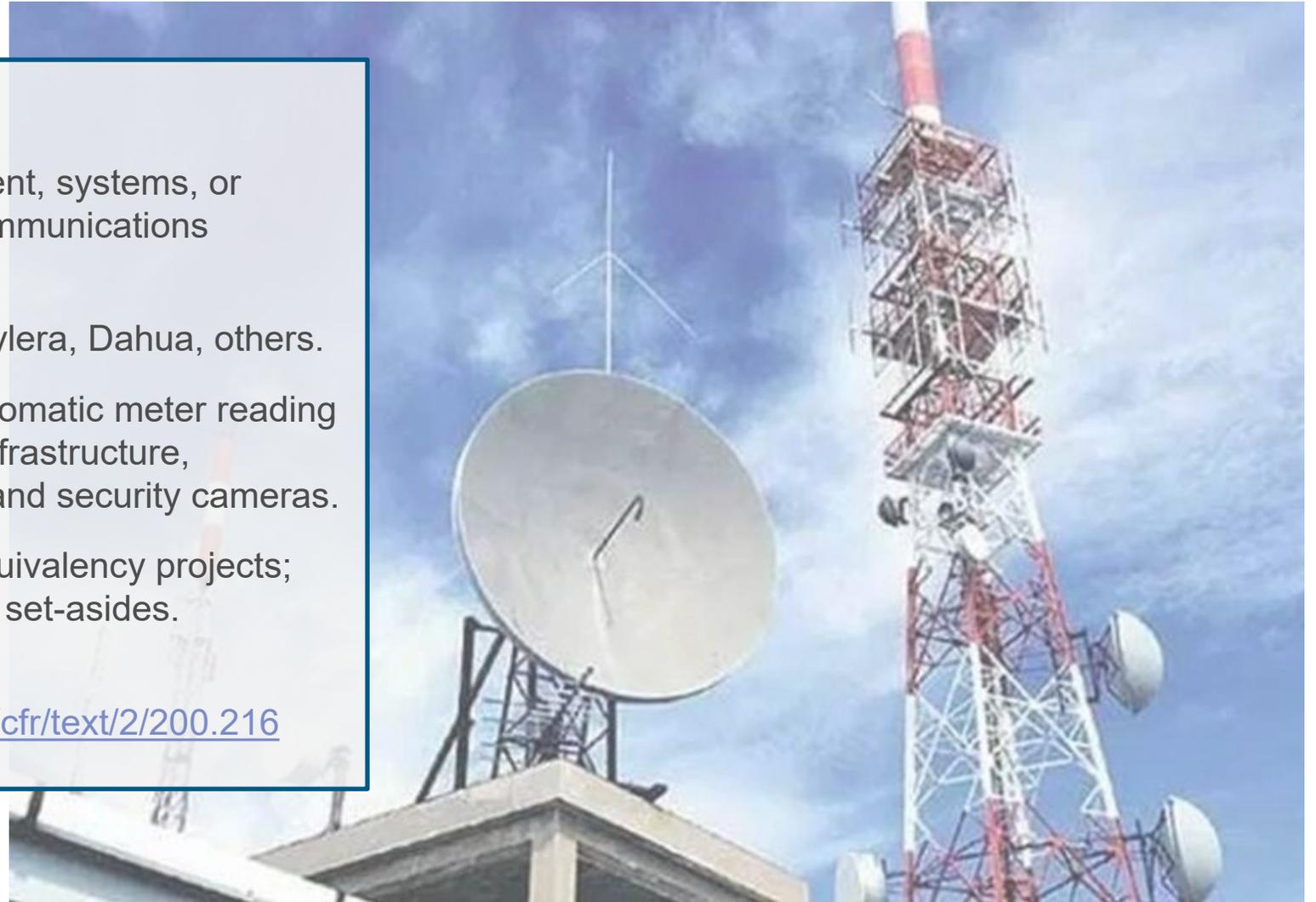


- Capitalization grant award condition.
- Can be part of bid documents/construction contract or handled as separate documents.
- Can be the standard project sign at the worksite. Must include the EPA logo.
- Other acceptable signage options include poster or wall signage in a public building, insert in water or sewer bill, newspaper or periodical advertisement, online signage, and press release.



Telecom

- Telecom Services and Equipment
 - Cannot procure or obtain equipment, systems, or services that use “covered telecommunications equipment or services”.
 - Covered brands: Huawei, ZTE, Hylera, Dahua, others.
 - Products and services include automatic meter reading technology, advanced metering infrastructure, instrumentation control systems, and security cameras.
 - Applies to: DWSRF & CWSRF equivalency projects; CWSRF admin funds; all DWSRF set-asides.
- Telecom prohibition <https://www.law.cornell.edu/cfr/text/2/200.216>



Single Audit

SRF Specific Requirements: Single Audit



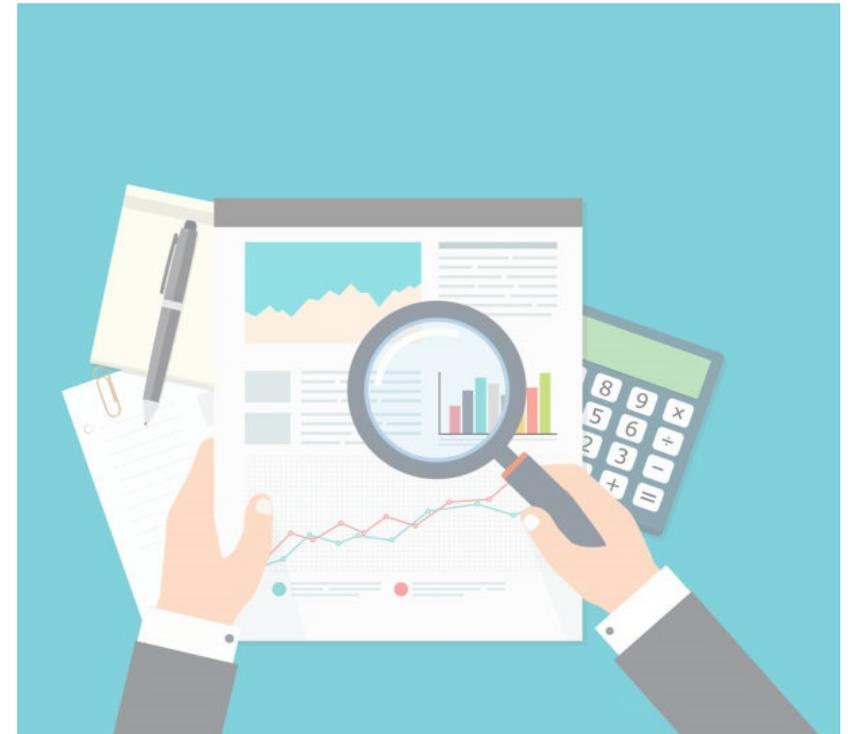
More than \$750,000 in federally-reimbursable funds in a fiscal year



Organization-wide financial statement and federal award audit



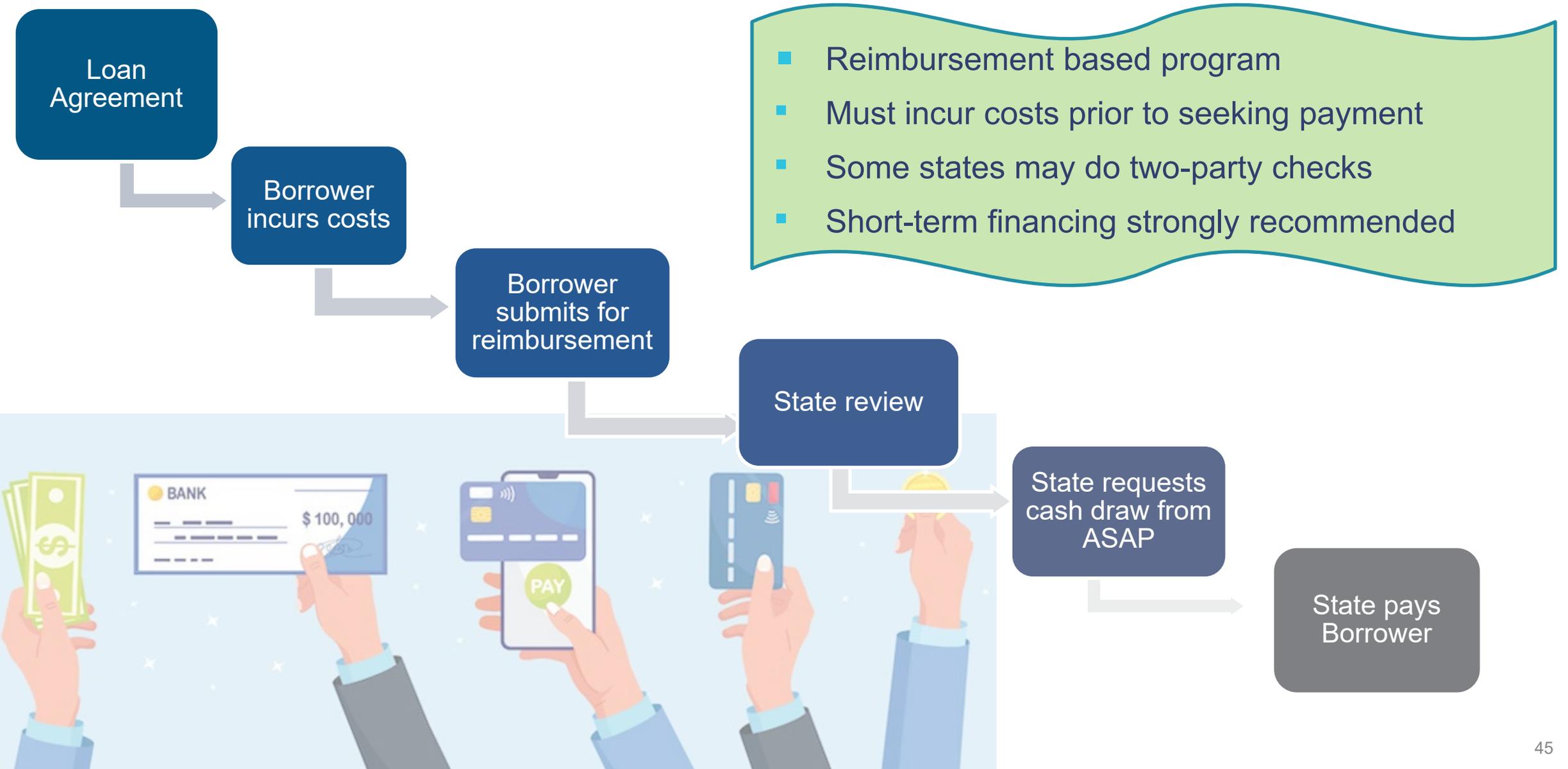
Intended to provide assurances that a non-federal entity has adequate internal controls in place, and is in compliance with program requirements



Disbursement



Disbursement- Loan recipient



Federal Crosscutters: SRF Matrix

Matrix of SRF Requirements							
	All CWSRF Projects	Only CW Equivalency	Only Governments	Only Treatment Works	All DWSRF Projects	Only DW Equivalency	Additional Notes
A/E Contract Procurement (RFQ, QBS)		X					Applies after 10/1/2014; WRRDA Guidance p 7
American Iron & Steel (AIS)				X	X		https://www.epa.gov/cwsrf/american-iron-and-steel-requirement-guidance-and-questions-and-answers
Buy America Build America (BABA)		X				X	https://www.epa.gov/cwsrf/build-america-buy-america-baba-resources
Crosscutters: Environmental		X				X	Crosscutter handbook
Crosscutters: Socioeconomic		X				X	Crosscutter handbook
Crosscutters: Super (Civil Rights)	X				X		Crosscutter handbook
Cost and Effectiveness (C&E)			X				Applies after 10/1/2014; WRRDA Guidance p 6
David Bacon Wage Requirements				X	X		WRRDA Guidance p 3; DB Guidance ; David Bacon Handbook
Disadvantaged Business Enterprises (DBE, WBE, MBE)		X				X	40 CFR Part 33
FFATA		X				X	SRF Policy 9/22/2014
Fiscal Sustainability Plans (FSP)				X			Applies after 10/1/2014; excludes new WWTPs; WRRDA Guidance p 12
Generally Accepted Government Accounting			X		X		WRRDA Guidance p 4
NEPA-like SERP				X	X		CW: 40 CFR 35.3140 DW: 40 CFR 35.3580, Also see DWSRF Program Operation Manual
Expected Useful Life > Loan Term	X				X		CW: WRRDA Guidance p 12; required even if loan term <20 yrs; only applies to loans. DW: AWIA Implementation 3/25/2019 memo
Signage		X				X	SRF Policy 6/3/2015
Single Audit		X				X	State does not need to collect or review
Telecomm Equipment & Services		X				X	2 CFR 200.216
Technical, Financial & Managerial Capacity (TFM)					X		AWIA Implementation 12/2/2019 memo

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“It Depends”

Questions?



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<https://www.quantifiedventures.com/water-state-revolving-fund-services?rq=srf>