

Massachusetts Clean Water Trust
Office of the Treasurer and Receiver - General
Executive Office for Administration and Finance
Department of Environmental Protection



Application for Financial Assistance
Clean Water State Revolving Fund
Planning Stage

May 2022

Department of Environmental Protection
Bureau of Water Resources
Division of Municipal Services
One Winter Street
Boston, Massachusetts 02108-4747

Introduction

Legislative Background

Chapter 275 of the Acts of 1989, as amended by Chapter 203 of the Acts of 1992, and most recently amended by Chapter 78 of the Acts of 1998, (the Act) established the state revolving fund program in Massachusetts contemplated by Title VI of the federal Clean Water Act (the CWA) and Title XIV of the Amendments to the federal Safe Drinking Water Act (SDWA). It further created the Massachusetts Clean Water Trust (the Trust) to implement the program. The Trust, together with the Massachusetts Department of Environmental Protection (MassDEP) is authorized under the Act to make loans to local governmental units (LGU) and Public Water Suppliers (PWS) to finance the costs of eligible water pollution abatement and drinking water protection projects.

What is an SRF Planning Project?

To address clean water or drinking needs, LGUs or PWSs may undertake a planning project to identify problems and determine feasible solutions. Typically, planning projects will provide the framework to design or engineer the infrastructure or construction project that will best serve the community.

Eligibility Determination

Eligible projects will be determined in accordance with the priority lists established annually by MassDEP. *A project must appear on the current MassDEP Intended Use Plan (IUP) project listing to be eligible to apply for financial assistance.* Applications for loans will be reviewed in accordance with the provisions of 310 CMR 44.00.

<https://www.mass.gov/regulations/310-CMR-4400-the-clean-water-state-revolving-fund>

Applying for Financial Assistance

Potential borrowers must file an Application for Financial Assistance (Application) with MassDEP, Bureau of Water Resources (BWR). Once MassDEP has approved the Application, it will forward a Project Approval Certificate (PAC) to the Trust. The Trust will then be authorized to fund the project, subject to:

1. availability of funds;
2. approval of the application by MassDEP and the Trust; and,
3. the terms and conditions subsequently developed for the assistance.

This application package includes the Application Form, Instructions, and other information relative to supporting documentation required to be submitted as part of the Application. **Please do not submit the instructions with the Application.**

Applicants should note that neither the filing of an Application nor issuance by MassDEP of a Project Approval Certificate constitutes a binding commitment of the Trust or MassDEP to make a loan. Binding commitments, subject to the availability of funds, will be issued by the Trust after review of the financial information contained in the Application.

PLEASE NOTE THAT THIS APPLICATION PACKAGE IS SUBJECT TO REVISION. IT DOES, HOWEVER, REFLECT THE MOST CURRENT INFORMATION REQUIRED BY MassDEP AND THE TRUST TO REVIEW AND APPROVE YOUR PROJECT.

PLEASE CONTACT MassDEP PRIOR TO SUBMISSION OF THIS APPLICATION.

General Information

Please complete all parts of this application; incomplete or incorrect applications may delay review.

1. ***Use of This Application*** - This application is to request loan assistance and/or to request refinancing of debt obligations incurred by the local governmental unit (LGU) in the planning of water pollution abatement and drinking water projects through preparation of Integrated Water Resource Management Plans, Comprehensive Wastewater Management Plans, Project Evaluation Reports or Stormwater Management Plans. LGUs interested in receiving an SRF loan must complete and return this application.
2. ***General Eligibility*** - A project must meet the eligibility criteria of the SRF program in order to be eligible for financial assistance (See 310 CMR 44.04 or 44.08)
<https://www.mass.gov/regulations/310-CMR-4400-the-clean-water-state-revolving-fund>
<https://www.mass.gov/doc/clean-water-srf-eligible-project-costs-0/download>
3. ***Deadlines*** - Please keep in mind two important deadlines. A vote on the local appropriation by the City Council, Town Meeting or Wastewater District must be completed by **June 30, 2022** and should be scheduled as far in advance of that date as possible. A complete application must be submitted by **October 14, 2022**.
4. ***The Application Consists of Two Parts and a Checklist:***
 - Part I:** General information about the applicant and the project, and an applicant certification statement.
 - Part II:** Project Section Information
 - Loan Application Checklist:** The checklist must be completed and submitted with the application.
5. ***Submission*** - Please submit a PDF file of the application (**including the loan application checklist**) via email or ftp site access:
Maria.Pinaud@mass.gov
cc
Robin.McNamara@mass.gov
Gregory.D.Devine@mass.gov (for NERO & WERO projects)
Michele.Higgins@mass.gov (for CERO & SERO projects)

Instructions for Part I – Applicant Information Section

1. Provide the legal name of the eligible local governmental unit (LGU) or public water supplier (PWS) that will undertake the proposed project. The person named as the authorized representative will be responsible for executing contracts and documents.

List the applicant's Department of Revenue (DOR) identification Number (this is the I.D. number used on all state revenue aid programs).

List the applicant's Federal Employer Identification Number (FEIN).

Authorized Representative - List the name, title, complete address, e-mail address, and telephone and fax numbers of the authorized representative. The application must contain a resolution or authorization designating by title the official (Mayor, City or Town Manager, Chairman of the Board of Water Commissioners, Select Board, etc.) to act as the representative of the applicant to sign for, accept, and take whatever action is necessary relative to the project. In the city form of government, the City Council will generally name the authorized representative. If the community is governed by Town Meeting, then the Town Meeting action will name the appropriate group, such as the Select Board or Board of Public Works. The appropriate governing body will then name the authorized representative. If the authority to file statement names an office, then a certified statement is required specifically identifying the individual currently holding that office. For wastewater districts, provide the requisite authorization of the governing board.

2. If an individual other than the Authorized Representative will serve as the Applicant's contact person for day-to-day management of the project, provide that person's name, address, e-mail address, and telephone and fax numbers.
3. Provide the name and Federal Employer Identification Number (FEIN) of the engineering firm, contact person, address, e-mail address, and telephone and fax numbers.
4. List the project's SRF ID number and name from the current CW SRF Priority List/Intended Use Plan and provide a brief description of the nature and scope of the planning project to be undertaken.
5. Indicate the amount of financial assistance you are requesting.

Instructions for Part II - Project Section

1. **PROJECT SCHEDULE AND COST** – The application must contain a realistic schedule for starting and completing the planning project. Since the Trust will sell its bonds based on the proposed schedule, it is critical that this schedule be as accurate as possible. Please include month, day, and year. Indicate the total and eligible costs of the project. Eligibility must be consistent with the MassDEP Policy on Eligible Project Costs. <https://www.mass.gov/doc/clean-water-srf-eligible-project-costs-0/download>
2. **CASH FLOW PROJECTIONS** – Provide a month-by-month schedule of project expenditures. <https://www.mass.gov/regulations/310-CMR-4400-the-clean-water-state-revolving-fund>

DEFINITIONS FOR LOAN APPLICATION CHECKLIST

Part I – Applicant Information and Certification

1. AUTHORITY TO FILE

Authorized Representative - List the name, title, complete address, e-mail address, and telephone and fax numbers of the authorized representative. The application must contain a resolution or authorization designating by title the official (Mayor, City or Town Manager, Chairperson of the Board of Sewer Commissioners, Chairperson of the Select Board, etc.) to act as the representative of the applicant to sign for, accept, and take whatever action is necessary relative to the project. In the city form of government, the City Council will generally name the authorized representative. If the community is governed by Town Meeting, then the Town Meeting action will name the appropriate group, such as the Select Board or Board of Public Works. The appropriate governing body will then name the authorized representative. If the authority to file statement names an office, then a certified statement is required specifically identifying the individual currently holding that office. For wastewater districts, provide the requisite authorization of the governing board.

2. CERTIFYING AUTHORITY TO FILE

Statement must be certified, by either a certification at the bottom of the authority to file or by submitting a separate certifying statement. Suggested forms for Authority to File and Certifying Authority to File are included in **Appendix A**.

In the event the authorized official is replaced while the project is still active, a certified statement naming the new incumbent and the effective date of appointment must be submitted. It is for this reason that it is recommended the Authority to File name only an office or position (Mayor, City or Town Manager, Chairperson of the Board of Water Commissioners, Chairperson of the Select Board, etc.) so when there is a change in the Authorized Representative, only a new Certifying Authority to File needs to be submitted.

On occasion an authorized representative may desire to delegate to another person the authority to also act on their behalf in processing paperwork during the implementation of the project. This is accomplished by having the authorized representative submitting a letter advising of this delegation.

3. LOCAL APPROPRIATION

The applicant must demonstrate that sufficient funds are available to cover the total (both eligible and ineligible) project costs. This is accomplished by means of a vote of Town Meeting, City Council, Water Supply District, or other appropriate action. Local bond counsel should be consulted for exact language depending on whether the applicant uses general obligation or revenue obligation borrowing.

Important points to remember include:

- Note that the applicant can borrow from the Massachusetts Clean Water Trust in accordance with Chapter 29c, as amended, of the General Laws.
- The resolution must be certified.
- It must denote who can act on behalf of the applicant to file for and accept financing.
- It must specifically state the project(s) being authorized.

Part II – Project Information Section

1. PLAN OF STUDY – A detailed Plan of Study must be submitted with the application, outlining the scope of services for the planning work. The plan of study should be of sufficient detail to demonstrate that all MassDEP planning requirements will be met. For further guidance on this issue, contact the appropriate MassDEP Program Manager.

Part III – Supplemental Requirements

1. PROFESSIONAL SERVICES AGREEMENT – The application must contain draft agreements for all professional services which clearly outline the duties and responsibilities of the applicant and its contractors. The agreement will include, but not be limited to, scope of work for the various planning tasks, cost to perform the work to be paid in accordance with the provisions of eligible contracts, provisional overhead rate, and time of completion.
2. MODEL SUBAGREEMENT CLAUSES – The provisions within **Appendix B** are to be made a part of all professional services agreements.
3. DETAILED FEE BREAKDOWN – All fees shall be broken out by task (shop drawings, resident services, start-up, etc.), job category (vice president, project engineer, draftsman, etc.), and cost.
4. DISADVANTAGED BUSINESS ENTERPRISE – Applicants receiving assistance must make positive efforts to use disadvantaged minority and women owned businesses for professional services. Such efforts should achieve a goal of 4.2% participation for disadvantaged minority business (D/MBE) and 4.5% participation for disadvantaged women owned business (D/WBE) but, at a minimum, should allow these sources the maximum feasible opportunity to compete for sub-agreements to be performed using state trust monies. Sample forms are provided in **Appendix C**.
5. CHAPTER 233 - COMPLIANCE STATEMENT ON MA TAXES – A statement must be signed by the consultant engineer(s) for the project that states that the engineer(s) is in compliance with Massachusetts tax laws. A sample statement is provided in **Appendix D**.

Part I

Applicant Information and Certification

(Attach additional pages as necessary)

1. LOCAL GOVERNMENTAL UNIT (LGU)			
LGU/PWS Name:		Dept. of Revenue ID No.:	FEIN
Authorized Representative:		Title:	
Street/P.O. Box:			
City:	State:		Zip:
Telephone:	Fax:	E-Mail:	

2. LGU CONTACT PERSON (if different from item 1)			
Name:		Title:	
Mailing Address (if different from item 1)			
Street/P.O. Box:			
City:	State:		Zip:
Telephone:	Fax:	E-Mail:	

3. ENGINEER OR CONSULTANT FIRM			
Firm/Agency:		FEIN	
Contact Person:			
Mailing Address			
Street/P.O. Box:			
City:	State:		Zip
Telephone:	Fax:	E-Mail:	

4. CWSRF PROJECT IDENTIFICATION NUMBER			
ID No. from Current Priority List:			
Project Description:			

5. AMOUNT OF ASSISTANCE REQUESTED \$			

6. CERTIFICATION

In submitting this Application to MassDEP, the Applicant certifies that it shall comply with the following Project related conditions and understands that the Applicant's non-compliance with one or more of these conditions may preclude MassDEP's issuance of a Project Approval Certificate or entry into a Project Regulatory Agreement.

(1) The Borrower shall comply with the (a) the Civil Rights Act of 1964, 42 USC s.2000(1) et seq., as amended, Section 13 of the Federal Water Pollution Control Act (FWPCA) of 1972; Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, (b) the Equal Employment Opportunity requirements (Executive Order 11246), and all Executive Orders and regulations promulgated thereunder, and (c) the Affirmative Action and Minority/Women Business Enterprise ("M/WBE") requirements in the Regulations and the federal Disadvantaged Business (DBE) rule. The Borrower shall ensure that any prime contracts or subcontracts for services, construction, goods, or equipment for the Project contain the DM/DWBE utilization goals of 4.2% D/MBE and 4.5% D/WBE.

(2) Prior to receiving final payment for the Project, the Applicant shall certify to MassDEP that the Project has been completed and performed in accordance with the Project Regulatory Agreement.

(3) The Applicant shall establish accounts for the Project which shall be maintained in accordance with generally accepted government accounting standards.

(4) The Applicant understands that if MassDEP issues a Project Approval Certificate for this project, such action does not constitute MassDEP's sanction or approval of any changes or deviation from any applicable state regulatory or permit standards, criteria, or conditions, or from the terms or schedules of state enforcement actions or orders applicable to the Project.

(5) The Applicant shall maintain all Project records for seven years after the issuance of final payment or until any litigation, appeal, claim, or audit that is begun before the end of the seven-year period is completed and resolved, whichever is longer.

(6) The Applicant agrees to provide any Project information and documentation requested by MassDEP.

(7) Any proposed change in Project-related contracts which substantially modifies the Project initially proposed shall be submitted to MassDEP for prior approval.

(8) The Applicant's implementation of the Project, including the procurement of related contracts, shall comply with all applicable requirements of state and local laws, ordinances, by-laws, rules, and regulations.

To the best of my knowledge and belief, data provided in this application is true and correct; the documentation has been duly authorized by the governing body of the applicant. Furthermore, the applicant certifies that it possesses the legal authority to apply for the loan, and to finance and construct the proposed facilities. A resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application. The same resolution, motion, or similar action is directing and authorizing the person identified below as the authorized representative of the applicant to act in connection with the application and to provide such additional information as may be required.

Name of Representative
(Type)

Title

Signature of Representative

Date

State Revolving Fund Program Loan Application Checklist

PLANNING STAGE PROJECTS

Please use this checklist to confirm that all required forms and supplemental information have been included with the application and submit the checklist with your application.

Item	Included (check)	Previously submitted (date)	Not applicable (check)
Part I - Applicant Information and Certification			
1. Authority to File			
2. Certifying Authority to File			
3. Local Appropriation			
Part II - Project Section Information			
1. Plan of Study			
Part III - Supplemental Requirements			
1. Professional Services Agreements			
2. Model Sub Agreement clauses			
3. Detailed Fee Breakdown			
4. Disadvantaged Business Enterprise			
5. Chapter 233 - Statement on MA Taxes			

Appendix A

Authority to File & Certifying Authority to File

Sample CWSRF: Resolution Authorizing Officer to File Application with the Massachusetts Department of Environmental Protection for State Financial Assistance for Water Pollution Abatement Projects.

AUTHORITY TO FILE

Whereas, _____, after thorough investigation,
(Applicant)

has determined that the work activity consisting of: _____

(describe project)

is both in the public interest and necessary to protect the public health, and that to undertake this activity, it is necessary to apply for assistance; and

Whereas, the Massachusetts Department of Environmental Protection (MassDEP) and the Massachusetts Clean Water Trust (the Trust) of the Commonwealth of Massachusetts, pursuant to Chapter 21 and Chapter 29C of the General Laws of the Commonwealth (Chapter 21 and Chapter 29C) are authorized to make loans to municipalities for the purpose of funding planning and construction activities relative to Water Pollution Abatement Projects; and

Whereas, the Applicant has examined the provisions of the Act, Chapter 21 and Chapter 29C, and believes it to be in the public interest to file a loan application.

NOW, THEREFORE, BE IT RESOLVED by _____
(Governing Body)

as follows:

1. That _____ is hereby authorized on behalf
(Title of Official)
of the Applicant to file applications and execute agreements for grant and/or loan assistance as well as furnishing such information, data and documents pertaining to the applicant for a grant(s) and/or loan(s) as may be required; and otherwise to act as the authorized representative of the Applicant in connection with this application;
2. That the purpose of said loan(s), if awarded, shall be to fund planning activities.
3. That if said award is made the Applicant agrees to pay those costs which constitute the required Applicant's share of the project cost.

Sample CWSRF: Certification to the Massachusetts Department of Environmental Protection as to Authority to File Applications for State Financial Assistance for Water Pollution Abatement Projects.

CERTIFYING AUTHORITY TO FILE

I hereby certify that the _____ of

(Name of Governing Body)

the _____

(Corporate Name of Local Government Unit)

(hereinafter referred to as the "Applicant"), at a meeting noticed and conducted in accordance with all applicable legal requirements, duly voted to authorize

(Title of Local Government Unit Official)

to act on behalf of the Applicant, as its agent, in filing applications for, executing agreements regarding, and performing any and all other actions necessary to secure for the Applicant such loan(s) for construction or planning of Water Pollution Abatement Projects as may be made available to the Applicant pursuant to the provisions of the Massachusetts Clean Waters Act (M.G.L. c.21, section 27-33E, inclusive, as amended) and the Water Pollution Abatement Revolving Loan Program (M.G.L. c.29C) for the following project:

(describe project)

I hereby certify that _____ is the present incumbent of the

(Name of Person)

position referenced above, and do hereby certify:

1. That the attached resolution is a true and correct copy of the resolution as finally adopted at a meeting of the governing body held on the ____ day of _____, 20____, and duly recorded in my office:
2. That said meeting was duly convened and held in all respects in accordance with law and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting, and a legally sufficient number of members of the governing body voted in the proper manner and for the adoption of said resolution; that all other requirements and proceedings under the law incident to the proper adoption or passage of said resolution, including publication, if required, have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate:
3. That if an impression of a seal has been affixed below, it constitutes the official seal of the Applicant and this certificate is hereby executed under such official seal; but if no seal has been affixed, the Applicant does not have an official seal:

IN WITNESS WHEREOF, I have hereunto set my hand this

_____ day of _____, 20____.

Appendix B

Model Sub-Agreement Provisions

Professional Services Agreements -Required Provisions

All contracts between SRF beneficiaries and professional services consultants shall contain the following provisions.

- (1) The owner and the contractor agree that the following provisions apply to the eligible work to be performed under this agreement and that such provisions supersede any conflicting provisions of this agreement.
- (2) The work under this agreement is funded in part by the water pollution abatement fund. Neither the Commonwealth of Massachusetts nor the Massachusetts Department of Environmental Protection (MassDEP) nor the Clean Water Trust (the Trust) is a party to this agreement. As used in these clauses, the words "the date of execution of this agreement" means the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.
- (3) The owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or this agreement.
- (4) The contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.
- (5) The contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable MassDEP requirements in effect on the date of execution of this agreement.
- (6) The owner's or MassDEP's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the contractor of responsibility for the technical adequacy of his work. Neither the owner's nor MassDEP's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.
- (7) The contractor shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or MassDEP caused by the contractor's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent solely attributable to the owner, owner-furnished data or any third party not controlled by the contractor. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control. Where innovative processes or techniques are recommended by the engineer and are used, the engineer shall be liable only for gross negligence to the extent of such use.
- (8) The services to be performed by the contractor shall include all services required to complete the scope of work as defined and set out in the professional services agreement to which these provisions are attached in accordance with applicable regulations.
- (9) The owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made, and this agreement shall be modified in writing accordingly. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change, unless the owner grants a further period of time before the date of final payment under this agreement.

- (10) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the owner.
- (11) In the event that there is a modification of MassDEP's requirements relating to the services to be performed under this agreement after the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.
- (12) Either party may terminate this agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.
- (13) The owner may terminate this agreement, in whole or in part, in writing, for its convenience, if the termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new phase) and the contractor is given (1) not less than ten calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party before termination.
- (14) If the owner terminates for default, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on services not performed or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs the owner incurs because of the contractor's default.

If the contractor terminates for default or if the owner terminates for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred before the termination, in addition to termination settlement costs the contractor reasonably incurs relating to commitments which had become firm before the termination.

- (15) Upon receipt of a termination action under paragraphs (13) or (14), the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the contractor may have accumulated in performing this agreement, whether completed or in process.
- (16) Upon termination under paragraph (13) or (14), the owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work the owner takes over for completion will be completed at the owner's risk, and the owner will hold harmless the contractor from all claims and damages arising out of improper use of the contractor's work.
- (17) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the owner. In such event, adjustment of the price provided for in this agreement shall be made as paragraph (14) provides.
- (18) Except as this agreement otherwise provides, all claims, counter-claims, disputes, and other matters in question between the owner and the contractor arising out of or relating to this agreement or the breach of it will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction pursuant to the laws of Massachusetts.

- (19) The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on eligible work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission and a copy of the cost summary submitted to the owner. The Governor, the Secretary of Administration and Finance, MassDEP and State Auditor's Office or any of their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.
- (20) The contractor agrees to include paragraphs (19)-(23) in all his contracts and all subcontracts directly related to project performance that are in excess of \$25,000.
- (21) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- (22) The contractor agrees to the disclosure of all information and reports resulting from access to records under paragraphs (19) or (20), to any of the agencies referred to in paragraph (19), provided that the contractor is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the contractor.
- (23) The contractor shall maintain and make available records under paragraph (19) and (20) during performance on eligible work under this agreement and until 7 years from the date of final payment for the project. In addition, those records which relate to any "Dispute", appeal under an assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such appeal, litigation, claim, or exception if such date is later than seven years from the date of final payment.
- (24) (This clause is applicable if the amount of this agreement exceeds \$100,000). If the owner or MassDEP determine that any price, including fee, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any sums because the contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or fee shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.
- (25) Any subcontractors and outside associates or consultants required by the contractor in connection with services under this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as the owner specifically authorizes in writing during the performance of this agreement. The owner must give prior approval for any substitutions in or additions to such subcontractors, associates, or consultants.
- (26) In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability, shall not discriminate in the selection or retention of subcontractors, and shall not discriminate in the procurement of materials and rentals of equipment.
- (27) The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- (28) If it is found, after notice and hearing, by the owner that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in form of entertainment, gifts, or otherwise), to any official, employee or agent of the owner, or of the state, in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this agreement, the owner may, by written notice to the contractor, terminate the right of the contractor to proceed under this agreement. The owner may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts upon which the owner bases such findings shall be in issue and may be reviewed in proceedings under the remedies clause of this agreement.
- (29) In the event this agreement is terminated as provided in paragraph (28), the owner shall be entitled: (1) To pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and (2) as penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the owner) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.
- (30) MassDEP has the right to use, duplicate, and disclose, in whole or in part, in any manner for any purpose whatsoever, any plans, drawings, designs, specifications, computer programs (which are substantially paid for with Trust funds), technical reports, operating manuals, and other work submitted with an application or which are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement. The owner and the MassDEP reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The contractor shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data.
- (31) All such subject data furnished by the contractor pursuant to this agreement are instruments of his services in respect of the project. It is understood that the contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the owner reuses the subject data without the contractor's specific written verification or adaptation, such reuse will be at the sole risk of the owner, without liability to the contractor. Any such verification or adaptation will entitle the contractor to further compensation at rates agreed upon by the owner and the contractor.

Appendix C

D/MBE and D/WBE Forms Professional Services Contracts

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FOR PROFESSIONAL SERVICES CONTRACTS

I. Purpose

The purpose of this guidance document is to assist local governmental units (LGUs) and their Prime Consultant in demonstrating compliance with the United States Environmental Protection Agency (EPA) requirements for disadvantaged business enterprise (DBE) participation in professional services contracts.

II. Requirements

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BACKGROUND

In May 2008 an EPA rule became effective that changed the Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Program to a Disadvantaged Business Enterprise (DBE) Program.

For firms to qualify under the old MBE/WBE program they needed to be socially disadvantaged and had to be certified by the Supplier Diversity Office (SDO). Under the DBE rule, the firms must be both **socially** and **economically** disadvantaged, **citizens of the United States**, and certified as a DBE either by the state or the federal government. Women and certain minorities are presumed to be socially disadvantaged. The economic disadvantage is measured by the owner's initial and continuing personal net worth of less than \$1,320,000.

Because the Clean Water Act requires the use of MBEs and WBEs, these firms will still be utilized in the State Revolving Fund (SRF) Loan Program, but they must also be certified as DBEs.

SDO will continue to be the certifying agency for the SRF program. SDO certifies firms under the federal Department of Transportation program, which is acceptable for use in the SRF program. An additional form has been added to the DBE package to verify that DBEs are owned or controlled by United States citizens.

The following are the current DBE goals:

Disadvantaged MBEs 4.2% Disadvantaged WBEs 4.5%.

III. Procedures

1. In cases where the professional services contracts achieve the goal of 4.2% D/MBE and 4.5% D/WBE participation, the LGU and/or its Prime Consultant is required to submit Form EEO-DEP- 190E (Schedule of Participation for Professional Services) and Form EEO-DEP-191E (Letter of Intent) to MassDEP. Form EEO-DEP-190E identifies the proposed DBE subcontractors, the type of services to be provided by each subcontractor (e.g., Architecture, preparation of O&M manuals, laboratory analysis, etc.), and the respective dollar value of their participation. Form EEO-DEP- 191E must be completed for each D/M/WBE subcontractor identified on Form EEO-DEP-190E. Each DBE must also sign the Certification of United States Citizenship form to verify that the firm is owned or controlled by a United States citizen.
2. In the event that a professional services contract does not achieve the goal of 4.2% D/MBE and 4.5% D/WBE participation, MassDEP may request that the LGU's Prime Consultant provide additional documentation demonstrating what positive efforts were made to achieve the participation goal. In cases where the LGU's Prime Consultant fails to demonstrate the 4.2% D/MBE and 4.5% D/WBE participation in the professional services contract, the Prime Consultant must submit Form EEO-DEP-490E (Request for Waiver), together with the supporting documentation identified therein, to MassDEP.
3. MassDEP's project approval certificate shall contain a condition requiring the LGU's Prime Consultant to submit all executed consultant contracts, including contracts with D/M/WBE subcontractor(s) if in excess of \$25,000, to MassDEP within sixty (60) days from the date of the award of financial assistance to the LGU by the Clean Water Trust (the Trust).
4. In order for MassDEP to monitor compliance with its above stated D/M/WBE provisions for professional services contracts, any LGU who does not file monthly or bi-monthly Payment Requisitions on Form 3000 (Consultant Engineer's Request and Certification) to document D/M/WBE activity, will be required at a minimum to submit Form EEO-DEP-390E (Quarterly D/M/WBE Activity Report) on a quarterly basis. The Form EEO-DEP-390E is not attached to this package but will be made available to those that need to use it when the Form 3000 reporting is not an option.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
 MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
 DIVISION OF MUNICIPAL SERVICES

SCHEDULE OF PARTICIPATION FOR PROFESSIONAL SERVICES

Project Title: _____ **Project Location:** _____

Disadvantaged Minority Business Enterprise Participation in the SRF Loan Work

Name & Address of D/MBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		

Total D/MBE Commitment: \$ _____

Percentage D/MBE Participation = (Total D/MBE Commitment) / (Total Engineering Cost) = _____

	%
--	---

Disadvantaged Women Business Enterprise Participation in the SRF Loan Work

Name & Address of D/WBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		

Total D/WBE Commitment: \$ _____

Percentage D/WBE Participation = (Total D/WBE Commitment) / (Total Engineering Cost) = _____

	%
--	---

The Prime Consultant agrees to furnish implementation reports as required by the Awarding Authority to indicate the D/MBE(s) and D/WBE(s) which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

Name of Prime Consultant: _____

Date: _____ By: _____

Signature

NOTE: Participation of a DBE may be counted in only their certified category; the same dollar participation cannot be used in computing the percentage of D/MBE participation and again of D/WBE participation.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
 MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
 DIVISION OF MUNICIPAL SERVICES

LETTER OF INTENT FOR PROFESSIONAL SERVICES

This form is to be completed by the disadvantaged MBE and WBE and must be submitted by the Prime Consultant as part of the proposal. A separate form must be completed for each D/MBE and D/WBE involved in the project.

Project Title: _____ Project Location: _____

TO: _____
 (Prime Consultant)

FROM: _____
 (Please Indicate Status D/MBE or D/WBE)

° I/we intend to perform work in connection with the above project as (check one):

An individual _____ A partnership _____
 A corporation _____ A joint venture with: _____
 Other (explain): _____

° It is understood that if you are awarded the contract, you intend to enter into an agreement to perform the activity described below for the prices indicated.

DBE PARTICIPATION

Description of Activity	Date of Project Commencement	\$ Commitment	% Total Engineering Cost
		\$	%

° The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above referenced project.

PRIME CONSULTANT		MBE/WBE	
(Authorized Original Signature)	Date	(Authorized Original Signature)	Date
ADDRESS:		ADDRESS:	
TELEPHONE #:		TELEPHONE #:	
FEIN:		FEIN:	
EMAIL:		EMAIL:	

ORIGINALS:

- ° Compliance Mgr. City/Town Project Location
- ° MassDEP Program Manager for MassDEP's CRU Director

*** Attach a copy of current (within 2 years) DBE Certification**

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

DBE CERTIFICATION OF UNITED STATES CITIZENSHIP

For the SRF program, under the EPA Disadvantage Business Enterprise (DBE) Rule, a DBE must be owned or controlled by a socially and economically disadvantaged person that is also a **citizen of the United States** (See 40 CFR 33.202). “Ownership” is defined at 13 CFR 124.105 and “control” is defined at 13 CFR 124.106.

DBEs are certified for the SRF program through the Supplier Diversity Office using the federal Department of Transportation (DOT) DBE rules. EPA allows the use of DBEs certified under the DOT rules as long as they are also United States citizens. To ensure compliance with the EPA rule, MassDEP must verify United States citizenship through the completion of the following form for each DBE used on the project.

SRF Project Number _____

Contract Number _____

Contract Title _____

DBE Subcontractor _____

The undersigned, on behalf of the above named DBE subcontractor, hereby certifies that the DBE firm is either owned or controlled by a person or persons that are citizens of the United States.

Printed Name and Title of DBE Signatory

DBE Signature

Date

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MUNICIPAL SERVICES

REQUEST FOR WAIVER FOR PROFESSIONAL SERVICES

Upon exhausting all known sources and making every possible effort to meet the minimum requirements for DBE participation, the Prime Consultant seeks relief from these requirements by filing this form. Failure to comply with this process shall be cause to reject the eligibility of engineering costs.

General Information

Project Title: _____ Project Location: _____

Prime Consultant: _____

Mailing Address: _____

Contact Person: _____ Telephone No. _____

Minimum Requirements

The Prime Consultant must show that good faith efforts were undertaken to comply with the percentage goals as specified. The firm seeking relief must show that such efforts were taken appropriately in advance of the time set for approval of the application by submitting the following:

- A. A detailed record of the effort made to contact and negotiate with minority and/or woman owned businesses, including:
1. names, addresses, telephone numbers and contact dates of all such companies contacted;
 2. copies of dated written notice(s) which were sent to DBE potential subcontractors prior to application deadlines;
 3. copies of dated advertisements as appearing in general publications, trade-oriented publications, and applicable minority/women-focused media detailing the opportunities for participation;
 4. a detailed statement as to why each subcontractor contacted (i) was not willing to do the job or (ii) was not qualified to perform the work as solicited; and
 5. in the case(s) where a negotiated price could not be reached the Prime Consultant should detail what efforts were made to reach an agreement on a competitive price.
- B. MassDEP may require the Prime Consultant to produce such additional information as it deems appropriate.

- C. No later than fifteen (15) days after receipt of all required information and documentation, MassDEP shall make a determination, in writing, whether the waiver request is granted and shall provide that determination to the Prime Consultant and Awarding Authority. If the waiver request is denied, the facts upon which a denial is based will be set forth in writing.

Special Note

If at any time, MassDEP determines that one or more of the DBE contractors as submitted by the Prime Consultant on form EEO-DEP-190C is not certified, the bidder shall have 10 working days, following notification to MassDEP, to either find a certified DBE contractor to perform work equal to or greater than that of the uncertified contractor or submit a waiver request.

CERTIFICATION

The undersigned herewith certifies that the above information and appropriate attachments are true and accurate to the best of my knowledge and that I have been authorized to act on behalf of the Prime Consultant in this matter.

(authorized original signature)

DATE

Appendix D

Statement of Tax Compliance

STATEMENT OF TAX COMPLIANCE

Under the laws of the Commonwealth of Massachusetts, Chapter 233; Section 35, Acts of 1983, the LGU Consultant Engineer is required to complete the following:

I, _____, as _____ of

(Title)

(Position)

_____, whose principal place of business is located at

(Business)

_____, do hereby certify that the above named

_____ has complied with all laws of the Commonwealth of Massachusetts relating to taxes, in accordance with the provisions of Massachusetts General Laws, Chapter 62C, 49A, as amended.

Signed under the penalties of perjury this _____ day of _____, 20_____.

DATED: _____

(Authorized Signature)

Appendix E

Loan Reimbursements

Loan Reimbursement Forms

Once a financial assistance agreement/loan has been executed with the Trust, the community may seek reimbursement for costs incurred on the project. The community or its consultant engineer will complete the requisition forms, gather the appropriate backup documentation and submit the payment reimbursement request package in PDF form to MassDEP via email at DMSDEP.General@mass.gov. MassDEP perform a complete review of the reimbursement packet, recommends payment upon approval and then forwards the signed Form 1000 to the Trust. The Trust will then electronically transfer (wire) the funds to the community.

The required forms needed to seek reimbursement are: Form 1000 Form 3000. The Form 1000 form states the following: the approved amount of the loan, the previous requests made by the community and the current requested amount. This form must be signed by the Authorized Representative of the community.

The Form 3000 is known as the consultant engineer's form, and maintains a running balance of the contract. The D/M/WBE information must be updated with each reimbursement request. The Form 3000 form requires the signature of the consulting engineer.

When the community signs a final loan agreement with the Trust either the community or the consulting engineer should contact MassDEP to receive a copy of these forms. Please refer to [State Revolving Fund Contact list](#) for the accountant for your [community](#).

Samples of these forms follow this page.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER RESOURCES**

PAYMENT REQUISITION

LOAN NO.: _____ DMS PROJECT NO.: _____		REQUEST NO.: _____ SERVICE DATES: _____ TO _____	
LEGAL NAME AND ADDRESS OF BORROWER: _____ _____ _____			
EXPENDITURE TYPE	APPROVED AMOUNT \$	PREVIOUS REQUESTS \$	THIS REQUEST \$
Construction		\$0.00	\$0.00
Construction Services		\$0.00	\$0.00
Construction Contingency			
Other:		\$0.00	\$0.00
<h1>Sample</h1>			
Totals	\$ -	\$ -	\$ -
CERTIFICATION OF THE BORROWER:			
<p><i>The Authorized Representative of the Borrower identified below certifies the following:</i></p> <p><i>(i) This payment is for Project Costs and the obligations specified herein have not been the basis for a prior requisition that has been paid;</i></p> <p><i>(ii) there has been no Default, as defined in the Regulatory Agreement hereunder or no Event of Default as defined in the Loan Agreement, and no event or condition exists which after notice or lapse of time or both, would become a Default under the Regulatory Agreement or an Event of Default under the Loan Agreement exists; and</i></p> <p><i>(iii) the payment requested by this requisition is due for work actually performed or materials or property actually supplied prior to the date of of this requisition less retainage.</i></p>			
Signature: _____ Date: _____ Print Name: _____ Title: _____			
(To be completed by the DEP Division of Municipal Services)			
Amount Requested: _____ Amount Approved: _____ Signature: _____ Date: _____ Print Name: <u>Maria E. Pinaud</u> Title: <u>Division Director</u>			

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER RESOURCES**

PAYMENT REQUISITION
(Consultant Engineer's Request and Certification)

LOAN NO. : 0				DESCRIPTION OF PROJECT:			
DMS PROJECT NO. : 0				0			
CONTRACT No. _____							
LEGAL NAME OF BORROWER: 0 _____				REQUEST No. 0 _____			
CONSULTANT NAME & ADDRESS: _____ _____				PAYMENT PERIOD: From _____ To _____			
				CONTRACT SERVICE DATES: From _____ To _____			
EXPENDITURE TYPE	APPROVED COST \$	PREVIOUS REQUESTS		THIS REQUEST \$	CUMMULATIVE REQUESTS \$	REMAINING BALANCE \$	
		%	\$				%
Construction Services	\$ -	0%	\$ -	\$ -	0%	\$ -	
D/MBE/WBE Subcontractors	\$ -	0%	\$ -	\$ -	0%	\$ -	
	\$ -	0%	\$ -	\$ -	0%	\$ -	
Totals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<p><i>The Borrower's Consultant Engineer identified herein certifies as follows: 1) the attached invoices and supporting documentation are for project costs for work actually performed or material or property actually supplied prior to the date of this requisition in conformity with the plans and specifications approved by the Department, or in the case of substantial deviations from the approved plans and specifications, the attached documentation demonstrates that all such deviations have been authorized and certified to by the Borrower or it's Consultant Engineer in accordance with M.G.L. c 30, ss39I and are project costs.</i></p>							
BY THE CONSULTING ENGINEER							
Certified by: _____				Date Signed _____			
Type Name and Title: _____				Telephone _____			

Sample