

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
Drinking Water State Revolving Fund
Construction Stage

January 2018

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

Introduction

Chapter 275 of the Acts of 1989, as most recently amended by Chapter 78 of the Acts of 1998, (the Act) established the Drinking Water State Revolving Fund loan program in Massachusetts contemplated by 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 Public Water Suppliers (PWS) to finance the costs of eligible drinking water protection projects. In order to receive a loan, a potential borrower must file an Application for Financial Assistance with MassDEP, Bureau of Water Resources (BWR). Once MassDEP has approved the Application, it will forward a Project Approval Certificate to the Trust. The Trust will then be authorized to fund the loan, subject to the availability of funds and subject to review by MassDEP and the Trust of financial information contained in the Application and development of terms and conditions for the loan.

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 project listing to be eligible to apply for financial assistance.*** Applications for loans will be reviewed in accordance with the provisions of 310 CMR 45.00 (<https://www.mass.gov/regulations/310-CMR-4500-the-drinking-water-state-revolving-fund>).

This package includes the Application Forms, Instructions and other information relative to supporting documentation required to be submitted as part of the Application. 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.

Changes for 2018

The regulations governing MassDEP's administration of the State Revolving Fund (310 CMR 44.00 and 45.00) were updated on January 1, 2018. The changes include:

States are required to periodically review the process and data with which they establish Disadvantaged Business Enterprise (DBE) goals, for the use of EPA grants. During 2016 and the first half of 2017, MassDEP and the Clean Water Trust, completed a DBE review and submitted the results to USEPA for approval. *On July 27, 2017, EPA Region 1 approved new DBE goals of 4.2% for minority-owned business enterprises (MBE) and 4.5 % for women-owned business enterprises (WBE).* Projects receiving SRF financing must therefore meet those goals. Proponents unable to meet the targets may seek a waiver from the requirement, if they can demonstrate a 'good faith effort' was undertaken to achieve those goals.

Owing to the fact that many of the projects which will receive SRF financing are already well under development or into construction, the Department had delayed the implementation of the change. Therefore, any projects or contracts bid on or after January 1, 2018, will be required to use the new 4.2% MBE and 4.5% WBE goals. There can be no exceptions.

Changes from previous years that continue into 2018 include:

Affordability Criteria – The EPA requires each state to develop affordability criteria for the distribution of additional subsidy. These criteria needed to take into account income, unemployment rate, and population trends. The Trust developed these criteria, accepted public comment and approved the final criteria on September 23, 2015. For projects eligible for principal forgiveness on the 2018 Drinking Water IUP, projects must have executed construction contracts by June 30, 2019.

<https://www.mass.gov/service-details/affordability-calculation-mcwt>

Example of affordability calculation:

<https://www.mass.gov/guides/borrower-documents-reports-and-publications-mcwt>



Project Accounting – The EPA is now requiring that projects accounts be maintained in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets. MassDEP has always required that project accounts be maintained in accordance with generally accepted government accounting standards, but not particularly with respect to the reporting of infrastructure assets. The most recent applicable standard is [Governmental Accounting Standards Board \(GASB\) Statement No. 34](#), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets. MassDEP will be changing the standard condition in the Project Regulatory Agreement to reflect this change. It is expected that this change will have little, if any impact on SRF borrowers as most communities are already complying with GASB 34 requirements.

Project Signage – In an effort to communicate the positive impact and benefits of EPA funding and to increase awareness surrounding the improvements communities receive as a result of SRF assistance, the EPA is now requiring project signs or other means of publicizing the project.

[State Revolving Fund Signage Guidance](#)  file size 1MB

American Iron and Steel (AIS) – Appendix I provides the official EPA guidance and sample contract language for use in SRF construction contracts. It also provides guidance on obtaining waivers from the AIS requirements. This information is also included with the Plans and Specifications package at <https://www.srfmadep.com/state-revolving-fund-applications-forms/cwdw/pspkg.pdf>.

Price Adjustment Clauses – On November 20, 2013, the Massachusetts Legislature passed a bill (Chapter 150 of the Acts of 2013) requiring that water and sewer projects bid under MGL Chapter 30 Section 39M include price adjustment clauses for fuel, liquid asphalt and portland cement contained in cast in place concrete. The legislative language and samples of the MassDOT price adjustment clauses are found in Appendix H of the Plans and Specifications package (<https://www.srfmadep.com/state-revolving-fund-applications-forms/cwdw/pspkg.pdf>).

DBE United States Citizen Certification – The USEPA requires the use of certified Disadvantaged Business Enterprises (DBEs) in all SRF financed contracts. The EPA allows the use of DBE firms certified under the MassDOT program as long as those firms are owned or controlled by a United States Citizen. As such, MassDEP has added a form to the DBE package requiring the DBE firm to certify that it is owned or controlled by a United States citizen. This form is required for both Construction and Professional Services contracts.

Davis Bacon Wage Rates – Davis Bacon wage rates are again required for 2018. The required Davis Bacon contract language may be found in the Plans and Specifications package at <https://www.srfmadep.com/state-revolving-fund-applications-forms/cwdw/pspkg.pdf>.

PLEASE NOTE THAT THIS APPLICATION PACKAGE IS SUBJECT TO REVISION. IT DOES, HOWEVER, REFLECT THE BEST CURRENT INFORMATION ANTICIPATED TO BE NEEDED 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 is an application form for financial assistance from the Massachusetts Clean Water Trust's State Revolving Fund (SRF) Program. This form is to request subsidized loan assistance and/or to request refinancing of debt obligations incurred by the local governmental unit (LGU) for the construction of drinking water protection projects. 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 under the SRF Program. (See 310 CMR 45.04 and 45.08 at <https://www.mass.gov/regulations/310-CMR-4500-the-drinking-water-state-revolving-fund.>)
3. *Deadlines*- Please keep in mind three important deadlines: A vote on the local appropriation by the City Council, Town Meeting or Water District must be completed by **June 29, 2018** and should be scheduled as far in advance of that date as possible. A complete application must be submitted by **October 15, 2018**. Construction must commence within 6 months of issuance of the Project Approval Certificate by MassDEP. For projects receiving principal forgiveness, construction contracts must be executed by **June 29, 2019**.
4. *The Application Consists of Three Parts and a Checklist:*

Part I - General information about the applicant and the project, and an applicant certification statement.

Part II - Project specific data with supporting documentation.

Part III - Supplemental Requirements.

Loan Application Checklist - The checklist must be completed and submitted with the application.
5. Please refer to the instructions for each section to determine which types of additional information are required for submission with the application. MassDEP may require other supporting information or documentation in addition to that requested in this application.
6. *Plans and Specifications* - Plans and specifications may be submitted prior to submitting the other parts of the application. Early submittal will help expedite MassDEP's review of the project. In any event, plans and specifications must be submitted no later than the application due date, and the loan application is not complete until they have been submitted. Plans and Specifications should be submitted as a PDF file on a CD or flash drive with one ½ size paper copy of the plans.
7. *Submission* - Please submit one PDF copy of the application (**including the loan application checklist**) on a CD or flash drive to:

Steven McCurdy, Director
Division of Municipal Services
Massachusetts Department of Environmental Protection
One Winter Street, 5th Floor
Boston, Massachusetts 02108-4747
(617) 292-5779

Instructions for Part I - Applicant Information Section

1. Provide the legal name and the PWSID Number of the eligible borrower (Public Water Supplier) that will undertake the proposed project. If the applicant is not a municipality provide information regarding the entity that 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- (*Checklist Items I-1 and I-2*) 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, Board of Selectmen, 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 Board of Selectmen 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 water districts, provide the requisite authorization of the governing board.

The Authority to File statement must be certified. This is accomplished 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, Chairman of the Board of Water Commissioners, Chairman of the Board of Selectmen, etc.) so when there is a change in the Authorized Representative, only a new Certifying Authority to File needs to be submitted.

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 ID number and name from the current DWSRF Priority List/Intended Use Plan, and provide a brief description of the planned project. The description should include, as applicable, information such as the nature and severity of the public health problem being addressed, the size and type of drinking water treatment plant(s), the size of pumping station(s), size and length of water lines, description of rehabilitation of water lines, whether the project is part of a phased project, whether the project is required by enforcement action, and the anticipated outcome of the project.
5. If the project is serving more than one municipality or water district, list all municipalities involved and any PWSID numbers, as applicable.
6. Indicate the amount of financial assistance you are requesting.

7. **Local Appropriation** - (Checklist Item I-3) 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. Recommended authorizing language is included in **Appendix B**. Local bond counsel should be consulted for exact language.

Important points to remember to include in any authorizing language:

- a. Note that the applicant can borrow from the Massachusetts Clean Water Trust in accordance with Chapter 29c, as amended, of the General Laws.
 - b. The resolution must be certified.
 - c. It must denote who can act on behalf of the applicant to file for and accept financing.
 - d. It must specifically state the project(s) being authorized.
8. Check **ALL** forms of financial assistance the applicant is requesting.
 9. The application certification must be signed by the authorized representative designated in item 1 above. **Please review carefully the 13 conditions (in Part I) with which construction projects financed through the SRF must comply**. Failure to meet these conditions may preclude MassDEP's approval of the project.
 10. Describe the environmental/public health benefits of the project. Examples include elimination of MCL violations, providing emergency connections for neighboring communities, etc.

Instructions for Part II - Project Section

1. **PLANS & SPECIFICATIONS (Checklist Item II-1)** - One copy of the final engineering plans and specifications for each contract should be submitted as soon as possible, but no later than the date the application is submitted (Please note that this submittal is in addition to plans and specifications provided to the MassDEP Regional Office in conjunction with the Drinking Water Program permit application). Plans and specifications must be consistent with the MassDEP "Guidelines for the Preparation of Plans and Specifications" and a copy of the Plans & Specifications Checklist contained in the Guidelines must be included with the submittal. These documents may be found on the MassDEP web site at <https://www.srfmadep.com/state-revolving-fund-applications-forms/cwdw/pspkg.pdf>. The comments of other interested parties, such as MassDEP regional offices, and applicant response are to be incorporated into the documents. Applicants are encouraged to submit the final plans and specifications as early as possible to the same address noted on Page 2. Plans and specifications should be submitted as a PDF file on a CD or flash drive along with one 1/2 size paper copy of the plans.
2. **DETAILED PROJECT SCHEDULE** - The application must contain a realistic schedule with cash flow outlining important milestones in the construction program, including bidding requirements. Since the Trust will sell its bonds based on the proposed schedules, it is critical that the schedule and cash flow be as accurate as possible. Please include month, day, and year.
3. **SUMMARY OF COSTS** - Provide detailed construction bid sheets from the specifications showing the engineer's estimate of construction cost, including eligibility. Eligibility must be consistent with the MassDEP "Policy on Eligible Project Costs" (<https://www.srfmadep.com/state-revolving-fund-applications-forms/cwdw/dwsrfpol.pdf>). Please note that a contingency of 10% of the estimated construction contract cost should be included in the estimate prior to receiving bids. The contingency will be reduced to 5% when based on actual bid amounts.

If the project includes costs for police traffic details, provide an explanation of the need and submit a traffic management plan that includes a detailed breakdown of the man-hour requirements to implement. The traffic management plan should be developed in conjunction with the local community's traffic

management officer. MassDEP reserves the right to require that the traffic management plan be certified by the appropriate police official should the estimated needs appear to be excessive (Note that costs for police traffic details are considered an administrative cost of the LGU, and are not to be included in the construction contract).

In addition to the above requirements for police details, the LGU is required to comply with 701 CMR 7.00 Use of Road Flaggers and Police Details on Public Works Projects. These regulations identify when road flaggers or police details shall be used and also require the preparation of a construction zone safety plan. The regulations and other guidelines can be found on the massDOT web site at <http://www.massdot.state.ma.us/portals/8/docs/flaggers/FlaggerGuidelines.pdf>. Both police details and road flaggers are eligible costs within the SRF program.

Instructions for Part III - Supplemental Requirements (Checklist Items III-1 through III-19)

1. **LAND TITLE/EASEMENTS** - The applicant must demonstrate that all required land, easements, or real property have been obtained, bona fide options taken, or condemnation proceedings initiated. An attorney must prepare a document certifying the ownership or easement rights to all property. A sample form is included in **Appendix C**.
2. **PROJECT EVALUATION REPORT (PER)** - Include a copy of MassDEP's letter approving the PER. As provided by 310 CMR 45.09 (<https://www.mass.gov/regulations/310-CMR-4500-the-drinking-water-state-revolving-fund>) every DWSRF project must be the result of an approved PER.
3. **INTERMUNICIPAL AGREEMENTS** - If the project will serve two or more municipalities, or one municipality's project must connect to another's water system, the applicant must submit an executed intermunicipal agreement or another legally binding document covering financing, construction, and operation of the proposed treatment works. The requirement may be waived if:
 - a. Evidence of historic relationships for other services between the parties exist; or
 - b. The financial strength of the applicant is adequate to continue the project, even if one of the proposed communities fails to participate.
4. **USER CHARGE SYSTEM** - The applicant must have a user charge system in place that is adequate and is being enforced. If no user charge system has been put in place, it must be developed and in effect by the time the treatment works are placed in operation.
5. **MassDEP DRINKING WATER PROGRAM PERMIT** - Prior to the award of financial assistance, the applicant must obtain all MassDEP Drinking Water Program permits and approvals applicable to the proposed project.
6. **CONSTRUCTION PERMITS/ORDER OF CONDITIONS/CERTIFICATES/ LICENSES** - If applicable, the following construction permits must be filed and documented in the loan application. For the purposes of awarding financial assistance, the application for the permit(s) is acceptable; however the final permit(s) must be incorporated into the specifications prior to MassDEP authorization to advertise:
 - a. **U.S. ARMY CORPS OF ENGINEERS (404 Permit)** - An Army Corps of Engineers Section 404 Permit is required if a structure is to be located in, or if excavation, discharge of dredged or fill material will be performed in waters of the United States. For projects, this may involve the excavation and backfilling associated with lines crossing a waterway or wetland, outfall pipes, and any fill material (including rip-rap) used for bank stabilization or any fill associated with treatment facilities.

- b. MassDEP PERMITS AND APPROVALS
- (i) MassDEP DIVISION OF WATERWAYS (Chapter 91 Permit) - A Chapter 91 Permit must be obtained for the construction of any structure or the filling of land, the driving of piles, or the making of excavations, in, over, or upon the waters below the high water mark of any tidal areas or in or over any great pond or any river or stream. In addition, a permit is also required if it is proposed to either dredge in the tidal areas or dispose of any dredged material therein. For further guidance on this issue, please refer to 310 CMR 9.00 (<https://www.mass.gov/regulations/310-CMR-900-the-massachusetts-waterways-regulation>).
 - (ii) WATER QUALITY CERTIFICATE - Any project requiring a federal or state license or permit to conduct activities which may result in a discharge to waters of the United States must be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed facility. State certification must be obtained before a license or permit may be issued. Such activities include NPDES regulated discharges, dredge and fill operations, and the construction of structures in water. For further guidance on this issue, please refer to 314 CMR 9.00 (<https://www.mass.gov/regulations/314-CMR-9-401-water-quality-certification>).
 - (iii) MassDEP DIVISION OF AIR QUALITY (Permit) - Any proposed new or modified source of air contaminants, such as carbon monoxide, hydrocarbons, nitrogen oxides, sulfur dioxide, particulate matter, volatile organic compounds, and any pollutant covered by the National Emission Standards for Hazardous Air Pollutants promulgated by EPA, must be approved. For further guidance on this issue, please contact the Division of Air Quality Control and refer to 310 CMR 7.00 (<https://www.mass.gov/regulations/310-CMR-700-air-pollution-control-0>).
- c. LOCAL CONSERVATION COMMISSION (Order of Conditions) - Under Chapter 131, Section 40, the applicant must file a notice of intent with the local conservation commission if construction is to occur within 100 feet of wetlands or floodplains. Note that both natural and man-made coastal dunes are included within the definition of wetlands.
- d. MASSACHUSETTS DEPARTMENT OF TRANSPORTATION (massDOT) PERMIT - A permit must be obtained from the regional massDOT office for any project that crosses or does any type of work within the boundaries of a state highway.
- e. MBTA/CONRAIL LICENSE - A license is required if the project will impact property owned by either the MBTA or CONRAIL. The appropriate agency should be contacted for further information.
- f. OTHER STATE/FEDERAL PERMITS - Depending upon the project, other permits may be required and must be filed for.
7. CZM CONSISTENCY CERTIFICATE - The issuance of federal permits for activities located within the coastal zone or affecting this zone requires that the applicant obtain a certification that the activities are consistent with the state coastal zone policy. For further guidance on this issue, contact the Office of Coastal Zone Management. <https://www.mass.gov/orgs/massachusetts-office-of-coastal-zone-management>
8. MASSACHUSETTS ENVIRONMENTAL POLICY ACT (MEPA) COMPLIANCE - Prior to the award of financial assistance, an Environmental Notification Form (ENF) must be filed with the MEPA Unit of the Executive Office of Energy and Environmental Affairs (EOEEA) if the project exceeds the review thresholds contained in 301 CMR 11.00 (<https://www.mass.gov/regulations/301-CMR-11-mepa-regulations>)

After a review period, the Secretary of EOEEA will decide whether an Environmental Impact Report (EIR) is required or not. If not, then the project can proceed, subject to any conditions that MEPA may place on the project. If an EIR is required, it must be completed by the proponent and submitted to the Secretary for an additional public comment period. Once the comment period has expired, the Secretary will render a decision on the final EIR. If it is found acceptable, and once the 60-day legal challenge period expires, the project can then proceed. The application must contain documentation that the requirements of MEPA have been satisfied.

9. FLOOD INSURANCE PARTICIPATION - If the project involves structures within a flood hazard area, the applicant must furnish evidence that it is either participating in the flood insurance program or a letter of intent that it will obtain the required insurance both during construction and for the useful life of the project.

Insurable structures are defined as being \$10,000 or more in value, and are new or reconstructed surface structures that are walled and roofed, such as a pump station or treatment plant control building. Facilities such as sewers, which are not likely to be damaged by flooding, are not eligible for insurance.

10. MASSACHUSETTS HISTORICAL COMMISSION (Approval) - A construction loan cannot be made until all work required by the Massachusetts Historical Commission (MHC) has been completed and approved by them in accordance with 950 CMR 71.00. The loan may be conditioned, in some instances, to require recovery of archaeological material during construction when a sensitive area will be affected and no reasonable alternative is available. Documentation that the requirements of MHC have been met must be included with the application.

11. LEGISLATION (IF NEEDED) - There are several instances where special legislation from the Massachusetts General Court could be required prior to the initiation of construction. Examples include:

- a. Construction in dedicated conservation land, including parkland;
- b. Construction by one community within the municipal boundaries of another;
- c. Formation of a water supply district;
- d. Easements for construction in state owned land.

12. PROFESSIONAL SERVICES AGREEMENT - The application must contain draft agreements for all professional services which clearly outline the duties and responsibilities of the applicant and the contractor. The agreement will include, but not be limited to:

- a. Scope of work for the various tasks, including basic, resident, and special construction services.
- b. Time of Completion.
- c. For certain drinking water protection facilities, start-up and post-construction services,

For professional services agreements receiving SRF subsidy, the following requirements apply:

- a. MODEL SUBAGREEMENT CLAUSES - The provisions of **Appendix D** are to be made a part of all professional services agreements.

- b. 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.
 - c. 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 subagreements to be performed using state trust monies. Sample forms are provided in **Appendix F**.
 - d. 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 G**.
13. MAP OF PROJECT - Each application must be accompanied by a project map, denoting the drinking water facilities and/or the site plan of the treatment plant. It should delineate:
 - a. Jurisdictional Boundaries.
 - b. Existing versus proposed facilities.
 14. BASIC DESIGN DATA - A detailed copy of the basic design data for the drinking water facilities must be included.
 15. PROVISION FOR O&M PROGRAM - The applicant must clearly demonstrate that it has the capability to properly operate and maintain the drinking water facilities. To this end, an operation and maintenance manual (O&M) must be prepared for all water treatment plants, which describes the equipment, develops staffing requirements, and outlines the procedures necessary to keep the facilities operating in an optimum fashion. A provision for the preparation of an O&M manual should appear in the Professional Services Agreement.
 16. DISPLACEMENT OF PERSONS OR BUSINESSES - The application must state whether this project has caused, since January 1, 1971, or will cause, the displacement of any individual, family business, or farm as required by the Uniform Relocation and Real Property Assistance Policies Act of 1970 (PL 91-646).
 17. PLAN OF OPERATION - Prior to the award of financial assistance for water treatment facilities, a preliminary plan of operation must be approved by MassDEP. By the 50% stage of construction, a final plan must be completed and approved. For further guidance on this issue, please contact the appropriate MassDEP program manager.
 18. START-UP SERVICES - For facilities, the Professional Services agreement must provide for start-up services during the first year following the initiation of operation. The extent of the services will vary depending on the size and complexity of the project. For further guidance on this issue, please contact the appropriate MassDEP program manager.

19. POST-CONSTRUCTION SERVICES - For facilities, the applicant must notify MassDEP in writing of the actual date of initiation of operation. During the first year following initiation of operations, the applicant will monitor the performance of the facilities. One year after initiation of operations, the applicant shall submit a report to MassDEP outlining whether the project meets performance standards.

Part I

Applicant Information and Certification

(Attach additional pages as necessary)

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

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

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

5. MUNICIPALITIES SERVED BY TREATMENT WORKS (Name / Permit Numbers)	

6. AMOUNT OF ASSISTANCE REQUESTED
\$

7. LOCAL APPROPRIATION		Amount	Available Balance
Bonds	\$		\$
Cash	\$		\$
Other	\$		\$

8. TYPE OF FINANCIAL ASSISTANCE REQUESTED		
(Check as applicable)		Loan for new project
		Refinancing of debt incurred
If refinancing, list amount of outstanding debt and maturity dates.		
Amount	Date of Issue	Maturity Date

9. 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 Applicant shall obtain MassDEP's prior written approval to: (a) advertise any Invitation To Bid or Request for Proposals to procure contracts for the Project; and (b) award any contracts for the Project.
(2) The Borrower shall comply with the Affirmative Action requirements in the Department's Regulations and the federal Disadvantaged Business Enterprise (DBE) rule. The Borrower shall comply with the Civil Rights Act of 1964, 42 USC s.2000(a) et seq., as amended, and all Executive Orders and regulations promulgated hereunder. The Borrower shall sign and deliver to the Department a Nondiscrimination in Employment form. The Borrower shall ensure that any prime contracts or subcontracts for services, construction, goods or equipment for the Project contain the M/WBE utilization goals of 4.2% D/MBE and 4.5% D/WBE.
(3) The Applicant shall at all times provide and maintain competent and adequate resident supervision and inspection of the Project under the direction of a licensed professional engineer. Such resident site engineer shall ensure that the implementation of the Project conforms with the approved plans and specifications, and shall certify to the Applicant and MassDEP at the completion of the Project that the implementation of the Project is in accordance with MassDEP approved final plans and specifications for the Project. The Applicant also agrees to submit an executed copy of the contract for resident site engineering services to MassDEP within sixty (60) days of the date of the contract award. The Applicant understands that no payments for the Project will be processed until such contract has been submitted to MassDEP.
(4) 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.
(5) The Applicant shall be solely responsible for the implementation and completion of the Project in accordance with MassDEP approved plans and specifications and MassDEP permit(s) issued for the Project, and for the economical and efficient operation and administration of the Project. The Applicant's responsibilities include retaining sufficient operating personnel and conducting operational tests and other needed evaluations to ensure the economical and efficient operation and administration of the Project.
(6) The Applicant shall establish accounts for the Project which shall be maintained in accordance with generally accepted government accounting standards.
(7) 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.
(8) 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.
(9) The Applicant agrees to provide any Project information and documentation requested by MassDEP.

<p>(10) The Applicant shall obtain fee simple title or such other property interest in the Project site, including any easements and rights-of-way, necessary to ensure the undisturbed use and possession of the Project site for the purposes of implementation and operation of the Project for its estimated life.</p>	
<p>(11) Any proposed change in Project-related contracts which substantially modifies the Project initially proposed shall be submitted to MassDEP for prior approval.</p>	
<p>(12) 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.</p>	
<p>(13) MassDEP representatives shall have access to Project work whenever it is in preparation or progress, and shall be provided proper facilities for such Project access and inspection. All of the Applicant's construction and other relevant contracts shall contain the above provision.</p>	
<p>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.</p>	
<p>Name of Representative (Type)</p>	<p>Title</p>
<p>Signature of Representative</p>	<p>(Date)</p>

Part II

Project Section Information

1. Plans and specifications		
Contract Number	Contract Name	Submittal Date

2. Construction Schedule (estimated dates – mm/dd/yy)					
Contract No(s).					
Bid Advertisement					
Contract Award					
Contract Completion					
Calendar Days to Complete					

3. Summary of Costs *	Total Costs	Eligible Costs
A. Construction (Use bid proposals) - List Contract Name or Number		
Construction Contingency (max. 10% pre-bid; 5% post-bid)		
Sub Total		
B. Construction Services		
a. General Supervision		
b. Resident Engineering		
c. Testing of Materials		
d. As Built Plans		
e. Operation and Maintenance Manual		
f. Start up Supervision		
g. Other:		
Sub Total		
C. Other Costs		
a. Police – Traffic Detail		
Sub Total		
TOTAL		

Date of Estimate: _____
 ENR Construction Cost Index: _____

*** Attach detailed construction bid sheets with engineer’s estimate.**

**Loan Application Checklist
Drinking Water State Revolving Fund Program
CONSTRUCTION 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 in this package (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. Plans & Specifications			
Part III - Supplemental Requirements			
1. Title / Easements (Legal Opinion)			
2. Project Evaluation Report			
3. Intermunicipal Agreements			
4. User Charge System (310 CMR 45.11(2)(b))			
5. MassDEP Drinking Water Program Permit(s)			
6. Other Construction Permits			
a. US Army Corps of Engineers			
b. MassDEP			
- Waterways			
- Water Quality Certification			
- Sludge Disposal Approval			
- Air Quality			
c. Local Conservation Commission (Order of Conditions)			
d. massDOT			
e. MBTA/Railroad			
f. Other State/Federal Permits Required			
7. Coastal Zone Management Consistency Certificate			
8. MEPA Compliance			
9. Flood Insurance Participation			
10. Historic Preservation			
11. Legislation (if needed)			
12. Professional Services Agreements			
a. Required Model Subagreement Clauses			
b. Cost / Price Summary			
c. Detailed Fee Breakdown			
d. Subcontracts			
e. Disadvantaged Business Enterprise			
f. Chapter 233 - Statement on MA Taxes			
13. Map of Project			
14. Basic Design Data			

Item	Included in this package (check)	Previously submitted (date)	Not applicable (check)
15. Provision for O & M Program			
16. Displacement of Persons or Businesses			
17. Plan of Operation			
18. Start-up Services			
19. Post-Construction Services			

Appendix A

**Authority to File
And
Certifying Authority to File**

Sample: Resolution Authorizing Officer to File Application with the Massachusetts Department of Environmental Protection, for State Financial Assistance for Drinking Water Protection 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 Drinking Water Protection 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 construction 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: Certification to the Massachusetts Department of Environmental Protection, as to Authority to File Applications for State Financial Assistance for Drinking Water Protection 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 Drinking Water Protection 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
(Name of Person)
of the 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

Sample Language for Local Appropriations

MASSACHUSETTS CLEAN WATER TRUST

NOTE: The following are suggested forms of a town meeting article and vote and city council loan order. These forms are provided as guidance only. Bond counsel to the municipality should be consulted to determine the exact form of authorization required and to determine which local body or official must approve the terms of the borrowing and the forms of documentation. Note also that districts and regional local governmental units may have substantially different authorization requirements from those indicated below for towns and cities.

SUGGESTED FORM OF TOWN MEETING ARTICLE AND VOTE

Article

To see if the Town will vote to appropriate a sum of money for the [construction] [planning] of (insert description of the drinking water protection project); to determine whether this appropriation shall be raised by borrowing from the Massachusetts Clean Water Trust or otherwise; and to take any other action relative thereto.

Vote

Voted: that \$_____ is appropriated for the purpose of financing the [construction] [planning] of (insert description of the drinking water protection project) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the Selectmen is authorized to borrow \$_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the Town unless the Treasurer with the approval of the Selectmen determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Clean Water Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Board of Selectmen, Board of Public Works or other appropriate local body or official) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

SUGGESTED FORM OF CITY COUNCIL LOAN ORDER

Ordered: that \$_____ is appropriated for the purpose of financing the [construction] [planning] of (insert description of the drinking water protection project) including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that to meet this appropriation the Treasurer with the approval of the (Mayor or Manager) and the (Auditor, Finance Committee or other appropriate local body or official) is authorized to borrow \$_____ and issue bonds or notes therefore under (Chapter 44 of the General Laws or insert reference to other applicable general or special law governing the issuance of local bonds) and/or Chapter 29C of the General Laws, as most recently amended by St. 1998, c.78; that such bonds or notes shall be general obligations of the City unless the Treasurer with the approval of the (Mayor or Manager) and the (Auditor, Finance Committee or other appropriate local body or official) determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C, as most recently amended by St. 1998, c.78; that the Treasurer with the approval of the (Mayor or Manager) [and the (Auditor, Finance Committee or other appropriate local body or official)] is authorized to borrow all or a portion of such amount from the Massachusetts Clean Water Trust established pursuant to Chapter 29C, as most recently amended by St. 1998, c.78; and in connection therewith to enter into a loan agreement and/or a security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; that the (Mayor or Manager) is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary to carry out the project.

Appendix C

Certificate as To Title to Project Site

CERTIFICATE AS TO TITLE TO PROJECT SITE

I, _____, Attorney At Law, representing the (City/town)
of _____, Massachusetts, herein called the Applicant, as title counsel,
do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (treatment plant, transmission mains, outfalls, pumping stations, distribution pipes, and appurtenances) of the drinking water protection project for which State Financial Assistance has been offered, identified as DWSRF- _____.
2. That I have examined the deed records of the county or counties in which this project is to be located and, in my opinion, the Applicant has a legal and valid fee simple title or other estate or interest in the site of the project, including the necessary easements and rights-of-way as are necessary to undisturbed use and possession for the purposes of construction and operation for the estimated life of the project.
3. That any deeds or documents required to be recorded, in order to protect the title of the owner and the interest of the Applicant, have been duly recorded or filed for record wherever necessary with reference to Contracts _____ through _____, inclusive.

Dated this _____ day of _____, 20____.

Appendix D

Model Sub-Agreement Provisions

Professional Services Agreements -Required Provisions

All contracts between Drinking Water State Revolving Fund (DWSRF) borrowers 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 authorized under MGL Ch. 29C. Neither the Commonwealth of Massachusetts nor the Massachusetts Department of Environmental Protection (MassDEP) nor the Clean Water 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 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 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 E

Additional Subsidy Requirements

Additional Subsidy Requirements

Requirements applicable to all applications for Additional Subsidy

M.G.L. c.29C, §6(h) provides that with respect to projects appearing on the MassDEP Intended Use Plan for calendar year 2016 and subsequent years:

- (i) the Massachusetts Clean Water Trust shall not commit contract assistance to provide for an additional subsidy or other form of financial assistance (for example, principal forgiveness or loans with an interest rate less than 2% (including the 0% interest rate loans for nutrient enrichment management projects referred to M.G.L. c.29C, §6(d)) to any local governmental unit unless it has established a sewer enterprise fund or water enterprise fund, as applicable, under M.G.L. c.44, §53F1/2, or in lieu of the applicable enterprise fund has established a separate restricted account that is the equivalent of such fund; and
- (ii) any local government unit that, on or after January 1, 2015, transfers or otherwise uses money from its enterprise fund or restricted account for its local governmental operating budget, other than to pay or reimburse, valid expenses or obligations related to such fund or restricted account, will not be eligible to seek new commitments for such additional subsidy for a period of five years following the date of such transfer or other use.

Applications for additional subsidy (for example, loans subject to principal forgiveness) are evaluated on criteria that includes: consistency with the current priorities of the Massachusetts Clean Water Trust (MCWT), federally-required affordability criteria, and the implementation of Best Management Practices (BMP) described on the MCWT website at: <https://www.mass.gov/guides/borrower-documents-reports-and-publications-mcwt>. Accordingly, applications for such additional subsidy must

include a certification that the applicant has adopted BMP or, if the applicant is unable to make such certification at the time of application, that the applicant is working toward such adoption and expects to have adopted BMP at or before project completion. ***If the applicant is unable to certify, at or before project completion, that it has adopted BMP, then the financing will remain subject to repayment in full at a standard (generally 2%) interest rate..***

Form of certifications

The attached certification must be submitted with each loan application for additional subsidy.

ADDITIONAL SUBSIDY REQUIREMENTS

I _____, _____, hereby
(name) (title/position)

certify on behalf of _____ (the "Applicant") that:
(local governmental unit)

(i) the Applicant has established a water enterprise fund under M.G.L. c.44, §53F1/2, or in lieu of the applicable enterprise fund has established a separate restricted account that is the equivalent of such fund;

(ii) Since January 1, 2015, Applicant has not transferred or otherwise used money from its enterprise fund or restricted account for its local governmental operating budget, other than to pay or reimburse, valid expenses or obligations related to such fund or restricted account; and

(iii) With respect to the Best Management Practices ("BMP") described at the Massachusetts

Clean Water Trust website at: <https://www.mass.gov/guides/borrower-documents-reports-and-publications-mcwt>

(check one):

- Applicant has adopted BMP; or
- Applicant is currently working towards adoption of BMP and expects to have adopted BMP at or before project completion (*if BMP are not adopted at or before project completion, then the financing will remain subject to repayment in full at a standard (generally 2%) interest rate*).

(signature)

(date)

Appendix F

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 DBE goals.

Disadvantaged MBEs (D/MBE) 4.2%* Disadvantaged WBEs (D/WBE) 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 M/WBE 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 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 4.50% 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 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 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 W/MBE activity, will be required at a minimum to submit Form EEO-DEP-390E (Quarterly 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.

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.

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:	

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**

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

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. () _____ Ext. _____

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

MAILING INSTRUCTIONS: (CERTIFIED MAIL)

TO: MassDEP-DMS PROGRAM
MANAGER
ONE WINTER STREET – 5th FLOOR
BOSTON, MA 02108-3237

CC: MassDEP - CRU DIRECTOR
ONE WINTER STREET - 4TH FLOOR
BOSTON, MA 02108-3237

Appendix G

Statement of Tax Compliance

STATEMENT OF TAX COMPLIANCE

I, _____, as _____ of
(Title)

_____, 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 H

Loan Reimbursements

Loan Reimbursement Forms

Once a loan has been made with the Trust the community may begin seeking reimbursement for costs incurred on the project. The consultant engineer for the project will fill out the forms, gather the appropriate backup and submit the forms to MassDEP. MassDEP then forwards a 1000 form to the Trust. The Trust will then wire transfer the funds to the community.

The required forms needed to seek reimbursement are: 1000, 2000 and 3000 forms. The 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 2000 form is known as the contractor's form. This form shows the approved amount of the contractor's contract and M/WBE information. Similar to the 1000 form, the 2000 form maintains a running balance of the contract. The M/WBE information must be updated with each reimbursement request. The 2000 form requires the signature of the contractor, the consulting engineer and the MassDEP inspector.

The 3000 form is known as the consultant engineer's form. The 3000 form is exactly like the 2000 form and its requirements. The 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. Those projects in the Northeast and Western regions should contact **Robert Bourque at (617) 556-1103**, and for those projects in the Southeast and Central regions contact **Chris Palmer at (617) 292-5772**.

Samples of these forms follow this page.

BUREAU OF RESOURCE PROTECTION

PAYMENT REQUISITION

LOAN NO.: _____ DMS PROJECT NO.: _____	REQUEST NO.: _____ 1 _____		
LEGAL NAME AND ADDRESS OF BORROWER: _____ _____ _____	PAYABLE TO: _____ _____ _____		
	PAYMENT METHOD: WIRE TRANSFER ACCOUNT #: _____		
EXPENDITURE TYPE	APPROVED AMOUNT \$	PREVIOUS REQUESTS \$	THIS REQUEST \$
Technical Expense	\$ -	\$ -	\$ -
Construction	\$ -	\$ -	\$ -
Contingency	\$ -		
Administrative (Police)	\$ -	\$ -	\$ -
Totals	\$ -	\$ -	\$ -

SAMPLE

CERTIFICATION OF THE BORROWER:

The Authorized Representative of the Borrower identified below certifies the following:

- (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;*
- (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*
- (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.*

Signature: _____ Date: _____
 Print Name: _____
 Title: _____

(To be completed by the DEP Division of Municipal Services)

Amount Requested: _____ Amount Approved: _____

Signature: _____ Date: _____

Print Name: Steven J. McCurdy
 Title: Director

BUREAU OF RESOURCE PROTECTION

PERIODIC PAYMENT FORM

(Contractor's Request)

LOAN NO. : DMS PROJECT NO.: CONTRACT NO.:	DESCRIPTION OF CONTRACT / TASK:
CONTRACTOR NAME & ADDRESS: _____ _____ _____	REQUEST NO.: <u> 1 </u>
CONSULTANT ENGINEER NAME & ADDRESS: _____ _____ _____	PAYMENT PERIOD: From To
	CONTRACT SERVICE DATES: From To

EXPENDITURE TYPE	APPROVED COST \$	PREVIOUS REQUESTS		THIS REQUEST \$	CUMMULATIVE REQUESTS		REMAINING BALANCE \$
		%	\$		%	\$	
Construction	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
MBE/WBE Subcontractors							
Company A	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Company B	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
<i>Total</i>	\$ -	#####	\$ -	\$0.00	####	\$ -	\$ -

SAMPLE

<i>I certify that to the best of my belief and knowledge, (i) that the attached invoices are in accordance with the specifications of the approved project plans; and (ii) that all work in place as of this date are in accordance with the terms of the above referenced Construction Contract.</i>	BY THE CONTRACTOR	<i>Certified by:</i> _____ <i>Type Name and Title:</i> _____	<i>Date Signed</i> _____	
	BY THE CONSULTING ENGINEER	<i>Recommended by:</i> _____ <i>Type Name and Title:</i> _____	<i>Date Signed</i> _____	
	BY THE PROJECT INSPECTOR	THE WORK AS INVOICED HERE TO DATE APPEARS REASONABLE THE WORK AS INVOICED HERE TO DATE APPEARS REASONABLE SIGNATURE _____ PRINT NAME DEP/ BRP PROJECT INSPECTOR	<i>Date Signed</i> _____ <i>Telephone</i> _____	

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RESOURCE PROTECTION**

**PAYMENT REQUISITION
(Consultant Engineer's Request and Certification)**

LOAN NO. : DMS PROJECT NO. : CONTRACT No. _____			DESCRIPTION OF PROJECT:				
LEGAL NAME OF BORROWER: _____			REQUEST No. <u> 1 </u>				
CONSULTANT NAME & ADDRESS: _____ _____			PAYMENT PERIOD: From To				
			CONTRACT SERVICE DATES: From To				
EXPENDITURE TYPE	APPROVED COST \$	PREVIOUS REQUESTS		THIS REQUEST \$	CUMMULATIVE REQUESTS		REMAINING BALANCE \$
		%	\$		%	\$	
Technical Services	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
SAMPLE							
MBE/WBE Subcontractors							
Company A	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Company B	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
Company C	\$ -	#####	\$ -	\$ -	####	\$ -	\$ -
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 _____			

FORM - 3000

Appendix I

American Iron and Steel Requirements



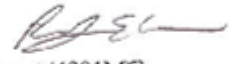
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

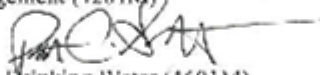
MAR 20 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76,
Consolidated Appropriations Act, 2014

FROM: ✓ Andrew D. Sawyers, Director 
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director 
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

Implementation

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.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

Project Coverage

1) What classes of projects are covered by the AIS requirement?

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

8) What if a project has split funding from a non-SRF source?

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which

case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

9) What about refinancing?

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?

No, the AIS requirement only applies to 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)

Covered Iron and Steel Products

11) What is an iron or steel product?

For purposes of the CWSRF and 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 public water system or treatment works:

- 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; and
- Construction materials (defined in more detail below).

12) What does the term ‘primarily iron or steel’ mean?

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does ‘produced in the United States’ mean?

Production in the United States 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.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of ‘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 are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;
- Meter Boxes;

Service Boxes;
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings;
Trash receptacles;
Tree Grates;
Tree Guards;
Trench Grates; and
Valve Boxes, Covers and Risers.

20) What is ‘structural steel’?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three 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.

21) What is a ‘construction material’ for purposes of the AIS requirement?

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: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, 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, and stationary screens.

22) What is not considered a ‘construction material’ for purposes of the AIS requirement?

Mechanical and 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 (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers

and clarifier mechanisms, rakes, grinders, disinfection systems, 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, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire 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 bar and wire are considered to be a construction material and must be produced in the US.

Compliance

25) How should an assistance recipient document compliance with the AIS requirement?

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process 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 their 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 can be quite simple. Typically, it includes 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, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

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 occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

26) How should a State ensure assistance recipients are complying with the AIS requirement?

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website:

<https://www.epa.gov/office-inspector-general/epa-oig-hotline>.

28) How do international trade agreements affect the implementation of the AIS requirements?

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where 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.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

Definitions

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act 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.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: cwsrfwaiver@epa.gov. For DWSRF waiver requests, please send the application to: dwsrfwaiver@epa.gov.

Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA’s website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: <https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement>
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at dorfman.jordan@epa.gov or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Cost Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
Cost Waiver Requests				
• Does the waiver request include the following information?				
— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products				
— Relevant excerpts from the bid documents used by the contractors to complete the comparison				
— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market				
• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?				
Availability Waiver Requests				
• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?				
— Supplier information or other documentation indicating availability/delivery date for materials				
— Project schedule				
— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials				
• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?				
• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)				
• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested?				
Examples include:				
— Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State				
— Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States				
— Correspondence with construction trade associations indicating the non-availability of the materials				
• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?				

Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.

Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of _____ (“Purchaser”) and the _____ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements 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 Purchaser and the State 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 Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State 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.

Appendix 5: Sample Certifications

The following information is provided as a sample letter of step certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXXXX)

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.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

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

The following information is provided as a sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXXXX)

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 as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

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