

# Drinking Water State Revolving Fund Program

## Policy on Eligible Project Costs

### Introduction

This document establishes MassDEP's guidelines for determining the eligible project costs of drinking water projects financed through the Drinking Water State Revolving Fund Program (DWSRF).

### Applicability

This guidance is intended for use by SRF loan applicants and their consultants in the preparation of applications for DWSRF financing, and by MassDEP SRF Program staff in reviewing loan applications.

***Users of this guidance are strongly encouraged to review the regulatory provisions contained in 310 CMR 45.04 which address the types of projects eligible for financing through the DWSRF.*** These provisions are attached to this guidance as Appendix 1. The regulatory provisions pertaining to eligible project costs are contained in 310 CMR 45.08. These DWSRF program regulations can be found at the following link: <https://www.mass.gov/doc/310-cmr-4500-the-drinking-water-state-revolving-fund/download>.

Applicants should also refer to the relevant Intended Use Plan (IUP) on which their project appears, since the annual IUP may limit which stages of project implementation (i.e., planning, design, or construction) are eligible for that fiscal year. **Because the demand for construction financing has significantly surpassed available funding, since the late 1990s, MassDEP has excluded from SRF eligibility design stage costs and design projects.**

### Purpose

This policy summarizes how MassDEP distinguishes eligible costs (those necessary for the completion of a drinking water project) from ineligible costs (those which are not necessary for the completion of the project or have been otherwise deemed ineligible by MassDEP). The guidance is provided primarily in the form of examples and includes separate listings for eligible and ineligible costs. Eligible borrowers should contact MassDEP for further guidance concerning any other categories of costs not clearly appearing on either list. In general, in addition to being necessary, eligible costs must be (a) **reasonable**, (b) **allocable** to the project, (c) **not a general expense** of carrying out

the overall responsibilities of the eligible borrower or LGU; and, (d) **not funded** under another state or federal financial assistance program.

MassDEP determines eligible costs of each project after reviewing the eligible borrower's loan application. This determination is incorporated within the Project Approval Certificate issued by MassDEP to the Massachusetts Clean Water Trust. Issuance of the Project Approval Certificate is contingent upon an applicant satisfying the criteria and procedures set forth in the DWSRF program regulations, 310 CMR 45.00.

## **I. Eligible Costs**

### **A. Planning Phase Eligible Costs**

The costs of preparing a Project Evaluation Form (PER) (310 CMR 45.09) directly related to the drinking water project are eligible costs and include but are not limited to:

1. The costs of professional and consulting services including necessary travel to meet project objectives.
2. The costs incurred in complying with the requirements of the National Environmental Policy Act (NEPA) and the Massachusetts Environmental Policy Act (MEPA).
3. The costs to conduct cybersecurity assessments and to develop improvement plans and emergency response strategies. [Supporting Cybersecurity Measures with the DWSRF | Drinking Water State Revolving Fund \(DWSRF\) | US EPA](#)
4. Pilot studies.

### **B. Construction Phase Eligible Costs**

The costs of construction and related activities necessary to build the drinking water project are eligible costs and include but are not be limited to:

1. The costs of professional and consulting services, including those incurred during bidding process and necessary travel costs to meet project objectives.
2. The construction contract including a 5 % construction contingency
3. Costs of start-up services for on-site training of operating personnel in operation and control of specific treatment processes, laboratory procedures, and maintenance and records management.
4. The cost of developing an operation and maintenance (O & M) manual or revisions to an existing O & M manual for drinking water treatment facilities.

5. The cost for post construction certification.
6. Cost of acquiring all or part of an existing publicly or privately owned drinking water facility provided all the following criteria are met:
  - a. The acquisition, in and of itself, considered apart from any upgrade expansion or rehabilitation, provides new drinking water benefits;
  - b. The acquired drinking water facility was not built with previous federal or state financial assistance;
  - c. The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and,
  - d. The acquisition does not circumvent the requirements of 310 CMR 45.00, or other state or local requirements.
7. Cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory equipment necessary to conduct tests required for plant operation.
8. Cost of permanently fixed shop equipment (i.e., lathes, drill press other power shop equipment) installed at the drinking water plant necessary for the operation of the works.
9. Costs of necessary safety equipment to be used exclusively at the drinking water facility, provided the equipment meets applicable federal, state, local or industry safety requirements.
10. Costs of a reasonable inventory of necessary maintenance equipment (such as lawn mowers, snow blowers, and power and shop tools) and customary furniture and office equipment for new treatment works, provided these purchases are to be used exclusively for that treatment facility. These purchases should receive prior MassDEP approval, be appropriate for the facility's size and usage and should be limited in cost.
11. Computers and ancillary software necessary for efficient operation of the drinking water facility.
12. Costs of royalties for the use of or rights in a patented drinking water process or product.
13. Costs allocable to the drinking water treatment purpose of multiple purpose projects.
14. Costs necessary to mitigate direct, adverse, physical impacts resulting from building drinking water facilities.
15. Change orders and the costs of meritorious contractor claims for increased costs under sub-agreements provided the costs are within the scope of the project, not caused by the owner's mismanagement; and not caused by the owner's vicarious liability for the improper actions of others. Eligible costs include:

- a) Building costs resulting from defects in the plans, design drawings and specifications, or other sub-agreement documents only to the extent that the costs would have been incurred if the sub-agreement documents had been free of defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects.
  - b) Costs of equitable adjustments for differing site conditions. Settlements, arbitration awards, and court judgments which resolve contractor claims shall be eligible only to the extent that they meet the requirements of 310 CMR 45.00, are reasonable, and do not attempt to pass on to the state the cost of events that were the responsibility of the owner, the contractor, or others.
16. The costs (including legal, technical, and administrative costs) of assessing the merits of or negotiating the settlement of a claim by or against a recipient under a sub-agreement provided the claim arises from work within the scope of the project, a formal amendment to the loan agreement is executed specifically covering the costs before they are incurred, and the costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the awardee.
  17. The cost associated with the preparation of the drinking water facility site before, during and, to the extent agreed on in the loan agreement, after building, including the cost of demolition of existing structures on the drinking water facility site (including rights-of-way) if building cannot be undertaken without such demolition.
  18. The cost of removal, relocation or replacement of utilities, if the recipient is legally obligated to pay such costs under state or federal law.
  19. The cost of restoring streets and rights-of-way to their original condition. The need for such restoration must result directly from the construction and will generally be limited to those costs of replacement of temporary and permanent paving over water main trenches.
  20. The costs of dams and reservoirs rehabilitation, owned by the public water system, intended to provide a safe drinking water supply and improve public health protection consistent with the Safe Drinking Water Act (SDWA).

### **C. Miscellaneous and Administrative Eligible Costs**

Other costs necessary to plan or implement a drinking water project include, but are not limited to:

1. The costs of police traffic details during construction.
2. Preliminary and or final Plan of Operation.
3. Costs of force account work provided the owner demonstrates to the satisfaction of MassDEP that the work can be accomplished more economically by the use of the force account method, or that emergency

circumstances dictate its use, and that it possesses the necessary competence required to accomplish, document, and audit such work.

## **II. Ineligible Costs**

Ineligible Project Costs are those costs MassDEP determines are the borrower's responsibility and or are not necessary for the completion of the project.

MassDEP has determined that ineligible costs include, but are not limited to, the following:

1. Costs that are incurred in excess of the approved project costs shall not be eligible for a subsidy under the loan unless MassDEP has approved the increase through an amendment to the project approval certificate and the loan has been amended to include the increased amount.
2. The operational costs of drinking water projects shall be ineligible for SRF assistance.
3. Costs which are incurred in violation of applicable federal and state statutes, regulations, or requirements;
4. Bonus payments, not legally required, for completion of building before a contractual completion date.
5. Costs of basin or area wide planning which is not directly related to the project.
6. Removal, relocation, or replacement of utilities located on land by privilege, such as franchise or privilege of sufferance.
7. The cost of vehicles for the transportation of the recipient's employees.
8. Items of routine "programmed" maintenance such as ordinary piping, air filters, couplings, hose, bolts, to major system components.
9. Ordinary operating expenses of the borrower including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies.
10. Personal injury compensation, claims related to wrongful deaths, or property damages arising out of the project.
11. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws, regulations or procedures.
12. Costs outside the scope of the approved project, as defined in the Project Evaluation Form.
13. Costs for capacity beyond the design life of the project.

14. Costs for which payment has been or will be received from another federal or state agency.
15. The cost of drinking water projects that would provide capacity for new habitation or other establishments to be located in environmentally sensitive land such as wetland or floodplain.
16. The pro-rata portion of the costs for utilities that cannot be dedicated for the sole purpose of the drinking water project.
17. The costs of solutions to aesthetic problems, including design details which require expensive building techniques and architectural features and hardware, that are unreasonable or substantially higher in cost than approvable alternatives.
18. Preparation of applications, plans of study, and permits required by federal, state or local regulations or procedures.
19. Architectural or engineering services or other services necessary to correct defects in a comprehensive wastewater management plan, design drawings and specifications, or other sub-agreement documents *except meritorious contractor claims as allowed in section II, Construction Eligible Cost, #15.*
20. The costs of acquisition (including associated legal, administrative and engineering etc.) of water main rights-of-way or drinking water treatment plant sites.
21. Costs of non-technical services (legal or administrative) for development of a user charge system, or inter-municipal agreement;
22. Architectural or engineering services or other services necessary to correct defects in a Project Evaluation report, design drawings and specifications, or other sub-agreement documents
23. The cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement
24. Buy-in cost to another community's water supply system.
25. Corrective Action Reports and related corrective action construction for conventional technology.
26. Design phase costs such as the costs for preparation of construction drawings, specifications, pre-design reports, estimates, and construction contract documents related to the water pollution abatement project are ineligible costs, including the costs of professional and consulting services including necessary travel to meet project objectives and the costs of survey and borings.
27. Any cost that are prohibited by the U.S. EPA, including but not limited to: 2 CFR 200.216, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment ([https://www.ecfr.gov/cgi-bin/text-idx?SID=2312b40f5181614169488e0699a25e61&mc=true&node=se2.1.200\\_1216&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=2312b40f5181614169488e0699a25e61&mc=true&node=se2.1.200_1216&rgn=div8))